

A Comparative Analysis of Unfair Terms in Consumer Contracts in Malaysia and Singapore

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ABSTRACT

The inclusion of welfarist ideology in the consumers' trade derived from the ideal of paternalism is a paradigm change from the doctrine of freedom of contract. Regulatory and legislative steps must be taken to support and attract consumers to the industry. Judicial and legislative actions must be taken to correct the market flaws that create consumers' vulnerability while trading in the global market. As one of ASEAN members' founders, Malaysia is moving towards people-centered economic endeavours to balance both industry and consumer interests through exclusion clauses to prevent unfair practices in consumer contracts. Legal intervention is one of the ways to curbing the issues that

arise from exclusion clauses. Before 2010, the non-existence of a specific regulatory framework to limit exclusion clauses usage in contracts involving consumers further increases consumers' vulnerability. Traditional judicial approaches in the battle against coercion and unethical behaviour of traders before 2010 did not engross consumer rights and interests. This sign is, in fact, the modern age of customer contracts, the enforcement of unfair terms. This article used the content analysis technique and analysed the evolution of legislative

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interference and judicial approaches in interpreting exclusion clauses in contracts involving consumers in Malaysia and Singapore.

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INTRODUCTION

The effect of globalization on trade has seen the emergence of consumerism to provide market protection. In the cardinal concept of contract equality, the globalised economy's existence has led to consumers' insecurity. Contract freedom no longer offers equal bargaining power for the vulnerable consumer in consumer contracts (Yusoff et al., 2011). In contrast, freedom of contract is often used as a tool for the advantages of traders.

Exclusion clauses have provided an indirect contract drafting method for the traders' benefit rather than the consumers. Equal bargaining power is the primary rationale for security measures for the poor and vulnerable community, widely recognized as consumers in a modern market economy (Alias & Abdul Ghadas, 2012). The information available regarding the products were within the manufacturers, retailers, merchants, and the sellers but never the consumers. According to Treitel (1984), the benefit usage of exclusion clauses is on unfair terms. These terms enable one party to the contract to predict the risks they might encounter to take precautionary measures such as insurance to protect themselves. These

terms are subject to abuse, particularly to the consumers because of their vulnerability in bargaining power and the contract and industry practices. Further, lack of resources as compared to the industry players explores consumers to greater risk (Yusoff, 2009). The lack of adequate knowledge to determine the substance in consumer contracts is fair, and customers' insecurity is balanced. Consumers are uncertain of the terms to which they have accepted. This research's significance is perhaps reflected in the dilemma a consumer is confronted with within the marketplace (Atiyah, 1971).

In Malaysia, consumer protection laws are designated to protect consumers' interest and intend to balance sellers and consumers' interest by governing unfair terms in consumers' contracts. Existing laws, namely, Part IIIA *Consumer Protection Act 1999* governing consumer contracts have been reviewed and amended to uphold consumerism. Besides, the Consumer Protection Act 1999, the National Consumer Policy 2002, was set up to improve the legal and institutional framework further to protect Malaysian consumers. Consumer protection regulations cover many issues intertwined between private and public law issues (Amin, 2013).

On the other hand, Singapore enacted the *Consumer Rights (Fair Trading) Act* in 2012 to regulate consumer contracts' unfair practices. Unlike Malaysia, Singapore has used the name of 'unfair practice' rather than unfair terms. *Consumer Protection (Fair Trading) Act 2003 (CPFTA 2003)* was enacted to provide a fair market for the

