

Consumer Protection and the Bruneian Sale of Goods Act 1994: With Special Reference to Quality and Fitness of Goods

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Abstract: With a rapidly expanding urbanised population, Brunei Darussalam has ever more demanding consumers. Increased affluence in the country has given birth to a more sophisticated consumer, who not only looks for value for money, but is also attracted by quality and fitness of the goods they purchase. Consumer protection is an essential element of a healthy business ecosystem. Today's consumers need to be equipped with high consumerism knowledge and skills in order to become more empowered. Empowered consumers will not be created without the government intervening to protect consumers with adequate legislations. This article aims to examine the Bruneian Sale of Goods Act 1994 in its regime of protecting consumers in a contract of sale of goods by focusing mainly on quality and fitness of such goods. The article adopts a legal library-based research methodology focusing mainly on primary and secondary legal sources. Although the aforementioned Bruneian law continue to protect consumers of goods, the article concludes that there are still some loopholes that manufacturers or retailers tend to abuse. The article recommends that there is a need to completely revamp the Sale of Goods Act 1994 and to come up with a Principal Consumer Protection Act.

Keywords: Brunei Darussalam, consumer protection, contract of sale of goods, fitness, quality

Date of Submission: 05-01-2018

Date of acceptance: 22-01-2018

I. INTRODUCTION

A contract for the sale of goods is one of the main types of contracts commonly entered into by everybody. Such a contract is a commercial transaction, and because it is so commonly transacted it is important that we should know some basic principles regarding consumer protection. Consumer protection is designed to promote and protect interests of consumers. As consumers always have a weak bargaining power, there is every need to protect them through adequate and effective laws [1]. In today's challenging environment, consumers have to deal with current technology, mass-marketing tactics, high-pressure salesmanship and sharp advertising [2]. Bruneian market is not free from these challenges. Consumer protection is aimed at upholding justice and fairness in all commercial transactions between purchaser-consumers and sellers or manufacturers. Consumer protection seems to alleviate the sufferings of consumers who are at a disadvantage in the market place. In view of the importance of protecting the basic rights of a consumer, the United Nations Assembly adopted the United Nations Guidelines for Consumer Protection on 9 April 1985 [3]. Since then, United Nations member countries have used these guidelines as their reference and have passed consumer protection or related legislations. In Brunei Darussalam, the main legislations governing the supply of goods are the Sale of Goods Act 1994 (SOGA) and the Consumer Protection (Fair Trading) Order, 2011 (CPFTO). Despite the availability of such protection, nevertheless in the area of supply of goods, freedom of contract and *caveat emptor* still remain predominantly the underlying concepts in consumer contracts in Brunei.

The objective of this article is to examine the Bruneian Sale of Goods Act 1994 in its regime of protecting consumers in a contract of sale of goods, especially in terms of quality and fitness of such goods. The article argues that the SOGA is not a consumer protection oriented piece of legislation. Many of its principles are based on the common law principles during the 18th and 19th centuries during which freedom of contract and *laissez faire* were widely practiced [1]. Regardless of this shortcoming, the article also made reference to the CPFTO in its quest to protect consumers. For example, the CPFTO protects consumers against any unfair practices by sellers such as making false claims regarding the goods in question. The article is divided into four parts excluding the introduction. The first part deals with the sale of goods in Brunei. This part of the discussion also touches on the definitions of 'contract of sale of goods', 'goods', 'buyer' and 'seller' under the SOGA. These terms are defined in order to have a holistic approach in addressing the adequacy of the SOGA in terms of

consumer protection. The second part deals with terms of the contract involving sale of goods, which may be a condition or a warranty. In addressing these two terms, reference has been made to implied terms under the SOGA. The SOGA implies a number of stipulations in every contract for the sale of goods i.e., implied conditions or warranties in order to protect buyers/consumers. The third part addresses the issue of implied condition as to quality and fitness as one of the protections accorded to buyers/consumers under the SOGA. Under this part, the article argues that as a general rule there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied in a contract of sale. This is because of the common law rule expressed in the phrase *caveat emptor* expecting the buyer to exercise care in making purchases. However, there are two exceptions to this rule i.e. goods must be reasonably fit for purposes for which the buyer wants them and goods must be of merchantable quality. Regardless of these two exceptions, what is important is to address the adequacy of such protection. This issue has been addressed at the later part of this article. The fourth part focuses on the conclusion. This part embraces some recommendations bearing in mind that the Bruneian SOGA is inadequate in terms of protecting buyers/consumers on the basis that there are some loopholes surrounding the discussion of implied condition as to quality or fitness under the SOGA.

