

ASEAN Consumer Contract Laws: Consumer Remedies in Malaysia and Singapore

Ong Tze Chin and Sakina Shaik Ahmad Yusoff
Faculty of Law, University Kebangsaan Malaysia (UKM), Bangi, Malaysia

Abstract: In the era of globalisation with the complexities of the chain of trading and sales, consumers are no longer the market players but the weakest group in the market economy. One of the most effective ways in providing consumer protection is through consumer right to redress. The right to redress raises the issues of remedies in law. Remedies are often linked with rights, rights and remedies are intertwined, the right derives from the remedy and as a matter of sequence the remedy precedes the right. Consequently, the absence of a remedy points to the non-existence of a legal right. With the formal establishment of ASEAN Community 2015 and towards the ASEAN Community Vision 2025, consumer protection is among others, one of the criteria in a deeper integration process in achieving people-oriented and people centred ASEAN Community. The enactment of consumer protection legislations among the ASEAN countries marked a new era of consumer protection in ASEAN. In Malaysia with the increase awareness of consumerism, the Consumer Protection Act 1999 was enacted to provide a comprehensive scheme of protection for consumers. After many years of lobbying, Singapore has also enacted the Consumer Protection (Fair Trading) Act in 2003. Nevertheless the difference in the approach taken by the legislature in each country calls for a comparative study of the remedial scheme provided by the relevant legislation. This study aims at analysing the similarities and differences in the remedies available to consumers in sale of goods contracts under the Malaysian Consumer Protection Act 1999 and the Singaporean Consumer Protection (Fair Trading) Act 2003. Malaysia and Singapore, being among the founding fathers of ASEAN have been chosen as the focus of study based on the similarities in their legal traditions and the English law being the origin of the countries' sale legislations. Adopting the doctrinal legal research methodology this study emphasises on the comparative, analytical and critical approaches in the study of consumer's sale of goods remedies under the Malaysian and Singaporean legislations.

Key words: Consumer protection, consumer contracts, sale of goods, remedies, Malaysia and Singapore, legislations

INTRODUCTION

The evolution of globalisation which is characterised by the liberalisation of capital movements, the deregulation of major financial markets and the spread of neo-liberal beliefs in the merits of open and competitive trade has changed the world social economy (Chan, 2004). The changes of world social economy have since created various adverse effects and implications to the social welfare especially to the welfare of the consumers. Now a days, consumers are no longer the major influential group which control the market economy. Conversely, they are the weakest parties in business transactions. With the market commercial forces, globalisation that promotes economy efficiency, economy growth and commercial gains has forgone ethical trading practices among the traders in certain circumstances. Hence, consumer rights are being abused and taken advantage of by the unethical traders which resulted in lack of bargaining power or

with no bargaining power on the part of the consumer in Business to Consumer transactions (B2C). Furthermore with the advancement of information and communication technology, it has not only changed the environment of consumer transactions but has also posed potential risks affecting consumer rights as a whole.

ASEAN with a highly competitive economy region with the GDP of US\$2.6 trillion and over 622 million people in 2014 (ASEAN, 2015) have been subjected to various challenges, especially in upholding consumer protection. Consumer expenditure is among the biggest contributors to the ASEAN economy. Nevertheless, this expenditure is not reflective in the protection given to the consumers. Consumer protection has always been neglected prior to the establishment of the ASEAN Economic Community Blueprint. The importance of consumer protection has been first recognised in ASEAN Economic Community Blueprint, Clause B2, Paragraph 42 (ASEAN Economic Community Blueprint). In order to

foster a competitive economy with a people-centred approach ASEAN realised the significant of consumer protection in order to achieve equilibrium in economic integration. With the establishment of the ASEAN Committee on Consumer Protection (ACCP) in 2008 ASEAN member states have been enhancing and improving their consumer protection legislations with the assistance of ACCP. However, the disparity among the consumer protection legislations among the member states has impeded a common goal in enhancing consumer protection in the region. One of the areas that evinces the so-called disparity is in the area of consumer contractual remedy. It is thus pertinent to analyse the remedial scheme for consumer in a contract of sale of goods under the Malaysian Consumer Protection Act 1999 and to compare such scheme with the remedial scheme provided by the Singaporean Consumer Protection (Fair Trading) Act 2003 in the cause of searching for the best approach or the way forward in harmonising consumer contract laws among the ASEAN countries. Malaysia and Singapore have been chosen as the focus of this research as there are commonalities between both countries. Both Malaysia and Singapore are ASEAN countries upholding the common law tradition and the English common law being the origin of the provisions of the law of sale of goods in these countries.