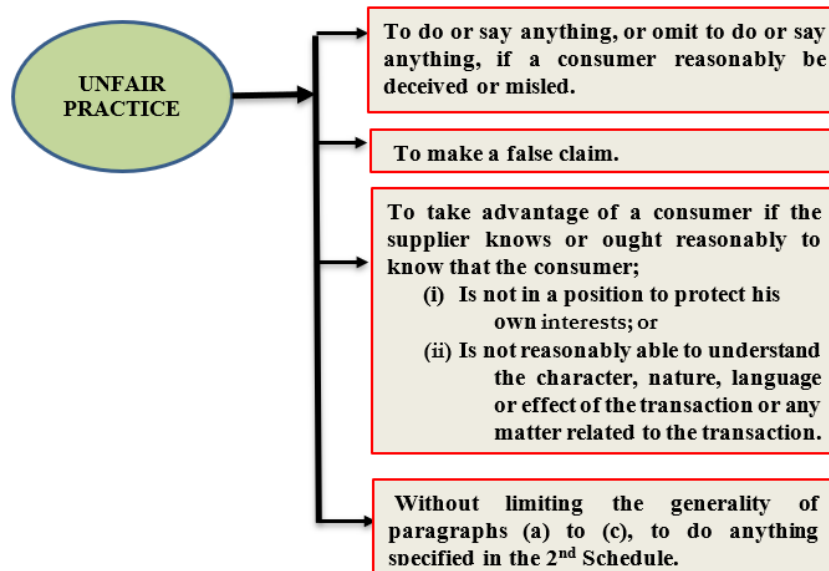


Figure 1. Meaning of 'unfair practice' in Section 4 CPFTA

sellers while protecting consumers. Figure 1 shows the unfair practice within the scope of the Act:

This article analysed the different legislative approaches of 'unfair terms' and 'unfair practices' in Malaysia and Singapore's consumer contracts by adopting the comparative methodology.

METHODOLOGY

This article adopted two approaches, which are the content analysis approach and comparative approach in its methodology. The first approach was content analysis, a method used to analyse the contents of documents systematically. (Chatterjee, 2000). This method was deployed in analysing the unfair terms in Malaysia *Consumer Protection Act 1999* (CPA 1999) and the Singapore *Consumer Protection*

(Fair Trading) (Amendment) Act 2012 (CPFTA 2012). Also, an appraisal of the content analysis was used to analyse the judicial approach to cases involving exclusion clauses in Malaysia. Singapore's contract law is primarily founded on England's common contract law and covers unfair terms and unfair practices more significantly than Malaysian. As with Malaysia, Singapore courts have applied the same construction rules in cases involving unequal terms, specifically exclusion clauses (Yusoff et al., 2012). Nevertheless, the Singapore courts' laws bear a somewhat similar resemblance regarding background and history to those set under England's common law, such as Malaysia. (Yusoff, 2009).

The second approach is by the comparative analysis, which explains a

similar situation using similar attributes, and different positions using different characteristics. (Pickvance, 2005). This approach has been used in the analysis of the related consumer protection challenge in unfair practices. However, Malaysia and Singapore react to the events with different methods in the Act. The second comparative analysis approach was used to compare the other unfair terms in CPA 1999 and unfair practices in CPFTA 2012.

TYPES AND CATEGORIES OF EXCLUSION CLAUSES

The term 'exclusion clause' applies to "any clause in a contract or term in a notice that purports to restrict, exclude or modify a liability, duty or remedy that would otherwise arise from a legally recognised relationship between the parties." (Yates, 1982). Poole (2008) acknowledged that there were enormous types and categories of exclusion clauses about one another. It is impossible to categorise them in an organised manner.

In Malaysia, there is no provision in the *Contracts Act 1950* that governs unfair terms (Mahmood, 1993). Thus, the necessity of legislative provision to provide specific regulations on unfair terms compared to the generality of common law is much needed. The courts have been hampered because, under the principle of freedom of contract, courts have not prevented unfair terms from being included as exclusion clauses in English common law. (Yusoff, 2009).

In the context of consumer contracts in Malaysia, the governing legislations are

the *Contracts Act 1950 (CA 1950)*, the *Sale of Goods Act 1957 (SOGA 1957)*, and the *Consumer Protection Act 1999 (CPA 1999)*.

SOGA 1957 codified the principles of sale of goods in its established case law into statute. However, SOGA 1957 is an Act of the 1950s that upholds freedom of contract and focuses on market economic growth rather than protecting the less advantaged party to the contract. SOGA 1957 regulates all business-to-business (B2B) and business-to-consumer (B2C) transactions.

Even though the implementation of the exclusion clauses is allowed in contracts, the interpretation of the *contra proferentum* remains; whereby a judge shall construe restrictions against the person who relies on the exclusion clauses. Despite such limits of judicial interpretation, small print, which conceals a wide range of exclusion clauses, particularly in standard form contracts, is always detrimental to customers (Wu, 1994).

The development of case law regarding exclusion clauses in Malaysia has shown grave concern over the years, particularly in consumer welfare.