II. SALE OF GOODS IN BRUNEI DARUSSALAM

Brunei Darussalam generally follows the British "*Caveat Emptor*" (let the buyer beware) principal. This means parties are allowed to conduct business dealings with each other on term agreeable between them. The parties are deemed to be knowledgeable and able to take care of their respective interests. Generally, the parties involved in the transaction do not owe any duty to look after the interest of the other party to the transaction i.e. the buyer takes care of himself. However, it is important to note that consumers are always parties of weaker bargaining power as far as the marketplace is concerned. Due to its open economy, consumers are vulnerable to market trends and volatility affecting not only prices but also quality and fitness of goods purchased in a contract of sale.

Within this general concept, the Bruneian government has enacted several legislations and set up institutions to protect specific interests of consumers. The SOGA is one of the statutes of great significance in consumer purchases. In other words, the SOGA governs the law with respect to the sale of goods in Brunei Darussalam. Contract of sale of goods is defined in section 4(1) of the SOGA, 1994 as: 'A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.' This means that in addition to the ordinary elements of a contract, two other elements, goods and money consideration, must also be present in a contract of sale of goods.

In addition, section 3 of the SOGA is the interpretation section. The section defines terms such as 'goods', 'buyer' and 'seller'. Under the section, 'goods' includes all personal chattels other than things in action and money; and in particular 'goods' includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. By virtue of this definition, therefore, land is excluded from the SOGA. Money is also excluded from the definition of 'goods' under the SOGA because there cannot be a contract for sale of money

Goods which form the subject of a contract of sale may either be existing or future goods. This is by virtue of section 7(1) of the SOGA. Existing goods are goods already owned or possessed by the seller, and may either be specified or agreed upon at the time a contract of sale is made. On the other hand, future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. This definition is provided under section 3 of the SOGA

According to section 3 of the SOGA, the term 'buyer' means a person who buys or agrees to buy goods. Perhaps at this juncture, it is vital to make reference to the CPFTO 2011 since it uses the term 'consumer'. The definition of a 'consumer' in the CPFTO is a person who purchases goods/services for personal consumption and not for commercial purposes. This article argues that the terms 'buyer' and 'consumer' can be used interchangeably as far as the regime of consumer protection is concerned in Brunei Darussalam. On the other hand, the term 'seller' is also defined in section 3 of the SOGA, which means a person who sells or agrees to sell goods.

Having defined the terms 'contract of sale of goods', 'goods', 'buyer' and 'seller' above, perhaps what is important in the context of this article is to focus on the issue of the adequacy of the SOGA in protecting buyers/consumers in a contract of sale of goods. In other words, we need to pay attention to issues such as quality and fitness of the goods in question i.e., whether the goods purchased are of merchantable quality or reasonably fit for purposes for which the buyer/consumer wants them.

III. TERMS OF THE CONTRACT

In addressing the issue of consumer protection under the SOGA i.e., as to quality and fitness of goods, it is important to note that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. A condition is a 'stipulation essential to the main purpose of the contract, the

breach of which gives rise to a right to treat the contract as repudiated' [4]. As for a warranty, is 'a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated' [4]. Regardless of the definitions of a 'condition' or a 'warranty' above, it is submitted that whether a stipulation is a 'condition' or a 'warranty' depends in each case on the construction of the contract [5]. The stipulation may be a 'condition', though called a 'warranty' in the contract. In other words, whether or not a term in a contract is actually a 'condition' or a 'warranty' depends in each case on the construction of the contract. A term may actually be a 'condition', although it is referred to as a 'warranty' in the contract by the parties [4].

