INTRODUCTION

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 (Yusoff, Ismail, Markom, & Zakuan, 2015). In today’s challenging environment, consumers have to deal with current technology, mass-marketing tactics, high-pressure salesmanship and sharp advertising (Sabri, 2014). Malaysian 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 (Wan Jusoh, Othman, Nuruddin, & Ahmad, 2001). Since then, United Nations member countries have used these guidelines as their reference and have passed consumer protection or related legislations. In Malaysia, the main legislations governing the supply of goods are the Sale of Goods Act 1957 (SOGA) and the Consumer Protection Act 1999 (CPA). 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 Malaysia.

The objective of this paper is to examine the existing Malaysian laws dealing with the sale of goods mainly SOGA and CPA, especially in terms of their adequacy in protecting consumers. The paper argues that the existing Malaysian laws, especially 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 (Yusoff et al., 2015). Hence, this Act contains provisions which defeat consumer protection expectations and interests. On the other hand, the CPA being supplemental and without prejudice to any other law regulating contractual relations has indeed reduced the effectiveness of this long awaited legislation (Yusoff, Ismail, Aziz, Isa & Talib, 2013).

SALE OF GOODS IN MALAYSIA

Malaysia generally follows the British “Caveat Emptor” (let the buyer be aware) 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. For instance, with the emerging era of new computer technology, consumers need more protection.

Within this general concept, the Malaysian government has enacted several legislations and set up institutions to protect specific interests of consumers. Therefore, is is important to note that the statute applicable for sale of goods in Peninsular (West) Malaysia is the Sale of Goods Act 1957 (Revised 1990). There is no equivalent statute for the states of Sabah and Sarawak (East Malaysia) and the law in these two states is governed by section 5(2) of the Civil Law Act 1956 which provides, among others, that 'the law to be administered shall be the same as would be administered in England in the like case at the corresponding period'. Consequently, these two states are bound by statute to continue to apply principles of English law relating to the sale of goods (Vohrah & Aun, 1991). This discrepancy in the application of the law on the sale of goods between West Malaysia on the one hand and East Malaysia, on the other, has the potential to raise difficult conflict of law issues within the country. Hence, it is highly desirable that a degree of uniformity should prevail and a simple method would be to extend the Sale of Goods Act 1957 to the other two states (East Malaysia) as had been done in the case of the Contracts Act 1950.

Still on the sale of goods in Malaysia, there are a number of specific statutes dealing with some elements of consumer protection and these are administered by various Ministries. Among the statutes which are under the purview of the Ministry of Domestic Trade and Consumer Affairs are the Price Control Act 1946, the Trade Descriptions Act 1972, the Hire Purchase Act 1967, Weight and Measures Act 1972, the Consumer Protection Act 1990 etc. With all these statutes in place, there is no doubt that the consumer market or the supply of goods in Malaysia is regulated. Perhaps the issue to address in the context of this paper is that of the adequacy of these statutes, i.e. the Sale of Goods Act 1957 and the Consumer Protection Act 1999.

**THE SALE OF GOODS ACT 1957**

The Malaysian Sale of Goods Act 1957 was originally enacted in 1957 and revised in 1990 to include the states of Malacca and Penang. The earlier laws were largely modeled on the United Kingdom Sale of Goods Act 1893. The SOGA is the main piece of legislation serving consumers in obtaining a remedy when their acquisition 'go wrong'. Modeled upon the Indian Sale of Goods Act 1930 which also has its origin in the English Sale of Goods Act 1893. The Sale of Goods Act 1957 applies to contract for the sale of goods as defined in section 4 of the Act:

\[ A \text{ contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one party and another.} \]

Section 2 defines goods to mean 'every kind of movable property other than actionable claims and money', and includes stock and shares, growing crops, grass, and 'things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale'. It follows from this definition that sales of land or chattels real (leaseholds) are not sales of goods. Also excluded are actionable claims, which are, rights to sue another person for a debt or for any other reason (Vohrah & Aun, 1991).