MATERIALS AND METHODS

Consumer protection among ASEAN countries: The Final report of the Committee on Consumer Protection 1962. Hansard 1803. 14 November 1962 Vol. 244 cc605-25) defines 'consumer protection' as.

'Consumer protection' is an amorphous conception that cannot be defined. It consists of those instances where the law intervenes to impose safeguards in favour of purchasers and hire-purchasers. Together with the activities of a number of organisations, variously inspires, the object or effect of which is to procure fair and satisfying treatment for the domestic buyer.

Consumer protection has been recognised since medieval ages with the law protecting the buyer from adulterated wine or mould bread (Simnadurai, 1969). However, the era of progressive movement of consumer protection only started during 19th century initiated by the social reformists from the Western countries through the National Consumers League (History of National Consumers League at <http://www.nclnet.org/history>). The struggle of the National Consumers League in promoting consumer protection for fair distributive justice went on for years and lasted until the 20th century. The new era of consumer protection started during the 1960's with reference to a Consumer Bill of Rights proclaimed by President (Kennedy, 1962).

We nevertheless cannot afford waste in consumption any more than we can afford inefficiency in business or Government. If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted his health and safety may be threatened and the national interest suffers. On the other hand, increased efforts to make the best possible use of their incomes can contribute more to the well-being of most families than equivalent efforts to raise their incomes.

From another viewpoint, "consumer protection" may be regarded as those measures which contribute directly or indirectly to the consumer's assurance that he will buy goods of suitable quality appropriate to his purpose that they will give him reasonable use and that if he has just complaint there will be a means of redress".

ASEAN was set up by its founding fathers, Indonesia, Malaysia, the Philippines, Singapore and Thailand in 1967. Subsequently, Brunei Darussalam joined ASEAN in 1984 followed by Vietnam 1995, Lao PDR and Myanmar in 1997, lastly Cambodia joined in 1999 which made up today's ten member states of ASEAN (About ASEAN: Overview at <http://asean.org/asean/aboutasean/overview/>). ASEAN countries have different degrees of openness to globalisation and integration in the global market economy. Despite the differences, the culture of non-involvement in the domestic policies of the countries has weakened the social welfare protection especially consumer protection in the region. Consumer protection in the ASEAN countries remains fundamentally weak and further squeezed by the economic need to be internationally competitive and this phenomenon has affected consumer rights in the region.

Recent, emerging economy of ASEAN has attracted much attention on the importance of consumer protection. The establishment of ASEAN ACCP has provided a positive platform in facilitating development of consumer protection legislation among the member states. Thailand is the earliest country that has enacted a consumer protection legislation, namely, the Consumer Protection Act 1979, followed by the Philippines with the enactment of the Consumer Act in 1992. Malaysia enacted its consumer oriented legislation in 1999 in the form of the Consumer Protection Act 1999. Its neighbour Indonesia too has enacted the Consumer Protection Law No. 8/1999 and Vietnam enacted its consumer protection law in the form of Ordinance on Protection of Consumer's Interest 1999. Despite the competitiveness in its economy, Singapore has only enacted its Consumer Protection (Fair Trading) Act in the year 2003, followed by Lao PDR enacted its Law on Consumer Protection 2010, Brunei Darussalam enacted the Consumer Protection Fair Trading Order in 2011 and Myanmar enacted the Consumer

Protection Law in 2014. Currently, Cambodia is the only country without a principal legislation on consumer protection. However, Cambodia is expected to enact its Consumer Protection Law soon. This article concentrates on the comparison of remedies available to consumer remedies in contracts of sale of goods under the Malaysian Consumer Protection Act 1999 and the Singaporean Consumer Protection (Fair Trading) Act 2003 with a view of harmonising the consumer contract laws among the ASEAN countries. This comparative study would be able to set down a sound foundation for the harmonisation of consumer laws on sale of goods among the ASEAN countries.

