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.
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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 problem\(^1\) 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