The apprehension of the courts' exclusion clauses, which results in unfair or oppressive treatment to the consumers, has brought changes in the judicial approach. Malaysian courts' judicial attitude toward treating exclusion clauses is also hard to evaluate due to various judges' various ideologies (Yusoff, 2009). Only the judges using the paternalism approach would give priority to consumer protection. The rules of the judges derived from how the clause

is drawn up are either ‘incorporation’ or ‘construction.’ Although there is a lack of decision on exclusion clauses in consumer protection litigation, Malaysian courts have been able to apply specific rules on the use of exclusion clauses as terms and to view certain clauses as *contra proferentum*. Unless the exclusion clauses are vague, the court may have solved the clauses against the party’s interests demanding that they are included in the contract (Yusoff, 2009).

In recent years, the judicial approach’s developments to the exclusion clause to the just cause of protecting the weaker party to the contract in the awareness of bargaining power disparities have been pragmatic (Rahman, et al., 2017). In *CIMB Bank Berhad v Anthony Lawrence Bourke & Alison Deborah Essex Bourke* (2019) 2 CLJ 1, the Federal Court held that the exclusion clause of CIMB Bank was contrary against public policy as provided for in section 29 of the *Contracts Act 1950*. The learned Justice Balia Yusof Wahi mentioned in his decision:

“The bargaining powers of the parties to that agreement were different and never equal. In today’s commercial world, the reality is that if a customer wishes to buy a product or obtain services, he has to accept the terms and conditions of a standard contract prepared by the other party. There are the patent unfairness and injustice to the plaintiffs. It is unconscionable on the part of the Bank to seek refuge behind the clause and abuse the freedom of contract.”

The Federal Court has changed the traditional static way of giving effect to a more current and fair interpretation of the exclusion clause. By supporting the principle of unequal bargaining power in the contract, the weaker party, particularly the consumer, would be better secured. It is observed that the use of exclusion clauses in Malaysia’s contract is valid as long as it does not contravene public policy. There is no way to render a more equitable use of exclusion clauses, particularly in many standard forms contracts by the prevailing industry players. The vulnerability of the parties to the contract remains until there is an apparent legislative intervention.

UNFAIR TERMS IN CONSUMER CONTRACTS

In Malaysia, the *Consumer Protection Act (CPA) 1999* is the main legislation governing consumer protection. The responsible ministry is the Ministry of Domestic Trade and Consumer Affairs. Throughout one way or another, the CPA has been affected by legal advancements in the United Kingdom, Australian and New Zealand (Amin, 2013). There are several deficiencies in the 1999 Act in providing sufficient consumer protection in contract, particularly in exclusion clauses. While Section 6 of the 1999 Act provides for some kind of safeguard that prevents the contracting out of the Act’s provisions, it notes the need to restrict the extensive use of the exclusion clauses in consumer contracts. (Yusoff, 2009).

However, CPA 1999 lost its claws in providing comprehensive consumer

protection because section 2(4) of the Act stated that CPA 1999 is a supplemental Act being complimented and with a detachment to any other legislation regulating relations in contracts. According to paragraph 2(4): “The application of this Act shall be supplemental in nature and without prejudice to any other law regulating contractual relations.” This provision can be seen as reducing the CPA relative to other legislation because ‘supplementary’ simply means added because of complementary legislation (Amin, 2011). In this context, the CPA does not supplant existing legislation; it only provides additional safeguards to consumers above existing legislation. The new law shall prevail in the event of any contradiction in the application of any other legislation. The 1999 Act’s object is not to interfere with the execution of any other provision that imposes a strict duty on a seller or supplier other than the 1999 Act. In the truanity of consumer protection provisions in current legislation, the CPA 1999 reigns supreme. Section 2(4) diminishes the Act’s paternalistic characteristic, reducing the level of consumer protection offered to the consumers. (Abdullah & Yusoff, 2015).

In 2010, the CPA (Amendment) Act ratified Malaysian consumer protection legislation’s inadequacy in diagnosing unfair terms, according to Singh and Rahim (2011), as opposed to enacting a whole new law. A new section added to the current CPA, and Part IIIA is called Unfair Contract Terms. Therefore, CPA embraced a fresh way to describe unequal terms by characterising unfairness as ‘procedural’

and ‘substantive’ unfairness. It brings benefits to consumers and tends to affect how business to consumers’ conduct (B2C) is carried out by corporations and companies providing consumer products and services (Sinnadurai, 2011).