Remedies under the Malaysian Consumer Protection Act 1999:

In Malaysia with the increase awareness of consumerism, the National Advisory Council for Consumer Protection published a report in Rachagan (1992) which proposed the introduction of a product liability rule in Malaysia. Subsequently, the Consumer Protection Act 1999 was enacted so as to provide a comprehensive scheme of protection for consumers. Under CPA 1999 the National Consumer Advisory Council and the Tribunal for Consumer Claims were established. Regrettably, the application of CPA 1999 is only of supplemental in nature and without prejudice to any other law regulating contractual relations. Although, CPA 1999 does provide statutory remedies for consumers as the status of the Act is merely supplementary in nature, the remedies under the Contracts Act 1950 and Sale of Goods Acts 1957 override the remedies available under the CPA 1999. Despite the statutory remedies available under the CPA 1999, the application of the remedies provided are rather confusing and do not provide a comprehensive protection for consumers.

CPA 1999 provides in Part VI Rights against Suppliers in Respect of Guarantees in the supply of goods and Part VII Rights against Manufacturers in respect of Guarantees in the supply of goods. In the context of consumer's sale of goods, the right to redress against the suppliers of goods arises where the goods fail to comply with any of the implied guarantees under Section 31-37. The consumer's right of redress against manufacturers arises where the goods fail to comply with the implied guarantees under Section 32, 34, 37 and 38. Thus, the consumer's right to redress under CPA 1999 is subject to the statutory breach of implied guarantees under CPA 1999. However, there is no definition of the term 'guarantee' provided under the Act. It would however appear that the term 'guarantee' in the Act refers to a formal assurance or promise that goods will meet certain standards (Naemah, 2002). However, Halsbury's Law of England define 'guarantee' as:

A guarantee is an accessory contract by which the promisor undertakes to be answerable to the promise for the dent, default or miscarriage of another person whose primary liability to the promise must exists or be contemplated.

Although, the term 'guarantee' is meant to be distinct from the term 'condition' or 'warranty' under the Sale of Goods Act 1957 but the implied guarantees provided under the CPA 1999 such as implied guarantee as to title, implied guarantee as to acceptable quality, implied guarantee for fitness for particular purposes, implied guarantee that goods comply with description and sample suggested that these guarantees bear resemblance to the implied conditions under the 1957 Act.

In its remedial regime, CPA 1999 provides a set of new remedies departed from the common law contract remedies. CPA 1999 segregate the remedies against the suppliers and the manufacturers. The new remedies against the suppliers are in the form of remedying the failure such as repairs, curing the defect in title, replacing the goods with goods of identical type and refund of money paid. On the other hand, the new remedies against the manufacturers are reduction in price, repairing the goods or replacing the goods with goods of identical type. However, the remedies provided by CPA 1999 are very confusing in its application and practicality. There are also many statutory constraints on to the application of the new remedies which are rather frustrating. Among others, Section 40 of the CPA 1999 is one of the obstructive section that deny consumers of their remedial rights. Section 40 provides that there shall be no right of redress against the supplier of goods under the Act in respect of the failure of the goods to comply with the implied guarantee as to acceptable quality where the manufacturer makes a representation in respect of the goods otherwise than by a statement on any packaging or label. There shall be no right of redress as well where the goods would have complied with the implied guarantee as to acceptable quality if that representation had not been made. This study excludes the liability of the supplier by providing the means to escape their obligation in the context of implied guarantees as to acceptable quality.

The remedies provided for a consumer are in the form of a hierarchical remedial regime in which the consumer will lose his choice of other remedies if he has exercised his right and opted for one remedy against the others. Section 41(1) of CPA 1999 provides that where a consumer has a right of redress against the supplier in respect of the failure of any goods to comply with a guarantee, the consumer may exercise the following remedies:

- Where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time in accordance with Section 42
- Where the failure is one that cannot be remedied or is of a substantial character within the meaning of Section 44, the consumer may
- Subject to Section 43, reject the goods in accordance with Section 45
- Obtain from the supplier damages in compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods
- The right is not exercised within a reasonable time
- The goods have been disposed of by the consumer
- The goods have been lost or destroyed while in the possession of a person other than supplier
- The goods were damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply
- The goods have been attached to or incorporated in any real or personal property and the goods cannot be detached or isolated without damaging them

This study seems to suggest that the remedial choice is of the supplier rather than the consumer's choice. It is because only the supplier can determine whether the failure is a failure that can or cannot be remedied. Further there is no definition of what is meant by a failure that can be remedied. It might be problematic in determining what amount to failure that can be remedied. Besides that there is also no definition of what amount to a 'reasonable time', what might be a reasonable time to a supplier might not be a reasonable time to the consumer.

