REGULATING UNFAIR TERMS IN MALAYSIA:
THE NEED FOR A GENERAL ACT

By

Haselyn Mohd Ali (2010612772)
Uzma Saifuzzaman (2010861188)
Fatin Farhana Mohd Bekeri (2010499894)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA
Faculty of Law

December 2012

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

The purpose of this study is to analyse the common law position in dealing with unfair terms and expose the weaknesses of common law, Part IIIA of Consumer Protection (Amendment) Act 2010, compare the law in Germany, Switzerland, Israel, Thailand, and United Kingdom dealing with unfair terms and to propose suggestions and recommendations necessary for the implementation of a general Act dealing with unfair terms in Malaysia. The practices of unfair terms are widespread without our conscious as a consumer or even a trader. The emergence of the many business transactions may cause detriment to the customers as well as traders especially laymen who are doing business and are not fully equipped with the protection against unfair terms in Malaysia. Generally, unfair contract terms arise when the contract is prepared unilaterally ie in standard form of contract. However, a standard form of contract may bring biased advantages to the traders engaging in numerous transactions without bringing the same advantage to consumers due to the fact that the standard form of contracts save time, trouble and expense in bargaining over terms. Currently, the law for unfair terms is provided under the Consumer Protection (Amendment) Act 2010 whereby protection is only provided for consumers within the definition of the CPA without regard to a wider range of consumers which are the parties in Consumer-to-consumer transactions, as well as traders. In relation to this, even in a Business-to-Consumer transaction, the consumers are not fully protected as the protection is only limited to standard form of contract, without regards to the individually negotiated contracts. Accordingly, the placing of the law against unfair terms into Part IIIA of the Consumer Protection (Amendment) Act 2010 has been highlighted to be the major drawback in enforcing the said law. Comparative analyses were made with countries like Switzerland, Israel, Thailand, and United Kingdom with emphasis being made towards Germany which is the oldest legal system and was willingly codify the law and make a general act to govern unfair terms has strengthened our argument on the need for a general act. The implementation of a general act is not to duplicate the laws blindly but merely acting as an appropriate benchmark. Therefore, this research seeks propose a general where all parties concerned can be protected.
ACKNOWLEDGEMENT

In the name of Allah, the Beneficent, the Merciful

Our utmost gratitude and thanks goes to our supervisor who had been patiently guiding us all the way through the completion of this research paper, Dr J. Sheela. Her firm yet motherly support and confidence in us for the completion of this research have driven us to conduct this research passionately. Next is to our family members who have constantly provided us with courage and inner strength to endure the hardships. Without which, it would have been a sloppy work. Also, many thanks to the officials in Jabatan Peguam Negara, Putrajaya who have full heartedly attended us in spite of their tight and demanding schedule. Additionally, thanks to the librarians from the UiTM library who were always available at times we are in need. Above it all, we thank God for giving each of us the ultimate strength mentally and physically to overcome the challenges in the course of completing this research.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgement</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>iii</td>
</tr>
<tr>
<td>Contents</td>
<td>iv</td>
</tr>
<tr>
<td>List of Cases</td>
<td>vii</td>
</tr>
</tbody>
</table>

## CHAPTER ONE: INTRODUCTION

1.0 Background 1
1.1 Problem Statement 4
1.2 Objectives and Scope 4
1.3 Significance of the Research 5
1.4 Scope and Limitation of the Research 5
1.5 Research Methodology 6

## CHAPTER TWO: REGULATING A GENERAL ACT WITH UNFAIR TERMS: A THEORETICAL ANALYSIS

2.0 Theories 8
2.1 Definition of unfair terms 10
2.2 Examples of the unfair terms 12
2.3 How is unfair terms regulated in Malaysia 13
   2.3.1 Common Law Position 14
   2.3.2 Statutes 17
      a. Contracts Act 1950 17
      b. Hire Purchase Act 1967 22
2.4 The importance of having general act 29

## CHAPTER THREE: REGULATIVE MEASURES IN MALAYSIA ON UNFAIR TERMS

3.0 Weaknesses on Part IIIA of Consumer Protection (Amendment) Act 2010 33
   3.0.1 Not all contractual transactions are applicable 34
   3.0.2 Definitions and concept contained in the Part IIIA of Consumer Protection Act 1999 are not clearly defined. 35
   3.0.3 The new provisions do not expressly refer to the provisions 36
of the Contracts Act, except in section 24A(a) to define a 'contract'.

3.0.4 The separation of Section 24C and 24D(1) are not exclusively different.

3.0.5 Part IIIA excludes protection of unfair notices

3.1 Weaknesses of Contracts Act 1950.

3.2 Weaknesses of Hire Purchase Act 1967

3.3 Weaknesses of Sale of Goods Act 1957

3.4 Cases Regarding Unfair Terms

3.4.1 Position in Malaysia on unfair

CHAPTER FOUR: COMPARATIVE ANALYSIS OF UNFAIR TERMS WITH GERMANY, SWITZERLAND, ISRAEL, THAILAND, AND UNITED KINGDOM

4.0 Introduction

4.1 Background of the German Civil Code

4.2 Comparisons between Germany and Malaysia on unfair terms

4.3 Advantages of German Civil Code

4.4 Other Countries Having a General Act to Govern Unfair Terms

4.4.1 Switzerland

4.4.2 Israel

4.4.3 Thailand

4.4.4 United Kingdom

CHAPTER FIVE: RESEARCH FINDINGS

5.0 Introduction

5.1 Unfair terms in Malaysia

5.2 Comparison between law governing unfair terms in Malaysia and other countries

5.3 The need for a general act to protect parties in all types of transactions against unfair terms

5.4 Findings derived from survey conducted via questionnaire

5.5 Conclusion

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.0 Introduction

6.1 Dealing with Challenges

6.1.1 Challenges faced by the researchers

6.1.2 Challenges in legislating general act pertaining unfair terms in Malaysia

6.2 Recommendations

6.2.1 Amendments to the Contracts Act 1950

6.2.2 Enacting a general act dealing with unfair terms

6.3 Conclusion