The CPA (Amendment) Act 2010 accepted the proposal put forward in the *Indian Law Commission Report on Unfair (Procedural & Substantive) Contract Terms (2006)*. The said Commission Report distinguishes between ‘procedural’ and ‘substantive’ unfairness. This creative approach in distinguishing unfairness seems to be uncertain of its application and its purpose in providing more comprehensive protection to the consumers. Further, Amin (2011) criticised an unclear magnitude as to how procedural unfairness and substantive unfairness under a new Part IIIA of the CPA could better protect consumers’ in the fair bargain. Moreover, unfairness in procedure and substance is often hard to distinguish even in judicial review cases. How this unfairness being determined by Consumer Claims Tribunals in Malaysia, remain challenging.

UNFAIR PRACTICES IN CONSUMER PROTECTION (FAIR TRADING) (AMENDMENT) (SINGAPORE) ACT 2012

The primary consumer protection statutes in Singapore are the *Unfair Contract Terms Act 1977* (UCTA) and the CPFTA. The Unfair Contract Terms Act regulates the use of exclusion and limitation clauses in consumer contracts and is a substantial re-enactment of the *English Unfair Contract*

Terms Act 1977 and was reviewed in 1994. The CPFTA provides a “consumer” involving an “unfair practice” in consumer contracts with a right to bring an action against the supplier for some sort of redress (Aziz et al., 2011).

The aim is to impose a limitation on civil liability for breach of contract, or for negligence or other violations of the duty to protect consumers from unfair practices. Besides, it also forbids and contains specific contractual terms that are deemed unreasonable. Matters relating to the unfair contract terms will be dealt with the UCTA 1977 founded on the English model. However, another statute but non-English models regulating unfair terms is the CPFTA. The CPFTA is the lemon law of Singapore. It was primarily based on fair trade laws passed in Alberta and Saskatchewan. The lemon law in Singapore provides that the customers claim a defective product (also known as lemons) sold to them within 6 months of their purchase. A seller of a defective product must replace, repair, refund, or reduce the defective product’s price subject to certain conditions. The Act applies to most consumer matters, but it does not apply to sales of land and houses and employment contracts. It was formulated to provide consumers with additional rights to ensure that they are fully protected under the Act (Manaf & Amiruddin, 2018).

Singapore amended its *Consumer Protection (Fair Trade) Act 2012* (CPFTA 2012) to include an additional part of unfair practices in Part II of the amended Act. Unfair practice in CPFTA 2012 means that

doing or omitting to do or say that might deceive or misled reasonable consumers in making a false claim and being taken advantage of when the supplier ought to know that the consumers will be taken advantage of because of its weaker position.

Furthermore, the Second Schedule of CPFTA 2012 sets out a long list of different unfair practices. Including the representation that the products or services have support, approval, performance characteristics, accessories, ingredients, components, qualities, uses, or benefits that they do not have. The making of false or misleading representations to the need for such goods or services; the demand for quality for any products or services is unfair. This representation also provides for a price for products or services that is considerably higher than the customer’s estimate; that is, an arrangement concerning goods or services where the customer does not have a right, remedies, or obligations if the description is inaccurate or deceptive. There are 20 specific unfair practices provided in the Second Schedule of the CPFTA 2012. The specific unfair practices in the Second Schedule of the CPFTA 2012 are distinct from each other with precise details covering particular unfair practices.

UNFAIR CONTRACT TERMS ACT: THE SINGAPOREAN APPROACH

The statutory law in Singapore relating to exemption clauses is essentially based on English law. The UK *Unfair Contract Terms Act 1977*, which either invalidates an exemption clause or limits the efficacy

of such terms by requiring reasonableness, has been reenacted in Singapore as the Unfair Contract Terms Act (as Cap 396, 1994 Rev Ed). The *Unfair Contract Terms Act 1994* generally only applies to terms that affect liability for breach of obligations that arise in the course of a business or from the occupation of business premises. It also gives protection to persons who are dealing as consumers. Under the *Unfair Contract Terms Act 1994*, exemption clauses are either rendered wholly ineffective or are ineffective unless shown to satisfy the requirement of reasonableness. Terms which seek to exclude or limit the responsibility of a party for death or personal injury arising from the negligence of that party are made entirely useless by the 1994 Act.