Section 42 provides a requirement to remedy a failure. Such a requirement is an obstacle that hinders a consumer from getting an appropriate remedy. Section 42(1) provides that a supplier may satisfy a requirement under Section 41 to remedy a failure of any goods to comply with a guarantee by:

- Where the failure does not relate to title, repairing the goods
- Where the failure relates to title, curing any defect in title
- Replacing the goods with goods of identical type
- Providing a refund of any money paid or other consideration provided by the consumer in respect of the goods where the supplier cannot reasonably be expected to repair or replace the goods or sure any defect in title

This study has no proper guidelines as to how to apply such a requirement. Furthermore, problems may arise if the supplier does not take the consumer's claim seriously in repairing the goods or curing the title. Once the consumer has chosen a remedy such as repairing the goods, the consumer will lose the right of compensation or the right to reject the goods.

Apart from that, consumers are facing difficulties in invoking their traditional rights of redress such as the right to reject goods. Section 43(1) provides that the right conferred under this Act to reject goods shall not apply where:

It is clearly stated that consumers would lose the right to reject goods in the circumstances specified under the Act. The conditions imposed for the rejection of goods is undoubtedly a more harsh statutory imposition in impeding consumer's right of redress.

A consumer may only reject the goods or obtain damages in compensation for any reduction in value of the goods if the failure is one that cannot be remedied. Further, Section 44 provided that the failure to comply with a guarantee must be of a substantial character as where:

- The goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure
- The goods depart in one or more significant respects from the description by which they were supplied or where they were supplied by reference to sample or demonstration model, from the sample or demonstration model
- The goods are
- Substantially, unfit for purpose for which goods of the type in question are commonly supplied
- Unfit for a particular purpose made known to the supplier or represented by the supplier to be a purpose for which the goods would be fit

As such, consumer may only reject the goods or obtain damages in compensation for any reduction in value of the goods for a failure of a substantial character. This provision clearly is opposed to the common law rights of rejection and claim for damages, further reducing the availability of remedies for consumer redress.

Consumer's right against manufacturers in respect of guarantees in the supply of goods is also hindered by the exception to right of redress against manufacturers. Section 51 CPA 1999 provides that there shall be no right of redress against the manufacturer under this Act in respect of goods which fail to comply with the implied guarantee under Section 32 or 34 where the failure is due to:

- An act, default or omission of or any representation made by, a person other than the manufacturer
- A cause independent of human control, occurring after the goods have left the control of the manufacturer

The above exception provides a means for a manufacturer to avoid liability for failure of the goods manufactured. There are also options against manufacturers where goods do not comply with guarantees under section 52 of CPA 1999. Section 52(1) provides that where a consumer has a right of redress against the manufacturer in respect of the failure of any goods to comply with a guarantee, the consumer may obtain damages from the manufacturer:

- For the reduction in the value of the goods resulting from the manufacturer's failure, namely
- The reduction below the price paid or payable by the consumer for the goods
- The reduction below the average retail price of goods at the time of supply whichever price is lower
- For any loss or damage to the consumer resulting from the manufacturer's failure, other than loss or damage through a reduction in the value of the goods which is proved to be a result or consequence of the failure

Section 52(2) provides where the consumer is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by:

- Repairing the goods
- replacing the goods which goods of identical type

No action shall be commenced under paragraph (1)(a) unless the consumer has required the manufacturer to remedy the failure and the manufacturer has reused or neglected to remedy or has not succeeded in remedying, the failure within a reasonable time.