In addition, it is not an easy task to clearly draw a line between these two terms i.e. condition and warranty. Thus where it is possible to discover, by inspection, the quality and condition of the goods and their fitness for a particular purpose, the buyer/consumer will generally lose any legal rights that may have existed against the seller if the goods are not satisfactory [4]. As mentioned earlier, each party is negotiating on equal terms and so the maxim *caveat emptor* (let the buyer beware) prevails. Buyers have only themselves to blame if they fail to make careful inspection of the goods before they purchase them. Thus if goods, open to inspection, are purchased by a buyer, he cannot, (unless the seller is guilty of a misrepresentation) complain of any defect which he subsequently discovers in the goods.

Looking at the maxim *caveat emptor* above, it cannot be denied that there are circumstances in which the application of this common law rule would prove unjust. Being aware of these circumstances, the SOGA implies a number of stipulations in every contract for the sale of goods. However, these implied terms apply only when the parties to the contract of sale have not excluded or modified them. For example, where the buyer, expressly or impliedly, makes known to the seller the particular purpose for which the goods are required so as to show that he relies on the seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose [6]. One would argue that with the operation of these implied terms, the SOGA seems to offer protection to buyers/consumers in a contract of sale of goods. True the SOGA seems to offer some form of protections, but what needs to be addressed in the context of this article is the adequacy of these protections by way of looking at the issues of quality and fitness of such goods.

IV. IMPLIED CONDITION AS TO QUALITY OR FITNESS

As mentioned earlier, the SOGA implies a number of stipulations in every contract for the sale of goods. However, it is important to note that these implied terms apply only when the parties to the contract of sale have not excluded or modified them. As echoed earlier, the common law rule as expressed in the phrase *caveat emptor* expects the buyer/consumer to exercise care in making purchases. If he does not, he must bear the consequences. The opening words of section 16(1) of the SOGA preserves the common law rule of *caveat emptor* by stating that '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', and then proceeds to describe the circumstances in which there will be an implied condition that the goods are reasonably fit for a particular purpose and also of merchantable quality.

In short, as a general rule 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 [7]-[8]. However, the two exceptions to this rule are: (a) Goods must be reasonably fit for purposes for which the buyer wants them, and (b) Goods must be of merchantable quality [9]. Therefore, if the buyer, expressly or impliedly, makes known to the seller the particular purpose for which the goods are required so as to show that he relies on the seller's skill or judgment, and the goods are of the description which is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose [10]-[11]. The two exceptions are discussed below.

Goods must be reasonably fit for purposes for which the buyer/consumer wants them

Section 16(3) of the SOGA provides for an implied condition as to fitness of the goods purchased by the buyer in a contract of sale. Thus, where goods are sold in the course of a business and the buyer expressly or by implication makes known to the seller the purpose for which he is buying the goods, then there is an implied condition that the goods will be reasonably fit for that purpose, even if it is a purpose for which such goods are not commonly bought. This section may be invoked where the purpose for which the goods are required is made known to the seller unless it is implied, but where a buyer purchases goods without saying anything, the situation may be covered by section 16(2). In order to understand the operation of this exception, it is important to make reference to some English and Malaysian cases since the Bruneian SOGA 1994 is modeled on the Malaysian Sale of Goods Act 1957. The enactments of both Acts have their basis on the English Sale of Goods Act 1893. However, it is important to note that the English Sale of Goods Act 1979 has superseded the English

Sale of Goods Act 1893. Hence, relevant cases from both jurisdictions and commonwealth countries may offer some help in terms of understanding the operation of this exception.