According to section 6(1), the 'goods which form the subject of a contract of sale may either be existing goods, owned or possessed by the seller, or future goods'. Existing goods may be either specific or unascertained goods. Goods are specific if they are 'identified and agreed upon at the time a contract of sale is made'. Uncertained goods is mentioned in section 18 but it is not expressly defined; by inference it
means 'goods not identified and agreed upon at the time a contract of sale is made (Vohrah & Aun, 1991). SOGA does not address the issue of services. It only focuses on the sale of goods.

**Protections Accorded to Buyers under the Sale of Goods Act 1957**

The Sale of Goods Act 1957 offers various forms of protection to a buyer. The following are some of the relevant provisions of SOGA offering protection to buyers:

- **Section 14(b)- implied warranty as to quiet possession:** This section provides that, unless a different intention is shown, there is 'an implied warranty that the buyer shall have and enjoy quiet possession of goods'. Section 14(b) will cover against wrongful interference by a stranger claiming a lawful right by virtue of a better title than the seller as well as the wrongful act of the seller himself. This implied stipulation is merely a warranty and not a condition. Therefore, a breach of this stipulation will not entitle the innocent party to repudiate the contract. However, if the seller fails to comply, the buyer is entitled to claim for damages since the matter is being constituted as an implied warranty.

- **Section 14(c)- implied warranty that the goods are free from encumbrance:** The section provides 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 was made'. Again, if the seller fails to comply with this statutory requirement, the buyer is entitled to claim for damages since the matter is being constituted as an implied warranty.

- **Section 15- implied condition that goods correspond with description:** This section states that where there is a contract for the sale 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. The obligation of the seller under this section is absolute and it is no defence that the defect in the goods is latent.

In analysing section 15, it is pertinent to note that all contracts for the sale of unascertained goods are sales by description and in respect of specific goods, it applies particularly where the buyer has not seen the goods such as mail order and sale from a catalogue. But it is still possible where specific goods have been seen can still be considered as a case of a sale by description (Grant v Australian Knitting Mills Ltd (1936) AC 85).

In addition, in *Nagurdas Purshotumdas & Co v Mistui Bussan Kaisha Ltd* ((1911) 12 SSLR 67), previous contracts between the parties for the sale of flour had been sold in bags bearing a well-known trade mark. Further flour was ordered described as 'the same as our previous contracts'. Flour identical in quality was delivered, but it did not bear the same well-known trade mark, and it was ruled that it did not comply with the description.

- **Section 16(1)(a)- implied condition as to fitness:** The section provides that 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(1)(b). It appears that section 16(1)(a) excludes a private sale.

- **Section 16(1)(b)-implied conditions as to merchantable quality:** The section provides that where goods are bought by description from a seller who deals in goods of that description, 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 examination ought to reveal. This section means that the goods must be as fit for the purpose for which they are commonly used as it is reasonable to expect, taking into account any description attached to them, their price and all other circumstances. Thus, radio must be fit to use, clothes must be fit to wear, and cars must be fit to drive.

In dealing with section 16(1)(b), it is important 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 (Vohrah & Aun, 1991). If they are defective for the purpose, they are unmerchantable. In David v Jones ((1934) 52 CLR 110), a pair of shoes whose heels came off on the third occasion was held unmerchantable. Furthermore, in Reveex International S.A v Maclaine Watson Trading (M) Sdn Bhd ((1991) 2 CLJ 1388), 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 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.

THE CONSUMER PROTECTION ACT 1999

The promulgation of the Consumer Protection Act 1999 has brought some light to consumers in Malaysia. Prior to that, consumers had "countless" obstacles to bring action against manufacturers for defective products under common law of tort (Abd. Karim & Wan Talaat, 2011). Similarly, it was also almost impossible to impose direct liability on manufacturer based on contract due to the doctrine of privity of contract, which necessitates a claimant to have a pre-existing contractual relationship with the manufacturer of the product in question (Abd. Karim & Wan Talaat, 2011).