CPA 1999 undoubtedly establishes the rights of consumers against suppliers and manufacturers in respect of guarantees in the supply of goods. The Act however has failed to provide an effective and practical remedies to consumers and thus has affected the availability of consumer's right of redress. In order to ensure that consumer's rights are sufficiently protected by the law against the unfair trade practices, remedy is the only means to ensure consumer right for redress is protected. In the modern market economy, the marketing of goods for consumer is conducted by big organisations and

trained businessmen who in every attempt will persuade consumers to buy goods or enter into contract on the terms and conditions which are favourable to them. In situations where there is a breach of the consumer sale of goods contract, consumer is in the weaker position as compared to large business organisations as the terms and conditions in the contract are in such a way that it would jeopardise consumers in their claims against the producer or the supplier. Besides that, litigation is disproportionately costly and trouble some to consumer. Even with small claims tribunal, consumer is caught in between the terms that are so unfair to them in the contract entered. Only with a proper remedial scheme or system upholding consumer rights is able to sufficiently redress the consumers. In the latin words, *ubi jus ibi remedium* which means that there is a right there is a remedy thus right and remedy are intertwined. In order to ensure that consumer right is sufficiently protected by the law against unfair trade practices, remedy is the only means in realising this aim.

RESULTS AND DISCUSSION

Remedies under the Singaporean Consumer Protection (Fair Trading) (Amendment) Act 2012: Singapore Consumer Protection (Fair Trading) Act (CPFTA) was only enacted in 2003 and came into effect on 1st March 2004. Since then, the CPFTA 2003 has undergone a few amendments. However, the more significant amendment was the recent 2012 amendment which inserted the 'Lemon Law' in Part III of the Consumer Protection (Fair Trading) (Amendment) Act 2012. 'Lemon Law' refers to legislation which provide consumer the right to seek a replacement or a refund if the goods continue to manifest defects after repairs (Loke, 2014). According to Etymology Dictionary, the term 'lemon' was originated from British slang which means passing off a sub-standard good as a new one, in particular it is refer to second hand car in poor condition (<http://www.etymonline.com>). However, the term 'lemon law' was an American term which typically cover but not necessarily confined to the sale of vehicles. For example, Ohio Lemon Law which covers the sale of new vehicles. The Ohio Lemon Law provides that the manufacturer, its agent, or its authorised dealer is required to repair defects found in the new vehicle within the first 18,000 miles (whichever is earlier) (Ohio Revised Code §1345.72(B) 2013).

The new remedial regime of Lemon Law in Singapore introduces 4 additional remedies which are repair, replacement, price reduction and rescission in a distinct parallel scheme. One of the significant changes brought about by the Lemon Law is that of the 6 months

presumption of conformity. Section 12B(3) provides that goods which do not conform to the applicable contract at any time within the period of 6 months starting from the date on which the goods were delivered to the transferee must be taken not to have so conformed at the date. It means that if the goods after the delivery to a consumer are found to be defective within 6 months, it is presumed that the defect existed at the time of sale or delivery which is not conforming to the contract. The burden of proof is shifted to the transferor to prove the conformity of the goods to the contract, rather than the consumer to prove the non-conformity of the goods. This presumption does not only provide a useful guidance on the time frame as to when a consumer has access to the additional remedies but also improve the efficiency of consumer's right to remedies. Repair and replacement of goods are provided under Section 12C(1) of the CPFTA 2012 that the transferee may require the transferor to:

- Repair the goods
- Replace the goods

If the transferee requires the transferor to repair or replace the goods, the transferor must:

- Repair or as the case may be, replace the goods within a reasonable time and without causing significant inconvenience to the transferee
- Bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage)

The additional remedies of reduction in amount to be paid and rescission of contract are provided in Section 12D. The transferee may:

- Require the transferor to reduce the amount to be paid for the transfer of the goods in question to the transferee by an appropriate amount
- Rescind the contract with regard to those goods

The simple wording of the additional remedies seem no different from the remedies provided under the Malaysian CPA 1999. However, the major difference lies in the integration of the existing general law. The Malaysian CPA 1999 is only of supplemental in nature without prejudice to any other law regulating contractual relations (Section 2(4) CPA 1999). The supplemental nature of CPA 1999 leads to its failure to integrate with any existing law such as Malaysia's Contract Acts 1950 and the Sale of Goods Act 1957, hence causing much confusions as to the application of the remedies in CPA

