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Re-Evaluating the Remedial Paradigm Shift from Condition-Warranty to Implied Guarantees under the Sale of Goods Act 1957 and Consumer Protection Act 1999

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ABSTRACT

The development of supply of goods in Malaysia is characterized by an ongoing ideological and statutory clash between the classical, buyer beware principles of the Sale of Goods Act 1957 (SOGA 1957) and the modern consumer welfarism of the Consumer Protection Act 1999 (CPA 1999). Under SOGA 1957, buyers are subject to a rigid condition-warranty dichotomy, a fragile right of rejection compromised by the deemed acceptance trap and sweeping exclusion clauses that let sellers' contract out of implied obligations. While the CPA 1999 sought to overcome these deficiencies by introducing statutory implied guarantees and a tiered remedial scheme (repair, replacement, refund), its efficacy is severely undermined by a structural flaw. Utilising a qualitative, library-based doctrinal legal research methodology, this paper critically re-evaluates the remedial paradigms of SOGA 1957 and the CPA 1999. This article explores the fundamental ideological and statutory shift in Malaysian sales law through a comparative analysis of the Sale of Goods Act 1957 and the Consumer Protection Act 1999. It critiques SOGA 1957's reliance on nineteenth-century classical commercial principles specifically the doctrine of *caveat emptor*, a rigid condition-warranty dichotomy, and liability-exclusion loopholes which assume equal bargaining power and disproportionately disadvantage modern purchasers. In contrast, the analysis highlights the enactment of the CPA 1999 as a transformative pivot toward consumer welfarism and *caveat venditor*. By introducing robust, non-excludable implied guarantees, a flexible tiered remedial model, and bypassing traditional barriers like privity, the CPA 1999 effectively rectifies the systemic imbalances of SOGA 1957 to provide comprehensive legal redress for contemporary consumers.

1. INTRODUCTION

The law relating to supply of goods in Malaysia is shaped by a fundamental conflict between two economic ideologies: market individualism and consumer welfarism. Historically, the Sale of Goods Act 1957 (SOGA 1957) modelled after the Indian Sale of Goods Act 1930 and the English Sale of Goods Act 1893 was structured around market individualism. This ideology assumes equal bargaining strength between contracting parties and prioritizes freedom of contract and laissez-faire commercial stability. Under this classical framework, the doctrine of *caveat emptor* (let the buyer beware) placed the entire risk of product quality and defects on the buyer, who had to rely on their own skills and inspection. However, modern industrialization, complex supply chains, and the widespread use of standard form contracts shattered these laissez-faire assumptions. Consumers became the structurally weakest parties in the marketplace, lacking any real bargaining power. Unethical traders routinely exploited this imbalance by using standard-form contracts to strip buyers of their legal remedies.

Undoubtedly, the issue of consumer protection is a critical matter when discussing the supply of goods. As we are well aware, consumers constitute the largest economic group, influencing and being influenced by almost every economic decision made by the government. Therefore, it is only proper that this group is granted protection (Kennedy, 1962). Furthermore, in this era of globalization, the use of sophisticated technology to distribute goods and the production of goods through complex processes often lead to honest consumers facing oppression and exploitation by unethical traders (Yusoff, 1995). The free-market or laissez-faire economic system practiced in Malaysia has also created an imbalance of bargaining power between consumers and suppliers. Consumers, who are supposed to be kings in the economic market, have instead become victims due to this power imbalance (Yusoff & Ismail, 2003). This problem is one of the root causes for the supply of defective goods to consumers. It will continue to haunt consumers if they are not provided with adequate protection. The most appropriate protection to offer consumers is legal protection. This was acknowledged by Murphy in his speech while introducing the Trade Practices Bill in the Commonwealth Parliament in 1973:

> In consumer transactions, unfair practices are widespread. The existing law is still founded on the principle known as caveat emptor – meaning 'let the buyer beware'. That principle may have been appropriate as a general rule. Now the marketing of goods and services is conducted on an organized basis and by trained business executives. The untrained consumer is no match for the businessman who attempts to persuade the consumer to buy goods or services on terms and conditions suitable to the vendor. The consumer needs protection by the law and this Bill will provide such protection. (Murphy, 1973, p. 1013)

This market failure necessitated state intervention, driving a paradigm shift toward consumer welfarism and *caveat venditor* (let the seller beware) to restore contractual justice. In Malaysia, this ideological transition culminated in the enactment of the Consumer Protection Act 1999 (CPA 1999), establishing direct statutory protections and a consumer-friendly redress mechanism.

