

Consumer Protection and Environmental Sustainability on Drinking Bottled Water from Malaysian Sale of Goods Law Perspectives: Focusing on Statutory Implied Terms

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Abstract: Environmental sustainability is based on the concept of sustainable development. Environmental sustainability promotes the capacity to sustain the quality of life for consumer in order to safeguard environment as well as to protect consumer against harm, especially towards better living environment for consumer. One of the national laws of Malaysia that harmonised the concept of sustainable development in order to achieve environmental sustainability for consumer protection is the Sale of Goods Act, 1957. Therefore, this study will discuss on how the Malaysian Sale of Goods Act, 1957 provides protection to consumer protection and environmental sustainability on drinking bottled water which focusing on statutory implied terms.

Key words: Consumer protection, environmental sustainability, drinking bottled water, Malaysian Sale of Goods Law, implied terms

INTRODUCTION

Environmental sustainability basically is based on the concept of sustainable development. Environmental sustainability promotes the capacity to sustain the quality of life for consumer in order to safeguard environment as well as to protect consumer against harm, especially towards better living environment for consumer (Azrina *et al.*, 2011; Razman *et al.*, 2011a-c, 2010b). It is a daily routine for consumer to consume water from the environment. Currently, it is a norm for consumer to consume water from bottled water. Bottled water is a popular source of water now a days as most consumers perceived that they strive better on it. For most consumers bottled water is considered healthier, contaminants free, good taste and convenience or fashion even though the price is high (Azrina *et al.*, 2011; Razman *et al.*, 2011a). There are several varieties of bottled water in the market depending on the different source and processes applied spring water, purified water, mineral water, sparkling water and artesian water. Statistically, most people in developed countries are the top in rank who consume most of bottled water in the

world. Italy was ranked first followed by United Arab Emirates, Mexico, France, Belgium, Germany, Spain, Switzerland and US as reported in National Geographic Magazine, July 2007 (Azrina *et al.*, 2011; Razman *et al.*, 2011a). Being a better alternative to sweetened drink, drinking bottled plain water is advantageous especially in order to reduce extra caloric intake of an individual. Bottled water also is very valuable during emergencies or outbreak of illness especially when water supplies can be contaminated due to certain natural disasters (Azrina *et al.*, 2011; Razman *et al.*, 2011a-c, 2010b). Having accepted as a part of modern life today, bottled water is being sold at a very high price, comparable to petrol and at the same price with milk.

The increased in sales of bottled water worldwide has attracted many small scale entrepreneurs to participate in the bottled water industry (Azrina *et al.*, 2011; Razman *et al.*, 2011a-c, 2010b). However, without proper control in laws and regulations from the authority this condition may compromise health of consumers. Commonly, there are many laws that ensure the safety and purity of bottled water. 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 consumer protection and drinking water safety. 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 consumer protection and environmental sustainability that based on the concept of sustainable development.

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 and Great Britain in 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, 2010a; 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:

5 (1) 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 (2) 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)

Therefore, based on the 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 is was modelled (Pheng, 1997; Beatrix and Wu, 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 researchers 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. and Tham Cheow Toh in 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 Shukor, 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 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 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 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. As for section 16 of the Sale of Goods Act, 1957, stated that:

16 (1) 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:

- 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
- 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 (2) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by usage of trade

16 (3) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith

Therefore, based on the long provisions laid down in section 16 of Act, we 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 (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 (Hussain, 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:

17 (1) 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 (2) In the case of a contract for sale by sample there is an implied condition:

- That the bulk shall correspond with the sample in quality
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
- That the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample

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 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 drinking

bottled water in order to achieve environmental 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 drinking bottled water in order to achieve environmental sustainability by protecting the consumer.

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 drinking bottled water. 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 drinking bottled water.

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