1999. On the other hand, Singapore Lemon Law provisions apply in the event of non-conformity to contract at the time of delivery. The non-conformity to contract is defined under the existing Sale of Goods Act to include situations such as the product not being in a satisfactory quality, not fit for the purpose it is purchased for or not meeting reasonable performance expectations, description of the goods, the price and other relevant circumstances. Besides that, Section 12E of the CPFTA 2012 clearly anticipates the continuance of the right to reject goods for breach of condition. Therefore, it is clear that the additional remedies under Part III of the CPFTA 2012 are open to combination with the remedies of the existing Singapore law which governs consumer's sale of goods contract. Section 12A(4) provides that goods do not conform to:

- A contract of sale of goods if there is in relation to the goods, a breach of an express term of the contract or a term implied by Section 13, 14 or 15 of the Sale of Goods Act
- A contract for the supply or transfer of goods of there is, in relation to the goods, a breach of an express term of the contract or a term implied by Section 3, 4 or 5 of the Supply of Goods Act
- A hire-purchase agreement if there is, in relation to the goods, a breach of an express term of the contract or a term implied by Section 6A, 6B or 6C of the Hire-Purchase Act

The notion 'of conformity to the contract' in Part III of CPFTA 2012 is one of the salient features of the new remedies which is based on the existing concepts of law in the Sale of Goods Act, Supply of Goods Act and the Hire-Purchase Act. The new remedial regime is additional to the existing law; its co-existence and integration with the existing laws are in accord with the enhancement of consumer's right of redress. Part III Additional Consumer Rights in Respect of Non-conforming Goods as stated in the title is a two tier parallel remedial regime (Loke, 2014). Even though there is no indication in the legislation to suggests the two tier application of the remedies, priority that is given to Section 12C repair and replacement of goods is consistent with the notion of two tier remedies. Consumers are expected to exercise the rights of repair or replacement of goods (Tier 1 remedies) before claiming the remedies of price reduction or rescission (Tier 2 remedies) should remedies under the 1st tier fail. Consumers can only claim Tier 2 remedies if the condition in Section 12D(2) is satisfied. The conditions is that by virtue of Section

Table 1: Malaysian and Singapore Law

Variables	Malaysia Consumer Protection Act 1999 (CPA 1999)	Singapore Consumer Protection (Fair Trading) (Amendment) Act 2012 (CPFTA)
Rights of redress	Section 41-rights against suppliers in respect of guaranteed in the supply of goods Section 52-rights against manufacturers in respect of guarantees in the supply of goods	Section 12A(4)-Non-conformity to contract at the time of delivery
Remedial regime	Hierarchy remedial regime	Parallel two tier regime
New remedies	Suppliers Repairing the goods Curing the defect in title Replacing goods with goods of identical type Refund of money paid or other consideration Manufacturers Reduction in value of the goods Express guarantee: Repairing the goods or Replacing the goods with goods of identical type	Repair or replacement of goods Reduction in amount to be paid or rescission of contract
Integration with existing law	Section 2(4) Supplementary in nature	Section 12A (4) Sale of goods Act supply of goods Act hire-purchase Act Section 12F Powers of court in granting more appropriate remedy Section 15 Preservation of other rights or remedies

12C(3) the transferee may require neither repair nor replacement of the goods or the transferee has required the transferor to repair or replace the goods but the transferor is in breach of the requirement of Section 12C(2)(a) to do so within a reasonable time and without causing significant inconvenience to the transferee. The requirement to fulfil Section 12D(2) condition clearly prioritises the Tier 1 remedies. Moreover, Section 12C(3) provides that the transferee must not require the transferor to repair or as the case may be, replace the goods if that remedy is impossible; disproportionate in comparison to the other of those remedies or disproportionate in comparison to an appropriate reduction in the amount to be paid for the transfer under paragraph or rescission under paragraph of Section 12D(1). Thus, it transpires that the additional remedies of CPFTA 2012 apply the notion of two tier parallel remedial regime.