2. LITERATURE REVIEW

Scholars emphasize that substantive consumer rights are hollow unless supported by a functional and accessible remedial scheme, a principle captured by the classical legal maxim *ubi jus ibi remedium* (where there is a right, there is a remedy). In legal theory, the relationship between rights and remedies is sophisticated and heavily debated. Friedmann (2005) outlines four theoretical models of this relationship:

1. the primacy of the remedy model, where rights are derived from remedies and the absence of a remedy indicates the non-existence of a right;
2. the primacy of the right model, where remedies are merely derivative of independent rights;
3. the unity of the right-remedy model, where the remedy is an inseparable attribute of the right itself; and
4. the acoustic separation model.

Daniel Friedmann's Primacy of the Remedy Model demonstrates that a remedy is essential for sanctioning and enforcing a legal right because the right itself derives directly from the remedy. In this model, the remedy precedes the right in sequence. Consequently, the complete absence of an available remedy signals that no true legal right exists in practice. Applied to consumer protection, conferring statutory rights on buyers is meaningless unless supported by accessible, concrete remedies to sanction trader breaches.

Birks (2000) conceptualizes a remedy as a remedial or sanctioning right born of a civil wrong or injury. Furthermore, Barker (1998) maintains a clean contrast, defining primary rights as a person's initial legal entitlements and secondary rights as the substitutionary remedies that arise when those primary entitlements are breached. These theories directly influence statutory design. SOGA 1957 and classical contract law adopt a rights-based, promissory approach, utilizing expectation interest damages to place the injured party in the financial position they would have occupied had the contract been performed. Conversely, the CPA 1999 incorporates corrective justice into its remedial framework. Grounded in the moral duty of a wrongdoer to repair or rectify the harms they have caused, corrective justice underpins the CPA's remedies of repair and replacement under Parts VI and VII, seeking to actively restore contractual justice rather than merely calculating financial losses.

The literature presents a robust critique of SOGA 1957, arguing that its provisions fail to protect modern consumers. Under section 12 of SOGA 1957, contractual terms are strictly divided into conditions (essential terms allowing contract repudiation and goods rejection) and warranties (collateral terms only permitting claims for damages). This binary structure is criticized for creating commercial uncertainty and producing inequitable, "all-or-nothing" outcomes. Case law highlights this rigidity: in *Arcos Ltd v E A Ronaasen & Sons* [1933] AC 470, a buyer was allowed to reject goods over a minor, non-detrimental deviation from contract specifications, whereas in *Tham Cheow Toh v Associated Metal Smelters* [1972] 1 MLJ 239, the court restricted an injured buyer to mere damages despite a substantial breach of an essential undertaking. In *Yayasan Hasanah v Mohd Nizam bin Mohd Nasir & Anor* [2023] 9 MLJ 512, the plaintiff managed the CERDIK project supplying laptops to underprivileged children during the pandemic. They paid the defendants RM3.2 million for 2,500 laptops, but the initial delivery was fundamentally defective. The plaintiff sued for deceit and breach of contract. The High Court ruled in the plaintiff's favour, upholding the breach of contract and fraudulent misrepresentation by the individual defendant. The court authorized contract termination, awarded a full refund, dismissing the counterclaim. In *Suzannah Helen Harvey & Anor v Langkawi Yacht Club Bhd* [2024] 7 MLJ 385, the plaintiffs sued a yacht club for supplying contaminated diesel that caused severe engine damage during a Maldives voyage. The High Court ruled for the plaintiffs due to the timeline of refuelling and engine failure, awarding compensatory damages for repair costs, loss of yacht use, and mental distress. However, in *Langkawi Yacht Club Bhd v Suzannah Helen Harvey & Anor* [2026] 3 MLJ 813 (CA), the Court of Appeal set aside the High Court's decision and cleared the Langkawi Yacht Club of liability for supplying contaminated fuel. The appellate court dismissed the plaintiffs' claim due to a failure to establish a proper chain of custody for the fuel samples and reliance on inadmissible expert evidence. Under SOGA 1957, once a buyer is deemed to have accepted goods, they permanently lose their right to reject the goods, reducing their remedy to damages. This acts as an invisible trap for consumers who try to use or repair defective items. Perhaps SOGA's most significant flaw is section 62, which permits suppliers to use their superior bargaining power to contract out of all implied statutory obligations regarding quality, description, and fitness. While courts developed judicial techniques of incorporation and strict interpretation (*contra proferentem*) to restrict these clauses, their protection is severely limited by the rule in *L'Estrange v F Graucob Ltd* [1934] 2 KB 394, which holds that signed contracts are strictly binding regardless of whether the consumer read or understood the exclusion terms.