The CPA came into effect on 15 November 1999 with the main objective to provide greater protection for consumers and its provisions cover areas that are not covered by the other prevailing laws (Sabri, 2014). The aim of the CPA, which is based on consumerism, is to provide a better legal protection to consumers by introducing the concept of strict liability for defective product. Although the term "strict liability" does not appear anywhere under the Act, inference to it can be made by virtue of section 68(1) which clearly provides that amongst the person who shall be liable where any damage is caused wholly or partly by a defect in the product is the manufacturer (Abd. Karim & Wan Talaat, 2011). Hence, the enactment of the CPA has brought some major changes towards improving consumers' right against manufacturers in cases of defective products.

Section 3 defines a "consumer" as a person who 'acquires or uses goods and services of a kind ordinarily acquired for personal, domestic or household purposes, use or consumption; and does not acquire or use the goods or services, or hold himself out as acquiring or using the goods or services, primarily for the purpose of resupplying them in trade; consuming them in the course of a manufacturing process; or in the case of goods, repairing or treating, in trade, other goods or fixtures on land'.

Under the Consumer Protection Act 1999, consumers' rights granted cannot be taken away from them. This is by virtue of section 6(1) of the Act, which provides that the provisions of this Act shall have effect notwithstanding anything to the contrary in any agreement. Hence, to a certain extent the enactment of the Consumer Protection Act 1999 has brought some major changes towards improving consumers' right against manufacturers in cases of defective products.

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Protections Accorded to Consumers under the Consumer Protection Act 1999

Until the enactment of the CPA, Malaysia did not have a comprehensive and general statute on product liability. The law on product liability was expressed in the law of contracts, the common law principles of the tort of negligence, and several statutes, the most important of which is the Sale of Goods Act 1957 (Rachagan & Nair, 2008). The CPA comprises of 14 parts and a total of 150 sections. It deals with selected areas of the law not yet provided for in other statutes; it does not seek to repeal or replace existing law. The following are some of the protections accorded to consumers under the Act:

Part II deals with Misleading and Deceptive Conduct, False Representations, and Unfair Practices. For example, section 9 deals with misleading conduct and section 10 deals with false or misleading representation. Part II also deals with misleading indication of price (section 12), bait advertising (section 13), gifts, prices, and free offers (section 14). The Act now covers any transactions carried out by electronic means as a result of its amendment in 2007. Hence, the Act provides for the protection of e-consumers against misleading and deceptive conduct, false representations and unfair practices (Amin & Mohd Nor, 2012).

Part III deals with Safety of Goods and Services. It provides for the declaration of safety standards and compliance with them (section 20). Also provided for is a general safety requirement of goods (section 21). However, a special defence section is included- compliance with a requirement imposed by law or a standard determined in accordance with the Act (section 22). Part III also confers the Minister the power to declare any goods or class of goods to be prohibited where such goods are likely to cause injury to any person or property or otherwise unsafe (section 23). Such a prohibition order may additionally require the supplier to undertake remedial measures including the recall of the unsafe goods at the supplier’s own cost (section 23(2)).

Part IV deals with Offences, Defences and Remedies in relation to Parts II and III of the Act. Under Part IV, offences attract fines in the case where the defendant is a body corporate and fines and or imprisonment in the case where the defendant is not a body corporate (section 25(1)(a) & (b)). Part IV also enables the courts to avoid or vary the offending contract and provide for ancillary relief for the consumer inter alia ordering the refund of money and property, payment of the amount of loss and expenses incurred and repair of the defective goods (section 29; Rachagan & Nair, 2008).

Part V deals with Guarantees in Respect of Supply of Goods pertaining to title, acceptable quality, fitness for particular purpose, compliance with description, and sample. Section 32 guarantees that the goods purchased by a consumer shall have an “acceptable quality”. The meaning of acceptable quality may be considered as a reworking of the “merchantable quality under SOGA (Abd. Karim & Wan Talaat, 2011).

According to section 32(2)(b) of the Act, acceptable quality is tested not only by reference to the goods, but also to the consumer’s expectation: 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 are 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.