In *Deutz Far East (Pte) Ltd v Pacific Navigation Co Pte Ltd* [12], where the plaintiffs were the manufacturers and suppliers of Deutz marine engines and spare parts. They claimed for the sum being the price of a new top part of the injector pump ('NTP') supplied to be used on the main engine of the defendants' ship. The defendants maintained that the NTP was defective as it had four oversized springs. The main engine was badly damaged and the vessel was crippled and was repaired at considerable expense. The defendants counterclaimed that the equipment supplied by the plaintiffs for the engine of their ship was not fit for the purpose and was not of merchantable quality. The court held that the defendants relied entirely on the plaintiffs to supply the NTP which could be used with the engine on the ship. Section 14(3) of the UK Sale of Goods Act 1979 (which is materially the same as section 16(1)(a) of the Malaysian SOGA 1957) provides that where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill and judgment of the seller. Further, by section 14(2) of the Sale of Goods Act (UK) which is materially the same as section 16(1)(b) of its Malaysian equivalent, in the case of a seller who sells goods in the course of business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no condition as regards defects specifically drawn to the buyer's attention before the contract is made; or if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal. As the plaintiffs in this case are both the sellers and manufacturers of the NTP supplied to the defendants, they are liable to the defendants both in contract for breach of contract and in tort for negligence in the manufacture of the NTP.

In *Sunrise Bhd & Anor v L & M Agencies Sdn Bhd* [13], where the first plaintiff was a developer and the second plaintiff was the main contractor for the construction of a condominium. The second plaintiff acquired two new tower cranes from the defendant for the construction of two condominium towers. The tower cranes were manufactured in China under licence from the French Potain Company. It was alleged that the cranes frequently broke down. The plaintiffs contended, *inter alia*, that the tower cranes were not reasonably fit for the said purpose nor were they of merchantable quality, relying on section 16(1)(a), SOGA 1957. The court held *inter alia* that section 16(1)(a), SOGA 1957 imposes an implied condition that the goods purchased shall be reasonably fit for the purpose for which it was acquired. The particular purpose for which the goods were required could be implied by the plaintiffs making known to the defendant either expressly or by implication the particular purpose for which the cranes were needed. The court accepted the evidence of the plaintiff's witnesses that they had at all times during the negotiations informed the defendant that the tower cranes were required for the construction of the condominium towers at the project. If the defendant knew the purpose for which the plaintiff needed the particular goods, then it was clear that the plaintiff was relying on the seller's skill and judgment to supply the suitable goods to cater for the particular purpose for which the cranes were required. There was no doubt that the defendant well knew that the second plaintiff wanted the tower cranes to facilitate the construction of the condominium tower blocks as the project.

In *Grant v Australian Knitting Mills* [14], where Grant bought cellophane-packaged, woolen underwear from a shop that specialised in selling goods of that description. After wearing the garments for a short time he developed severe dermatitis because the garments contained chemicals left over from processing the wool. The issue was whether there was reliance on the retailer's choice of a quality product such that there was a breach of the implied condition of fitness for purpose. The court held that the goods were not reasonably fit for their only proper use. The plaintiff relied on the retailer's choice of a quality product that could be worn without being washed first. As this was not the case, there was a breach of the implied condition of fitness for purpose.

In analysing the decisions of the courts in the three cases discussed above, it would suffice to note that in the context of Brunei Darussalam there are four requirements that need to be satisfied in order to invoke section 16(3) of the Bruneian SOGA 1994, which is equivalent to section 16(1)(a) of the Malaysian SOGA 1957 [8]. The four requirements are: (a) The buyer must make known, either expressly or impliedly, to the seller at or before the time when the contract is made, the particular purpose for which the goods are required. (b) The buyer is relying on the seller's skill or judgment. (c) The goods are of a description which it is in the course of the seller's business to supply. (d) If the goods are specific, they must not be bought under their patent or trade name. Hence, these cases have demonstrated that there was reliance on the seller's skill and judgment, either expressly or by implication and the test is objective.

