

PROTECTING CONSUMER FROM UNFAIR TERMS : A COMPARATIVE
STUDY BETWEEN MALAYSIA , UNITED KINGDOM AND AUSTRALIA

By

Azleena Bt Md Khairuddin (2011254312)

Nur Aina Syafiqah Bt Azawawi (2011238172)

Nur Hidayah Binti Mat (2011272876)

Sofia Binti Azman (2011249906)

Submitted in Partial Fulfilment of the Requirement for the
Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

December 2013

The students / authors confirm that the work submitted is their own and that
appropriated credit has been given where reference has been made to the work of
others.

ABSTRACT

This research paper is about consumer law in Malaysia , United Kingdom and Australia . This research paper , focuses on the aspect of consumer protection and on the impact of unfair term on consumer in general .For Malaysia this research paper will focus on Consumer Protection act 1999 and Consumer Protection (amendment) act 2010, United Kingdom will focus on Unfair Contract Term Act 1977 and Unfair Term in Consumer Contract Regulation 1999 and for Australia Competition and Consumer Act 2010.

This research paper will discuss on the provision related to objective of legislation . Features of legislation which are the definition of consumer, definition of consumer contract, definition of unfair term contract terms ,conditions in determining unfair contract terms, examples of unfair contract terms ,scope of unfair contract terms law and remedies that can be sought under legislation.

Finally, comparison between all three legislation and the most suitable provision and feature will be pick to provide a better protection for consumer in Malaysia.

Table of content

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Cases	ix

CHAPTER ONE : INTRODUCTION

1.0	Introduction	
1.1	Overview	1
1.2	Statement of the problem	2
1.3	Purpose and objective of the research	6
1.4	Scope and limitation of the research	
1.4.1	Scope of the research	
	1.4.1.1 Malaysia	7
	1.4.1.2 United Kingdom	7
	1.4.1.3 Australia	8
1.4.2	The limitations of the research	
	1.4.2.1 Limitation of time	8
	1.4.2.2 Research constraint	8
	1.4.2.3 Lack of cooperation	9
1.5	The significance of the research	9
1.6	Research methodology	
1.6.1	Research questions	10
1.6.2	Research method	11
1.6.3	Research design	11
1.6.4	Research plan	13
1.6.5	Chapter outline	
	1.6.5.1 Chapter 1 :Introduction	14
	1.6.5.2 Chapter 2 :Unfair Terms in Malaysia	15

1.6.5.3 Chapter 3 :Unfair Terms in United Kingdom and Australia	15
1.6.5.4 Chapter 4 : Analysis	16
1.6.5.5 Chapter 5 : Recommendations and conclusion	17

CHAPTER TWO : UNFAIR TERMS IN MALAYSIA

2.0	Introduction	18
2.1	Malaysia position on unfair terms	18
2.1.1	CONTRACT ACT 1950	22
2.1.1.1	Malaysia judicial attitude	24
2.1.1.2	Summary	27
2.1.2	SALE OF GOODS ACT 1957	27
2.1.2.1	Summary	30
2.1.3	CONSUMER PROTECTION ACT 1999	31
2.1.3.1	Critics on the newly inserted part IIIA on the CPA 1999	39
2.1.3.1.1	Summary	41
2.1.4	Conclusion	42

CHAPTER 3 : UNFAIR TERMS IN UNITED KINGDOM AND AUSTRALIA

3.0	Introduction	44
3.1	Unfair terms in United Kingdom	44
3.1.1	Prior UTCA 1977 and UTCCR 1999	45
3.1.2	Unfair Terms contract act 1977	
3.1.2.1	Overview	46
3.1.2.2	Ineffective terms	49
3.1.2.3	The requirement of reasonableness	51

CHAPTER 1

INTRODUCTION

1.1 OVERVIEW

One of the main concerns in consumer protection area is in relation to unfair contract terms. Unfair term is referring to term which is unfair in a contract. Such terms are usually found in standard form contract, most of the times through the insertion of exclusion clauses. Unfair terms had become a serious problem¹ in the field of consumer law because consumers are often left powerless when it is related to notices. In ticketing disclaimer, another example, the consumer often has lesser bargaining power and being oppressed by way of the usage of standard form contract which is often on the 'take it or leave it' basis. Most of the time, the consumers are ignorant on the existence of unfair terms usually done by way of the insertion of exclusion clauses.

The Malaysian legislature tried to solves this problem by way of enacting several pieces of legislation to give guidelines on unfair terms such as the *Contract Act 1950* (CA 1950), the *Sales of Goods Act 1957* (SOGA 1957) and the *Consumer Protection Act 1999* (Amendment) 2010 (CPA 1999). The Malaysian legislature had taken more effort to protect consumer rights by way of amendment made to the CPA 1999 in 2010 under the newly inserted part IIIA, governing unfair terms. However, it seems that the problem of unfair terms remain unsettled as the existing laws governing unfair terms in Malaysia is either contradicting with each other or the scope of its application is limited.

Therefore, this research argues that the current situation of the existing legislation in Malaysia is inadequate to protect consumers due to the fact that most of the legislation governing unfair terms are insufficient. Hence, it is crucial to enact a piecemeal of legislation governing unfair terms for the sake of uniformity and to ensure adequacy of the law in order to cater the need of consumers in Malaysia. This

¹ Refer to case *Malaysian Airlines bhd V Malini Nathan*