Part VI deals with Rights Against Suppliers in Respect of Guarantees in the Supply of Goods. For instance, section 39 provides for consumer’s right of redress against suppliers. This section gives a consumer a right of redress against a supplier of goods where the goods fail to comply with the implied guarantees under sections 31 to 37. However, there is an exception provided under section 40. Part VI also deals with other issues related to consumer protection such as: options against suppliers where goods do not comply with guarantees (section 41); failure of substantial character in terms of guarantee (section 44); consumer’s option of refund or replacement (section 46) etc.
Part VII deals with Rights Against Manufacturers in Respect of Guarantee in the Supply of Goods. Part VII has introduced ‘contractual’ liability on the manufacturer. This is a new liability that has never been introduced under any law of Malaysia (Zakuan & Yusoff, 2013). According to section 3, ‘supply’, in relation to goods, means ‘to supply or resupply by way of sale, exchange, lease, hire or hire purchase’. Also, section 3 defines a manufacturer as ‘a person who carries on a business of assembling, producing or processing goods...’ Based on the definitions, a manufacturer is not a party in the contract of supply of goods to consumers. However, the introduction of rights under Part VII has waived the application of the doctrine of privity of contract and imposes direct liability against a manufacturer (Zakuan & Yusoff, 2013).

Parts VII and IX deal with Guarantees in Respect of Supply of Goods. It is not the intention of the authors to address Parts VII and IX since the focus here is more on services as oppose to goods whereas the focus of the paper is on the sale of goods.

Part X deals with an adoption of the strict liability regime for defective products. Thus, Malaysia has joined the increasing number of countries that have been influenced by the EC Directive on Product Liability (Rachagan & Nair, 2008). Liability can be imposed without contractual relationship and proof of fault. The claimant only has to prove three things: the damage, the defect in the product and the causal link between the two. The Act does not require for proof that the defect is caused by the producer or manufacturer. However, the onus of proving the defect in the product may create great difficulties for consumers especially in design defect cases and similarly, proof of causation will remain as difficult as establishing fault under tort especially in case involving drugs: it is not easy to show that the illness was caused by the consumption of the drug and not by other genetic or environmental factors (Abd. Karim & Wan Talaat, 2011).

Part XI deals with the establishment of the National Consumer Advisory Council. Section 73 provides that the Minister may establish the National Consumer Advisory Council to advise him on the following matters: (a) in respect of consumer issues and the operation of this Act; (b) the promotion of consumer protection and awareness in consumer affairs; and (c) any other matter which may be referred to it by the Minister for the proper and effective implementation of this Act and for the protection of consumers. Section 74 provides for the composition of the members of the council.

Part XII introduces an alternative redress mechanism styled as the Tribunal for Consumer Claims comprising a Chairperson and Deputy from among members of the Judicial and Legal Service of the public sector and other persons qualified for legal practice in the country (section 86). Under the Tribunal, a consumer may refer any dispute or claim that does not exceed ten thousand ringgit (section 98). Supplementary legislation entitled Consumer Protection (the Tribunal for Consumer Claims) Regulations 1999 now provide for the forms and other operational aspects of the Tribunal (Rachagan & Nair, 2008).

INADEQUACIES OF THE SALE OF GOODS ACT 1957 AND THE CONSUMER PROTECTION ACT 1999

Although both Acts do afford some form of protections to consumers, it is inevitable to point out that the protections accorded to consumers are not adequate. The following are some of the problems surrounding the operation of both Acts making it impossible to offer adequate protections to consumers:

The Sale of Goods Act 1957

Under the Sale of Goods Act 1957, section 15 has failed to address sufficiently the meaning of the phrase ‘sale by description’. The Malaysian courts have relied heavily on the English cases in providing answers to this question (Yusoff et al., 2015). Although this issue was addressed earlier, the paper submits that the
confusion on whether the sale of specific goods amount to sale by description could be settled by inserting into the Act a clear definition of the phrase sale by description. As compared to the English Sale of Goods Act 1979, section 13 of the Act contains an additional provision as follows:

*A sale of goods is not prevented from being a sale by description by reason only that being exposed for sale or hire, they are selected by the buyer*

The above English provision has partly resolved the problem associated with sale of specific goods and as such it is recommended for Malaysia to adopt a similar approach in order to overcome the current ambiguity.