In comparison, the terms that seek to exclude or limit liability for negligence resulting in loss or harm other than death or personal injury and those seeking to exclude or restrict contractual liability are subject to that Act. The reasonableness of the exemption clause is evaluated as that of the time at which the contract was entered. The actual consequences of the breach are, therefore, in theory, at least, immaterial. (Aziz et al., 2011)

The UCTA is intended to protect individuals, but it is not exclusively for consumer protection in the narrower CPFTA sense. For example, s 2 (exemptions for negligence) applies to all contracts; s 3 (exemptions for breach of contract) applies when one party 'deals as a customer' or contracts on the other party's standard written terms. In contrast, ss 6 and 7

(exemptions in goods contracts) disallows such exemptions when one party 'deals as a consumer' and allows them to make business-to-business contracts where appropriate. "Deals as consumer" is broad enough to embrace a business entity where the contract is not made in the course of its business. The application of the UCTA beyond the narrow consumer context is essential. As noted in *Jurong Port*, the business entities may find themselves in weak bargaining positions. It is evident, though, that the Singapore (and British) courts are justifiably reluctant to apply the UCTA to contracts between sophisticated, advised, commercial parties. Some courts have gone so far as to suggest that the UCTA has little role in the commercial context (Booyesen, 2016).

In the case of *Consumers Association of Singapore v Garraway Enterprises Ltd Singapore Branch* [2009] SGDC 193 (unfair practices); *Freely Pte Ltd v Ong Kaili* [2010] 2 SLR 1065 (misleading conduct); and *Speedo Motoring Pte Ltd v Ong Gek Sing* [2014] 2 SLR 1398 (defective goods), the court is of the opinion that in the absence of locus standi for CASE and STB can to some extent be addressed via the CPFTA since unreasonable terms may constitute unfair practices (Booyesen, 2016).

RESULTS AND DISCUSSIONS

Part IIIA of the CPA 1999 in Malaysia sets out the factors that the Court or the Tribunal may find relevant in reviewing either procedural or substantive injustice. The majority of substances do not require

judicial consideration as to their nature, as opposed to ‘substances without sufficient justification;’ ‘oppressive;’ ‘unreasonable;’ ‘just expectations of fair dealing’ (Sinnadurai, 2011). As such, for substances that are descriptive, it can be far more accessible for the court to decide if the contractual word is appropriate to the parties to the contract or otherwise. (Hamid & Mansor, 2011).

Procedural inequality relates to the method of forming a contract. For example, a customer is unaware of a small print when the contract has been signed. On the other hand, the substantive injustice object is the consequence of the process, i.e., the contract’s essence or substance. A provision in the contract that excludes one party from any liability for negligence is substantive oppression. Also, a deal or condition of a contract can be decided based on its unfairness, simply because of its procedural injustice, which will necessarily result in substantive unfairness. From a practical point of view, procedural discrimination is more difficult to prove than substantive discrimination, and this is because the only available proof is just a copy of the unfair contract itself. There is little else to help determine how and under what conditions the parties have entered into such an agreement.

Section 24A(b) of the CPA 1999 defines “standard form contract” as “a consumer contract that has been drawn up for general use in a particular industry, whether or not the contract differs from other contracts normally used in that industry.” It involves conventional type contracts for different

sectors, such as insurance, banking, credit facilities, and all other supply of goods and services. Section 24(C) defines the unfair term as “a term in a consumer contract which, about all the circumstances, causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer.” This segment focuses on defending customers from unfair terms in the traditional form of business-to-consumer (B2C) contracts and other unfair terms in the form of exemption clauses in different documents (Amin, 2011).

Section 24C(1) of the CPA 1999 provides “a contract or a term of a contract is procedurally unfair if it has resulted in an unfair advantage to the supplier or unfair disadvantage to the consumer on account of the conduct of the supplier or how or circumstances under which the contract or the term of the contract has been entered into or has been arrived at by the consumer and supplier.” At the same time, section 24C(2) sets out a long list of factors used by the Court / Tribunal based on the Indian Law Commission in determining procedural injustices. The key objective is to ensure that there is no prejudicing aspect in terms of procedure and substance (Amin, 2011). Handing with procedural discrimination, terms such as ‘knowledge and understanding,’ ‘fine printing,’ ‘negotiable authority,’ ‘linguistic disability,’ ‘independent legal or other professional advice’ and other circumstances set out in section 24C(2) are technical words. These terms may conflict

with the sections provided in the Contracts Act 1950 on unreasonable control, error, and distortion (Sinnadurai, 2011).