Furthermore, it is vital to take note of the fourth requirement which suggests that in a contract for sale of specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose [4], [8]-[11]. For example, in *Puncak Niaga (M) Sdn Bhd v NZ Sdn Bhd* [15]- the Court of Appeal held that when the Benz car could not start there was a breach of the implied conditions or guarantees

which rendered the Benz car not to be of satisfactory or acceptable quality and unfit for its purpose. Based on the numerous fundamental problems encountered by the plaintiff it was found that the Benz car was not in fact and in law of an acceptable quality within the provisions of the Consumer Protection Act 1999. The facts were clear and undisputed and there were no triable issues. Under section 12(2) of the SOGA 1957, the breach of a condition gives the plaintiff the right to treat the contract as repudiated. It was thus held that the plaintiff was entitled to reject the Benz car, which it did when it left it in the first defendant's workshop on 21 May 2007.

In addition, even when goods may have only one obvious use, if the goods are required for a special purpose, the buyer/consumer must expressly notify the seller of that purpose and rely on the seller to provide him with a suitable article/goods [4]. If the seller is not told of this specific purpose, there is no breach of implied condition. For instance, in *Griffiths v Peter Conway Ltd* [16], where a woman with abnormally sensitive skin bought a coat without telling the salesman that she had sensitive skin. She subsequently contracted dermatitis from wearing the coat. According to the court, she was unable to recover for breach of fitness for purpose because there was nothing in the cloth that would have affected the skin of a normal person. She had failed to disclose that she suffered from skin problems. Based on the decision of the court, it could be argued that where goods are to be used for a special purpose, it should be clearly indicated as otherwise, there would not be a breach of the implied condition if the goods are suitable for any purpose reasonably foreseeable. In contrast to the case of *Cammell Laird & Co Ltd v Manganese Bronze & Brass Co Ltd* [17], where a firm of shipbuilders ordered two ship's propellers from MB to be built according to the firm's own design and specifications to fit a particular ship and its engine. The thickness of the propellers was left to the manufacturers. One of the propellers, after fitting, was noisy due to the thickness of the blade. The propeller supplied complied with the specifications but did not suit the ship's engine. The court held that the manufacturers were liable for breach of an implied condition of fitness for a particular purpose because part of the manufacturing process was in the control of the blade manufacturers, and the ship-owners were relying on the manufacturer's skill to determine the correct thickness of the blades. The buyer/consumer had informed the seller of the purpose for which he required the goods and relied on the seller's skill and judgment to provide them. Again, *Cammell Laird & Co Ltd* acknowledges the fact that it is necessary to show that there was reliance on the seller's skill and judgment, either expressly or by implication. However, it is important to note that the buyer/consumer need not rely exclusively on the seller's skill or judgment provided he does to a substantial extent. Hence, partial reliance is not fatal to the buyer's claim as he is not expected to rely totally and exclusively on the seller's skill or judgment.

Goods must be of merchantable quality

In addressing the exception under section 16(2) of the SOGA, it is vital to look into the meaning of 'merchantable quality'. Generally, it means the goods sold are fit for the particular use to which they were sold [8]. If they are defective for the purpose, they are unmerchantable. Again, it is important to make reference to some English and Malaysian cases in order to understand the operation of this exception.

In *David Jones v Willis* [18], Willis went to the shoe department of David Jones and told the saleswoman that she wanted a comfortable pair of walking shoes because she had a bunion on her foot. After trying on a number of pairs she bought a pair which was recommended by the saleswoman. The third time that she wore the shoes the heel broke off one of them, causing her to fall and break her leg. The evidence showed that the shoes were not well made and that the heels had not been properly attached to the shoes. The court held that as the shoes had been bought by description, there had had been a breach of the implied condition of merchantable quality.

In *Reveex International S.A v Maclaine Watson Trading (M) Sdn Bhd* [19], the plaintiffs sold various pharmaceutical veterinary products to the defendants. The defendants did not honour the bill of exchange used to pay for the goods. The plaintiffs claimed as holders in due course of the bill. The defendants counter-claimed against the plaintiffs contending that the goods were not reasonably fit for the purpose for which they were intended and were not merchantable, therefore breaching a condition of the contract as statutorily implied by section 16 of the Malaysian Sale of Goods Act 1957. The court ruled in favour of the defendants. In other words, the defendants succeeded in their counter-claim. Basically, the test of 'merchantable quality' needs to be examined in relation to the description of the goods sold.

