

E-COMMERCE AND ONLINE CONTRACT LAW

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ABSTRACT

A web based shopping is still new concept in Malaysia, however, it has experienced quick advancement. While web based business law is consistently creating and developing, there are still various territories where there is no unique enactment to manage e-customer security in an offer of products contract. Evidently there are various related consumer assurance enactments which can be connected with regards to web based business in Malaysia, the issue stays in the matter of whether the present laws suit and provide food for the requirements of e-buyers. Current study provides insight for E-commerce in Malaysia, E-commerce trends, E-commerce regulations. Moreover, this study also provides insight for Sale of Good Contract and its limitations and governing regulations.

Keyword: E-commerce, consumer assurance, Act 2006 (ECA), governing regulations, Contract.

1. Introduction

Sale of products and services are progressively being executed over the Internet which is a border-less virtual market and the world's greatest shopping center. As indicated by International Data Corporation (IDC) Malaysia, the business income produced by internet business in Malaysia enlist positive year-to-year development, with \$105 billion in 2010 and \$144 billion in 2011 (IDC Malaysia, 2011). The development in web based business is because of the fast ascent in the quantity of PCs and additionally the development of WiFi administrations, broadband and hot-spots in Malaysia. This advancement witnesses the rise of another group of shoppers known as e-consumers. Generally, e-buyers allude to the buyer of products and services over electronic frameworks, for example, Internet and other electronic systems. This new group of customers is expanding in number throughout the years as online shopping turn into a pattern and indication of contemporary way of life. A review done by PayPal for the year 2010 on 400 clients who utilized IT facilities to pay online demonstrates that Malaysian has spent over RM1.8 billion to

buy products and acquire services on the web (Nazrin, 2012). However, unlike conventional strategy, web based shopping does not include face to face correspondence, and contracts of transaction are not made on paper. It is a separation exchange which gives no open door for consumers to look at the great and to know the providers and their business places. This paperless and separation exchange conceivably raises more complex buyer issues in an offer of products which not just examine the way the law manages them but there are likewise new issues which must be resolved successfully. Receiving the technique for content examination, this paper is going to analyze the current Malaysian law.

2. An Overview of E-commerce in Malaysia

E-commerce alludes to all business movement led with the guide of electronic gadgets (Quirk, 2003). The Organization for Economic Co-operation and Development (OECD) characterizes e-commerce as, all types of exchanges identifying with business exercises including both associations and people that are based after handling and transmission of digitized information including content, sound and visual pictures. Likewise, it alludes to the impacts that the electronic trade of business data may have on the foundations and procedures that support and administer business exercises. These days, web based business ordinarily identifies with the subset of exchanges directed by means of the Internet between gatherings associated with each other (Abu Bakar Munir, 1999). Subsequently, any business exchanges between the groups which are done electronically can be characterized as e-commerce and web based shopping is however one of the component among most critical segments of online business.

E-commerce has been expanded with the contemplation of some principled targets. The advantages of E-commerce are countless and it relies upon every member's motivation. A matter of fact, E-commerce conveys many advantages to both dealers and shoppers. For merchants, online exchange brings more prominent effectiveness, expanded responsiveness and decreases cost. It empowers little organizations and newcomers available to develop their range a long way past what was already conceivable. Customers likewise remain to pick up from more extensive decision, expanded accessibility of particular items, more complete item data, and bring down expenses and more responsive administrations (Rachagan, 1997). Therefore, this medium of exchange has made the world a small place and has empowered business to be completed 24

hours a day in an apparently border-less environment. However, web based shopping in Malaysia is not as well-known as in Western nations but it is quickly getting up to speed.

3. Regulation for Online Shopping in Malaysia

The expansion of web based business needs bolster from the law so as to manufacture trust and certainty among the shoppers. As the points of buyer security law and arrangement are apparently to provide shoppers with assurance from, and rights against, makers and providers of broken or deficient merchandise and services, along these lines the law must be created to suit this new business environment and difficulties. Generally, e-commerce resembles any commercial business transaction. The real contrasts lie in the way that current lawful theories may never again be satisfactory to manage the issue that rose with the advancement of internet business. New types of dangers to buyer assurance call for new defensive rules (Long, 2001). The insurance ought to be adjusted to address the issues of innovative development and its suggestion on the customers. It is in reality critical to manufacture buyers' trust and trust in the data interstates through authoritative intercession and without uncertainty that sufficient insurance of e-commerce rights will positively affect the advancement of web based business itself. In this way, an administrative system to guarantee e-commerce protection is basic and essential.