Section 24D(1) states that the contract or term of the contract is substantially unfair; (d) excludes or restricts liability for negligence; or (e) excludes or limits liability for breach of the express or implied terms of the contract without reasonable justification and, what is more, if it contains harsh and oppressive. The current legislation extends to the exclusion of responsibility for both negligence and contractual obligations. Section 24D(2) sets out a list of cases of severe inequality. Significant disparities should be based on the contract's context regarding how it is constructed or incorporated rather than on the contract process (Amin, 2011).

Also, the binary distinguishes notions of unfairness that may include correspondence with each other. It is not an easy task to create procedural unfairness based on substantive injustices, which describes why is there no difference between such two notions of the law on unfair contractual terms in different countries (Amin, 2011). In line with the difficulty of distinguishing between these two concepts, paragraph 24G(1) provides that the court or Tribunal may, as an unfair contract term under sections 24C and 24D, decide that the contract is either procedurally or substantially unfair or both. For the contract's proper operation, Section 24G(2) claimed that the other terms of the contract that are not affected would remain in place irrespective of the offence period,

which has been rendered unenforceable or void. As such a legislative control over the use of unfair terms in consumer contracts in Malaysia featured in the Pat IIIA CPA 1999 is not free from significant flaws.

Whereas in Singapore, the framework of regulating pattern of control of unfair practices in the Second Schedule aimed at unfair terms include the use of unreasonably harsh or one-sided (2nd Sche, para. 11:11). The misuse of small prints (2nd Sche, para. 20) by customers under terms or conditions that are punitive, restrictive, or unduly one-sided to be unconscionable in the agreement. In the current framework, unfair market practices are still taking place in Singapore. Some service providers may claim to escape liability for injuries. However, this may have been the case in the case of ADX v Fidgets Pte Ltd [2009] SGDC 393 [ADX] (Booyesen, 2016). Because such a clause is unconstitutional under the UCTA, it is unfair to practice the industry watchdog should reintroduce that on its initiative (Booyesen, 2016).

Also, section 5 of the CPFTA 2012 states that unfair practices can occur earlier, but at the same time, unfair practices may well be a single act or omission. In deciding whether a person has engaged in an unfair practice, two requirements must be met, such as an act or omission on the part of the employee or agent of the individual and an act or omission on the part of the individual. If the act or omission has occurred within the framework of the employee's employment with the individual; or (ii) the agent exercises

the powers or performs the duties on behalf of the individual within the limits of the real or apparent authority of the agent.

Consumer's right to sue for unfair practice governs in section 6 of the CPFTA 2012. A consumer who has entered a consumer contract involving an unfair practice may bring an action against the supplier in a court of competent jurisdiction. Any action relating to an unfair practice concerning a relevant contract shall be heard in front of a small claims tribunal. Furthermore, a consumer can also bring a lawsuit against the supplier regarding a deposit paid contract for selling motor vehicles as provided under section 7(10) (e). The relevant contract means a contract for the sale of goods or the provision of services or contract for the lease of residential premises that does not exceed two years from the contract's date. Small Claims Tribunals. However, a hire-purchase agreement or sale of immovable property is not a relevant contract.

The uniqueness of the unfair practices provided under Part II of the Singapore CPFTA 2012 is that the Act introduced a new element such as a voluntary compliance agreement. If there are reasonable grounds for believing that a supplier has engaged, is involved in, or is likely to be involved in, unfair practices, the specified body may demand that the supplier enters into a voluntary compliance agreement. A specified body may require the supplier to enter into a voluntary compliance agreement. The supplier's voluntary compliance agreement is an undertaking requiring the supplier

to not participate in any unfair practice. The contract is entered into on a shared basis. All suppliers don't need to enter into such a contract. The issue of how many suppliers? If any will voluntarily enter into such an agreement, remain the main problem on enforceability. The lack of enforceability means a lack of the supplier's practical involvement not to engage in unfair practices.