Looking at the two cases above, it seems that quality of goods refers to their state or condition. For example, in a sale of a lorry, it is an implied condition that the lorry will not overheat easily. As mentioned earlier, this implied condition as to merchantable quality applies even where goods are sold under their patent or trade name. This point is illustrated in *Wilson v Rickett & Co Ltd* [20] where a lady ordered fuel by its trade name 'Coalite' from a fuel merchant. The consignment included a piece of coal in which a detonator was embedded, resulting in an explosion in the fireplace. The court held that the consignment as a whole was unmerchantable. It had defects making it unfit for burning.

Furthermore, merchantable quality has been taken to mean that the 'goods' must be reasonable for the purpose described. This requirement must be satisfied even where the goods are sold under their trade or patent names [4]. Factors to be taken into account to determine 'merchantability' include: price; the description applied to the goods; whether the purpose for the goods had been made known to the seller; and any other circumstances relevant to the sale [4]-[8]. However, it is to be noted that if the description in the contract is so general that the goods sold under it can normally be used for several purposes, then goods would be merchantable under that description if they were fit for any one of those purposes. This point is illustrated in *Henry Kendall & Sons v William Lillico & Sons Ltd* [21] where a Brazilian groundnut extract was sold to manufacturers of cattle and poultry foods all over England. The ultimate buyers of a large quantity of meal containing the extract lost a large number of young poultry. It was discovered that this was due to a high concentration of a poisonous substance in the extract which, while suitable for cattle and older poultry, was deadly to young poultry. The suppliers had known from their previous dealings with the manufacturers of the meal in question that they only made poultry foods, and for this purpose the extract was obviously unsuitable. The court held that as the extract was suitable for compounding into meal for cattle and older poultry, there was no breach of an implied condition of merchantable quality.

However, if the description is so limited that the goods sold under the contract could only be used for one purpose, then the goods would be unmerchantable if they were of no use for that purpose [4]. This point is illustrated in *Wren v Holt* [22] where Wren went into a hotel and asked for beer. The beer contained arsenic as a result of the keg not being properly washed out. As a result of drinking it, Wren fell ill. The court held that there was an implied condition that the beer would be of 'merchantable quality'. That is, it would be fit to drink.

Having addressed the two exceptions to the general rule above, it is equally important to acknowledge the fact that sometimes there can be a breach of both of the conditions of fitness for purpose and merchantable quality on the same set of facts. This can be seen in *McWilliams Wines Ltd v Liaweena (NSW) Pty Ltd* [23] where McWilliams in 1983 bought 500,000 corks from Liaweena. It was subsequently discovered that a large number of bottles sealed using these corks had been contaminated and were not fit for sale. The court held that Liaweena were liable for breach of an implied condition of fitness for purpose. They had dealt with McWilliams for a number of years and it had been established that McWilliams relied on them to deliver corks that were not in any way contaminated and would cause the wine to become unsaleable. The corks were not of merchantable quality as the only purpose for which they could be used was to seal bottles and prevent contamination of the contents, which they failed to do. Hence, it is important to note that although merchantable quality overlaps with fitness for purpose, it is of much import. This means that a seller will be liable if the goods do not meet the standard required by the law even if he has taken all possible care.

Looking at the two exceptions to the general rule above, it is inevitable to point out that the protection accorded to buyers/consumers in terms of implied condition as to quality and fitness in a contract of sale of goods is inadequate. Thus, in addition to the SOGA, this has prompted the government to come up with the CPFTO 2011 in order to provide a legal framework for consumers affected by unfair trade practices to have a remedy through mediation. However, if the dispute still remains unsettled, the consumer may file a claim for civil remedies under Small Claims Tribunal or to court [24]. Despite having in place the CPFTO 2011, this paper argues that there is still room for improvement in terms of offering adequate protection to buyers/consumers in Brunei Darussalam in relation to quality and fitness of goods purchased.