In addition, section 15 does not apply to breaches of all words of description. It only applies to descriptive words which amount to conditions of the contract. On this note, the Act fails to provide for the test of which words of description fall within the ambit of the section (Yusoff et al., 2015). Without having a proper test in place, it would be difficult for consumers to be adequately protected under the Act. It is thus proposed that a test be inserted in the Act.

As to section 16(1)(a), the proviso provides a defence to the seller in cases of a contract of sale of specified article under its patent or other trade name. This has been interpreted to mean that if a buyer asks for specific goods 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. Bankes L.J. in *Baldry v Marshall* (1925) 1 KB 260 at p.267 canvassed the following test for the operation of the proviso:

*Did the buyer specify it under its trade name in such a way as to indicate that he is satisfied, rightly or wrongly, that it will answer his purpose, and that he is not relying on the skill or judgment of the seller, however great that skill or judgment may be?*

In England, this proviso has been deleted following the recommendation by the Law Commission in their Working Paper No. 18 (Yusoff et al., 2015). It is suggested that the proviso to section 16(1)(a) be deleted in order to have an adequate regime for consumer protection.

Looking at section 16(1)(b), the section 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 (Rachagan, 1992). 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 (Yusoff et al., 2015). 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. (Yusoff et al., 2015). 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.

Furthermore, section 62 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 (Vohrah & Aun, 1991). 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 (1992), consumer protection calls for the repeal of section 62. The English Sale of Goods Act 1979 does not contain a similar provision.
As to the remedial scheme provided under SOGA, it is based on the classical approach of the usage of the terms conditions and warranties as stipulated in section 12(2) and (3). The inadequacy of SOGA in terms of providing a remedial scheme to consumers can be seen from the provision of section 13(2). Section 13(2) provides for where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treated the contract as repudiated. The implication of section 13(2) is that, the passing of property in the goods to the buyer affects his right to reject the goods. Also in dealing with the issue of specific goods, section 20 provides for the property in the goods to pass to the buyer when the contract is made. Hence, the effect of section 13(2) is that the buyer automatically loses his right to reject the goods even though he has not had the opportunity to use the goods (Yusoff et al., 2015). It cannot be denied that this section creates injustice to the buyer as he would not have had the opportunity to use the goods and consequently discover the defects in the goods at the time the contract is made. However, it is important to note that this provision is no longer a feature of the English Sale of Goods Act 1979. It would be a sigh of relief to the consumers if section 13(2) is deleted from the Malaysian Sale of Goods Act 1957.

Still on the inadequacy of a remedial scheme under SOGA, reference must be made to section 42. The section provides for three ways of acceptance by the buyer: (i) When the buyer intimates that he has accepted the goods (ii) when the goods have been delivered to the buyer and he does any act in relation to them which is inconsistent with the ownership of the seller (iii) When the after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected the goods. It is pertinent to note that the second category of acceptance has been a source of confusion. There is of course a theoretical difficulty in section 42 because it is possible and indeed common situation for the property already to have passed to the buyer, especially after delivery of the goods ((Yusoff et al., 2015). It defeats logic to use the phrase ‘an act inconsistence with the ownership of the seller’ when the property in the goods may have passed to the buyer from the very beginning based on the act of delivery itself as a form of acceptance. Perhaps section 35 of the English Sale of Goods Act 1979 could be used as a guide in amending section 42 of the Malaysian Sale of Goods Act 1957. Section 35 of the English Sale of Goods Act 1975 is an important section addressing the issue of acceptance by a buyer at length.

The other inadequacy of a remedial scheme under SOGA revolves around the issue relating to the method of calculating damages. Section 56 provides for damages for non-acceptance as one of the personal remedies of an unpaid seller. On the other hand, section 57 provides for damages for non-delivery as one of the buyer’s personal remedies. Despite this being the case, SOGA fails to provide for the methods of calculating these damages. Again, reference must be made to the English Sale of Goods Act 1979 specifically sections 50 and 51 on the method of calculating damages for both non-acceptance and non-delivery of the goods. It is important to note that the formulae contained in both sections are similar to the method of calculating damages, which the Malaysian court adopted in Lee Heng and Co. v Melchers and Co. ((1963) 1 MLJ 47). Hence, it is timely that the above formulae has to be inserted in sections 56 and 57 of the Malaysian Sale of Goods Act 1957.