The CPFTA 2012 has a significant feature not found in the UCTA and MA: it enables the "relevant body" to interfere to stop the unjust activity. There is a general understanding that an adequately financed body is necessary to facilitate such legislation's successful implementation. The appointed bodies are the Consumers Association of Singapore ('CASE') and the Singapore Tourism Board ('STB'). They may pursue a voluntary agreement with a supplier to cease any alleged or real unfair practice, to declare that an unfair practice has been or will be committed, and, if necessary, to issue an injunction to stop such practice as is provided for in Sections 8 and 9 (Booyesen, 2016).

Also, Article 9 of the Act provides that where a supplier has engaged, engaged, or is likely to participate in unfair practices, the District Court or the High Court may, at the request of the Commission, make a statement that the way engaged in or about to be joined by the supplier is an unfair practice. The court also has the power to grant an injunction prohibiting the supplier from involving in the unfair practice. The court may, at its discretion, allows an

additional one or more of the accompanying orders. There have been many forms of discriminatory legislative control in Malaysia and Singapore. The meaning of unfair terms in CPA1999 is narrow compared to CPFTA 2012 Singapore.

Table 1 summarises the legislation in place on unequal terms relative to Malaysia and Singapore as a comparative analysis between CPA1999 and CPFTA 2012.

Table 1

Summary of the legislation in Malaysia and Singapore: Regulation pattern

Scope	Malaysia	Singapore
Type of legislation: Specific legislation	None	Unfair Contract Terms Act 1994
Type of legislation: Specific legislation in other legislations	Part IIIA, <i>Consumer Protection Act 1999</i>	Consumer Protection (Fair Trading) Act 2003
Type of provision on unfair terms	It provides a procedurally and substantively unfair contract or term of the contract. It is to be kept unenforceable or void. Lists down 11 procedural unfairness circumstances and 5 instances that render a term/ a contract substantively unfair.	List down 20 acts amounting to specific unfair practices.
Effect	None	Voluntary compliance upholds industry-friendly, based on trust to govern traders who do not comply with the regulation and are involved in unfair practices. This approach is very good at preventing unfair practices with foresight. This approach will not affect business practices, such as fine.
Sanctions	Civil & Criminal	CPFTA Civil

RESULT AND DISCUSSION

Referring to the laws in Singapore on unfair contract terms and consumer protection, there are several proposed alternatives for Malaysia in regulating unfair contract terms.

a. Amending the *Contracts Act 1950* by adding provision(s) on unfair terms. The problem with this alternative is the general nature of the 1950 Act. It does not have specific requirements dealing with contents or the terms of a contract.

b. Specific legislation on unfair terms. This form of regulating unfair terms is regarded as the best form for Malaysia, bearing in mind the limitations of other legislations; or

c. *Consumer Protection Act 1999*

i. Amending Part IIIA of the 1999 Act by taking into account unfair practices in CPFTA Singapore and not limit to unfair terms; or

ii. Enacting a regulation on unfair terms under section 150 of the 1999 Act.

Nevertheless, the problem with this alternative is the limited scope of the 1999 Act. In adopting this form of reform, the Act's limitations should be considered, for example, deleting section 2(4) and being replaced with a section giving the overall effect to the 1999 Act.

CONCLUSION

The history of Malaysian case law and the recent amendment to the exemption clauses in consumer contracts indicated a need for legislative intervention on these unfair clauses to protect consumers. Legal

intervention and the judicial approach's changes to unfair contract terms in consumer contracts caused the business to realize that they could no longer exclude consumers' rights and interest by exploiting unfair terms.

The growing influence of the statute, which codifies the effect on consumers' contract terms, has expanded the boundaries of the consumer contract law in Malaysia and Singapore. Traders need to be conscious of the legal implications of the unfair terms in CPA 1999, particularly in consumer contracts. The distinction of procedural and substantive unfairness gave a somewhat confusing approach in determining the unfair terms in consumer contracts. Despite that, Singapore CPFTA 2012 provides a different attitude towards unfair terms. CPFTA 2012 provides a broader coverage of unfair practices, identifying unfair practices rather than merely on the contractual terms.

The existing Part IIIA of CPA 1999 still contains some weaknesses that could have been addressed by enacting a single comprehensive piece of legislation of unfair terms in Malaysia. Singapore's legal regime has recognised unfair terms, including unfair practices, and thus the necessary protection through legislation. It is time for Malaysia to make reforms in this area to enhance consumer protection against the use of unfair terms in consumer contracts. This article highlighted some of the measures which Malaysia can adopt from Singapore to enhance consumer protection against unfair contract terms.

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