In Malaysia, there are distinctive enactments under the locale of various ministries which straightforwardly or by implication manage or affect the direct of internet shopping. The essential enactment overseeing e-commerce exchanges is the Electronic Commerce Act 2006 (ECA) under the Ministry of Domestic Trade, Cooperatives and Consumerism. The ECA essentially accommodates legitimate acknowledgment of electronic messages in business exchanges, the utilization of the electronic messages to satisfy lawful prerequisites and viable and encourage business exchanges using electronic means. In any case, the ECA contains no arrangements on how electronic exchanges should be possible in a safe and secured environment which is significant for buyer assurance. In the interim the general law on contracts and an offer of merchandise contracts can be found in the Contract Act 1950 and the Sale of Goods Act 1957. Regardless these pre-freedom laws are fairly obsolete and have not yet been corrected to suit present day business exchanges. The primary statute on consumer assurance in Malaysia is the Consumer Protection Act 1999 (CPA). The CPA was at first inapplicable to any exchange

exchanges by electronic means however the law has been altered in 2007. The insurance for e-customers has been further reinforced as of late by the order of the Consumer Protection Regulations 2012.

In addition, the Direct Sales and Anti-Pyramid Scheme Act 1993 has additionally been revised in 2010 to incorporate web based business in the meaning of mail order deals. These demonstrations are firmly identified with the goals of this paper to highlight legitimate assurance for e-purchasers and will be examined in later sub-points in more detail. What's more Malaysia has additionally built up an arrangement of laws that manages exercises that occur in the internet for the most part. These digital laws incorporate the Computer Crime Act 1997 and Digital Signature Act 1997. The Computer Crimes Act 1997 (CCA) essentially makes unapproved access to PCs, projects, information and other IT data an offense. Different offenses arranged under the CCA incorporate unapproved access to PC material, unapproved alteration to the substance of any PC, unapproved access with the goal of submitting or encouraging further offense and wrongful correspondence to the method of access. Those demonstrations are criminalized and disciplines are accommodated such acts. This law is regarded imperative because of the expansion in PC related exchanges particularly budgetary exchanges. With regards to web based shopping, the CCA to some degree ensures e-customers' enthusiasm as to a security of online installment. Another Act that could ensure e-purchasers regarding securing installments in internet shopping is the Digital Signature Act (DSA) 1997.

4. Regulation for E-consumer in a Sale of Goods Contract

A consumer alludes to a man who buy products or utilize services. For all intents and purposes everybody is a consumer in somehow of different products and ventures provided by others including open division organizations. However, with the end goal of buyer assurance law, the expression "purchaser" has a narrow meaning and it is characterized with regards to business or business dealings between the customer and the supplier of products or services. Segment 3 (1) of the Consumer Protection Act 1999 characterizes a buyer as a man who, firstly, secures or uses products or services of a kind normally gained for individual, residential or family reason, utilize or consumption, secondly, does not obtain or utilize the merchandise or services, or hold himself out as securing or utilizing the products or services fundamentally with the end goal of Resupplying them in exchange or Consuming them over the span of an assembling procedure or

on account of merchandise, repairing or treating, in exchange of different products or installations on land. For instance, in a legal case of NZ Wheels Sdn Bhd v/s Puncak Niaga (M) Sdn Bhd (2012) 1 MLJ 27, the court decided that a privately owned business who purchased Mercedes Benz vehicle to be utilized as organization's car was a consumer.

Advancement of the law identifying with consumer assurance is the appearance of a developing social concern to secure the powerless and those not able to deal with themselves in a cutting edge economy. An imbalance of bartering force is the primary defense for extra assurance to this helpless group of consumers (Oughton, Lowry, 2000). Clearly customers are in a frail haggling position contrasted with the all the more effective provider of products and enterprises because of the difference of information and assets. Additionally, shoppers likewise should be secured formal sorts of uncalled for exchange practices of market administrators, for example, insurance against offer of damaged, substandard and perilous items and different deceitful exchanging practices, for example, false commercial, misdirecting value sign, bogus portrayal of products and so forth.