The Consumer Protection Act 1999
One of the inadequacies of the CPA rests on the supplementary nature of the Act itself. Section 2(4) provides that 'the application of this Act shall be supplemental in nature and without prejudice to any other law relating to contractual relations. What happens in the event of a conflict between the Act and the Contract Act 1950 or the Sale of Goods Act 1957 in a consumer contract, which legislation shall prevail? There are obvious discrepancies between the CPA and SOGA with regards to privity and the application of exclusion clause, which can only be resolved after litigation. Due to these discrepancies, it is not clear whether the CPA can really achieve its principal objective to provide better protection to consumers.
Professional who are regulated by any written law and healthcare services provided or to be provided by healthcare professionals or healthcare facilities are excluded from the operation of the Act (section 2(2)(e) and (f)). Based on section 2(2)(e) and (f), it is difficult to see how the Act can really afford protection to consumers who are dealing with professionals in the health sector.

Section 51 provides that no right of redress against the manufacturer if the goods fail to comply with the implied guarantee under section 50 due to (a) a default or omission of, or any representation made by, a person other than the manufacturer; or (b) a cause independent of human control, occurring after the goods have left the control of the manufacturer. If these things occur, by virtue of section 51, the consumer will be left without any contractual remedies. The operation of this exclusion clause is seen as a tool of oppression as it enables manufacturers to escape liability. This section is not in line with the main objective of the CPA and should be abolished altogether. The existence of section 51 impairs the rights conferred by the Act to the consumers in obtaining redress against the manufacturers.

The other inadequacy of the CPA is the issue of interpretation. For instance, the test of defectiveness under Part X of the Act is based on a vague safety concept provided under Part III. There will always be a scope for a debate over questions of fact, degree and standard in deciding whether or not a particular product was unsafe and therefore defective (Abd. Karim & Wan Talaat, 2011). Apart from that, it is even more problematic when safety is to be judged according to what ‘a person is generally entitled to expect (section 67(2)). On the surface, the test appears to be objective since it is based on a particular person’s expectation. However, it is the general expectation that will be taken into account and not an actual expectation of a consumer (Amin, 1999). Hence, it may preclude a plaintiff’s claim.

In addition, the consumer expectation test has also been criticised for its failure to protect consumers adequately in the event of patent danger. Also, the time of supply is relevant in deciding defectiveness (section 67(2)(f)). For example, the relevant time would be the time of supply by the producer and not the subsequent time of supply to the ultimate consumer.

Lastly, the CPA does not provide for public interest groups to bring an action on behalf of an aggrieved consumer (Rachagan & Nair, 2008). Unlike the novel feature seen in many other jurisdictions such as in Thailand, India and China that provide for consumers in obtaining legal aid and representation by consumer organizations, the Act does not provide for it (Rachagan & Nair, 2008). The concept of locus standi or ‘standing in courts’ as the term is commonly understood, being a procedural barrier created to prevent abuse of legal process should perhaps be done away with in instances involving consumer disputes (Rachagan & Nair, 2008).

CONCLUSION

It is evident from the foregoing discussions above that the protections accorded to consumers under the Sale of Goods Act 1957 and the Consumer Protection Act 1999 are not adequate. The Sale of Goods Act 1957 is archaic. It predominantly reflects the provisions in the Sale of Goods Act 1893 (United Kingdom). The provisions contain in the Malaysian Sale of Goods Act 1957 do not adequately protect consumers in a sale of goods transaction. Looking at the changes in the way business is now being conducted call upon a review of the present law of sale of goods as contained in the Sale of Goods Act 1957. On the other hand, the Consumer Protection Act 1999 being supplemental and without prejudice to any other law regulating contractual relations has indeed reduced the effectiveness of this long awaited legislation. Hence, the existence of the Consumer Protection Act 1999 may still be inadequate to protect consumers until and unless the weaknesses of the Act (as mentioned above) are remedied.
REFERENCES