In choosing the remedies of repair or replacement of goods under Section 12C(1), the consumers have a right to choose between the two unless the chosen remedy is disproportionate in comparison to the other remedy. What is deemed to be 'disproportionate' is provided under Section 12C(4) that one remedy is disproportionate in comparison to the other if the one imposes costs on the transferor which in comparison to those imposed on him by the other are unreasonable, taking into account:

- The value which the goods would have if they conformed to the applicable contract
- The significance of the lack of conformity with the applicable contract
- Whether the other remedy could be effected without causing significant inconvenience to the transferee

Likewise, consumers also have the right to choose between Section 12D price reduction or rescission. Further, Section 12D(3) provides that if the transferee rescinds the contract, any reimbursement to the transferee may be reduced to take account of the use he has had of goods since they were delivered to him.

The Part III additional remedies further enhance the remedies provided by enduring the powers of the court to order another statutory remedy if it considers that remedy is more appropriate under Section 12F(3) and (4). Section 12F(3) provides that if:

- The transferee requires the transferor to give effect to a remedy under Section 12C or 12D or has claims to rescind under Section 12D (Table 1)
- The court decides that another remedy under Section 12C or 12D is appropriate

Section 12F(4) provides that the court may proceed:

- As if the transferee had required the transferor to give effect to the other remedy
- If the other remedy is rescission under Section 12D as if the transferee had claimed to rescind the contract under that section

The court's discretion in granting another more appropriate statutory remedy to the consumers is in line with the protection of consumer's right of redress. In order to further secure consumer's rights and remedies, the preservation of other rights or remedies is provided under Section 15 of the CPFTA by providing that nothing in the Act shall restrict, limit or derogate from any right or remedy that a consumer may have apart from the Act.

A comparative analysis of the remedies available to a consumer in a contract of sale of goods under the Malaysian law and the Singaporean law can be seen in the following (Table 1).

CONCLUSION

The development of the people-oriented and people-centred community define ASEAN as a highly integrated community with value in the global arena. Consumer protection served as an important criteria in the integration process of ASEAN should be viewed as a strength in the common growth. In order to achieve the equitable growth of ASEAN, consumer's rights of redress should not be taken for granted in the exchange of the economic growth. The rights of redress with effective and sufficient remedies will certainly achieve a win-win situation in achieving ASEAN vision and the equitable economic development with common advancement in interests. The comparative analysis of the Malaysian Consumer Protection Act 1999 and the Singapore Consumer Protection (Fair Trading) Act shows that both legislations have its strength and weaknesses. However, by realising that the existing remedial regime is not enough to sufficiently protect the consumer in a contract of sale of goods both countries are in the right path for such a move with the enactment of legislations providing for a better set of remedies for consumers. At first glance, CPA 1999 provides a hierarchical remedial regime but remains mindful to the implied guarantees influenced by the common law. The new remedies provided are full of flaws and problems in their application. On the other hand, the Singapore Lemon Law is a distinct parallel remedial regime with the integration of the existing law without undermining the importance of

judicial discretion and the preservation of other remedies. In a nutshell, the remedial regime in Malaysia and the new regime in Singapore both lay down a layer of complexity in its application. However, the effectiveness of the Singaporean law in protecting consumers in a contract of sale of goods is yet to be seen.

ACKNOWLEDGEMENT

This study is part of the research funded by the Ministry of Higher Education Malaysia (Project Code: FRGS/2/2014/SSI10/UKM/02/1).

REFERENCES

- ASEAN., 2015. ASEAN economy community. Association of Southeast Asian Nations, Jakarta, Indonesia. <http://asean.org/asean-economic-community/>.
- Chan, R.K., 2004. An overview: Themed section on Globalisation and welfare systems in Asia. *Social Policy Soc.*, 3: 253-258.
- Kennedy, J.F., 1962. Special message to the congress on protecting the consumer interest. *Public Pap. Presidents U. S.*, 93: 236-236.
- Loke, A.F., 2014. The lemon law and the integrated enhancement of consumer rights in Singapore. *Sing. J. Legal Stud.*, 2014: 285-306.
- Naemah, A., 2002. Guarantees in a contract of supply of goods to consumers. *IIUM. Law J.*, 10: 61-61.
- Rachagan, S.S., 1992. Consumer law reform-A report. Universiti Malaya Press, Kuala Lumpur, Malaysia.
- Sinnadurai, V., 1969. Consumer protection. *Sing. L. Rev.*, 1: 107-107.