V. CONCLUSION AND RECOMMENDATIONS

It is evident from the above discussions that as a general rule there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale. However, there are two exceptions to this general rule which are: (a) Goods must be reasonably fit for purposes for which the buyer/consumer wants them. (b) Goods must be of merchantable quality. Regardless of these two exceptions, the Bruneian SOGA 1994 does not offer adequate protection to buyers/consumers in terms of quality and fitness of goods purchased. Section 16(3) of the SOGA 1994 provides a defence to the seller in cases of a contract of sale where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller. Courts are prepared to accept that the requirement of reliance is satisfied if the reliance is a matter of reasonable inference from the circumstances of the case. That which is far from clear is the question of how far disclosure of the purpose for which the goods are required will raise a presumption that reliance is being placed upon the seller's skill and judgment. It would suffice to note that mere disclosure of the particular purpose for which goods are required is not of itself sufficient to raise a presumption of reliance in all cases. This article recommends that the phrase 'except where the circumstances show that the buyer does not rely...' appearing in section 16(3) has to be deleted in order to have an adequate regime for consumer protection. This phrase can be a subject of abuse by sellers since it can be interpreted to mean that if a buyer asks for specific goods e.g. under a patent or trade name with the impression that he is not relying on the seller's skill and judgment, then he cannot later complain if the goods bought are not fit for the purpose which he

requires them.

Furthermore, section 16(2) of the SOGA 1994 provides for goods to be of merchantable quality but fails to provide the meaning of this key phrase. The implied condition of merchantable quality is inappropriate for consumer transactions. Consumer buys goods for use not for sale. The current test emphasizes on fitness and usability, scant regard is given to durability, minor defects and acceptability [1]. Due to uncertainties in the use of the phrase 'merchantable quality', the English Sale of Goods Act 1979 has replaced the phrase with satisfactory quality [1]. It is thus proposed that the phrase 'merchantable quality' in SOGA be replaced with the phrase 'satisfactory quality'. The Act should also provide for the test and factors to be taken into account in deciding whether the goods sold by the seller are of satisfactory quality.

Also, section 56 of the SOGA 1994 allows the exclusion of implied terms and conditions by 'express agreement' or by previous dealings or by usage. Courts have made various efforts to read down exclusion clauses by construing them strictly *contra proferentem*, particularly those in contracts where the parties are not of equal bargaining strength [8]. Despite this judicial approach, the average consumers faced with a wide variety of standard contracts are disadvantaged by exclusion clauses hidden in fine print. According to Rachagan [25], consumer protection calls for the repeal of section 62 which is equivalent to section 56 of the Bruneian SOGA. The English Sale of Goods Act 1979 does not contain a similar provision.

Apart from the weaknesses of the SOGA highlighted above, this paper recommends that regardless of having in place the CPFTO 2011, it is high time to come up with a Principal Consumer Protection Act. This new Act could offer guarantees in respect of supply of goods pertaining to acceptable quality and fitness for a particular purpose. This paper recommends that the issue of acceptable quality should be tested not only by referring to the goods, but also to the consumer's expectation i.e., whether a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defect would regard the goods as acceptable. In addressing the issue of acceptable quality, the following factors could be taken into consideration: the nature of the goods; the price of the goods; any statement made about the goods on any packaging or on label; any representation about the goods by the supply or the manufacturer; and all other relevant circumstances.

All in all, defective goods in terms of its quality or fitness impose various direct and indirect costs on buyers/consumers and the broader community. Global changes in markets and technologies have combined with heightened consumer expectations regarding quality and fitness of 'goods' that they have purchased. Consumer complaints on quality and fitness of goods purchased in Brunei Darussalam are no different from those of other countries. It cannot be denied that an important step towards consumer protection measures is having a Principal Consumer Protection Act as well as a national consumer policy. Furthermore, we should also create public awareness and exposure to consumer protection by holding seminars/workshops. The needs for consumer protection in Brunei Darussalam have claimed importance and relevance as consumer vulnerability to market forces become apparent.

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IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Ahmad Masum "Consumer Protection and the Bruneian Sale of Goods Act 1994: With Special Reference to Quality and Fitness of Goods." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, vol. 23, no. 1, 2018, pp. 01-08.