Customers are additionally confronting issues of deficient data and constrained decision to practice a reasonable item purchasing choice. Consumer security laws are along these lines intended to guarantee reasonable exchange rivalry by anticipating organizations that take part in misrepresentation or other out of line practices from picking up favorable position over customers. The law especially concentrates on an offer of products get; the most widely recognized sort of agreement went into by shoppers in their day by day life. Under the current Malaysian Sale of Goods Act (SOGA) (1957)(revised, 1989), a contract of sale of goods including on the internet sales are categorized into 3 types, i.e. commercial sales, which describes a contract of sale of goods between a commercial seller and a buyer for only business purposes (B2B), consumer sales, which describes a contract of sale of goods between commercial seller and buyer only for the personal purpose or domestic purpose (B2C) and lastly, private sales, which describes a contract of sale of goods between to common people private purposes (C2C).

5. Compensation Mechanism for E-consumers

E-buyers who are disappointed with online dealings can record their cases in the Tribunal of Consumer Claims (TCC) which was set up to give rapid, modest and casual compensation to buyers' grievances (Amin & Abu Bakar, 2010). It was built up under Part XII of the CPA. The TCC appeared on 15 November, 1999, a similar date the CPA was upheld. The essential capacity of the TCC is to hear and decide claims documented by buyers. This incorporates a claim identifying with supply of merchandise, supply of services and uncalled for exchange practices for example, deceiving promotions, misdirecting value signs and so forth. The claim can be maximum RM25,000. Additionally, the TCC may likewise engage a buyer protestation under different statutes inside the domain of the Ministry of Domestic Trade, Cooperatives and Consumerism, for example, a contract for hire-purchase, coordinate selling and fraudulent business schemes.

The purview of the Tribunal has as of late been reached out to any "cases in regard of all merchandise and services for which no change component is accommodated under some other law" (section-98). As it were the TCC may likewise hear and decide buyer asserts in different matters outside the CPA the length of it is not explicitly prohibited from its jurisdiction. An e-consumer may hold up his claim by finishing a particular shape which can be acquired free from the Tribunals. An online dealer who debate the claim must record his protection together with counter-assert (assuming any) inside 14 days after the administration of the announcement of claim. The Tribunals will then issue a notice of listening to both parties at the very least 14 days before the date of hearing. However, before a legitimate trial is directed, the Tribunals would evaluate whether it is proper for the groups to arrange a concurred settlement in connection to the claim. A concurred settlement by the groups should be endorsed, recorded and viewed as an honor of the Tribunal.

6. Conclusion

A web based shopping is still new concept in Malaysia, however, it has experienced quick advancement. While web based business law is consistently creating and developing, there are still various territories where there is no unique enactment to manage e-customer security in an offer of products contract. Evidently there are various related consumer assurance enactments

which can be connected with regards to web based business in Malaysia, the issue stays in the matter of whether the present laws suit and provide food for the requirements of e-buyers. The obsolete enactment, for example, the Contracts Act 1950 and the Sale of Goods Act 1957 are clearly needing major amendments to suit current business hones. To a huge degree, e-buyers have similar needs and wants like a regular consumer.

Nonetheless, from various perspectives, e-buyers are more helpless as they normally can't look at the item preceding buying it and may not know their identity purchasing from. In light of this, it could be recommended that the requirement for "trust" is considerably more prominent in web based business than in regular exchange. Therefore, the law assumes a vital part in making customer confide in online business. There has been major authoritative change and advancement in the region of e-customer protection in Malaysia for as far back as couple of years. The present law on e-consumer security is not extremely a long way behind the assurance accessible in created nations, for example, the USA and European countries. In any case, there are different parts of e-consumer assurance that yet to be managed, for example, spontaneous business messages (anti-spam law). Most importantly, current local law would not be adequate to secure e-buyers in instances of cross-fringe online exchange transactions. Assist change to existing controls is clearly expected to give a gauge to national buyer assurance in online business in order to reinforce consumer certainty and also to guarantee satisfactory security for the e-consumers.

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