The CPA 1999 addresses SOGA's deficiencies by establishing a comprehensive, non-excludable protective framework. Part V of the CPA 1999 replaces SOGA's rigid terms with statutory implied guarantees. Crucially, section 32 introduces the modern standard of acceptable quality which accounts for minor defects, safety, and durability replacing SOGA's outdated merchantable quality standard. Section 41 of the CPA 1999 structures remedies based on the severity of the failure rather than rigid term classifications. For remediable or minor failures, the supplier is given an opportunity to repair or

replace the goods. For non-remediable or substantial failures, the consumer can immediately reject the goods and demand a full refund. This tiered approach avoids SOGA's rigid deemed acceptance rules, providing consumers with a realistic window to inspect and reject defective products. Part VII grants consumers a direct statutory right of action against manufacturers for failures of quality or description, overcoming the classical privity of contract barrier that historically shielded manufacturers from liability. Section 6 of the CPA 1999 renders any contractual term that purports to exclude, restrict, or modify consumer guarantees absolutely void. This was further strengthened by the introduction of Part IIIA (Unfair Contract Terms) in 2010, which empowers courts and tribunals to strike down substantively or procedurally unfair terms.

3. METHODOLOGY

This study adopts a qualitative, library based doctrinal legal research methodology to critically examine the statutory and jurisprudential transition of the Malaysian supply of goods remedial framework. As pure legal research, the analysis is grounded primarily on the systematic evaluation of primary legal sources, which include key statutory instruments principally the Sale of Goods Act 1957 and the Consumer Protection Act 1999 alongside relevant judicial precedents from both Malaysian and English common law jurisdictions (Yaqin, 2007). This primary statutory analysis is supplemented and contextualized through the examination of secondary legal sources, comprising peer-reviewed law journals, authoritative legal textbooks, academic conference proceedings, and law commission reform papers (Abdullah, 2020). By employing analytical, critical, and comparative approaches, this research deconstructs the conceptual boundaries of the classical condition-warranty dichotomy under SOGA 1957 and evaluates the modern, tiered statutory guarantees and corrective remedies under the CPA 1999, ultimately identifying persistent lacunae and proposing systemic statutory harmonization.

4. FINDINGS AND DISCUSSION

4.1 Legal Framework for the Supply of Goods Pre-1999

The evolution of Malaysian sales law is fundamentally characterized by a jurisprudential transition from classical, trader-centric laissez-faire principles to modern consumer welfarism. Historically, the SOGA 1957 which was modelled after the Indian Sale of Goods Act 1930 and ultimately derived from the English Sale of Goods Act 1893 was structured to facilitate general commercial exchanges under the assumption that contracting parties possessed equal bargaining strength. Under this traditional framework, SOGA 1957 was never designed with consumer protection as its primary objective. Instead, it functioned as a subset of general commercial law, operating in tandem with the Contracts Act 1950 to govern relationships between sellers and buyers indiscriminately.

This classical commercial framework is deeply rooted in the philosophy of market individualism. Furmston (1999) describes market individualism as an economic and legal ideology that emphasises holding contracting parties to the agreements they freely make. It is driven by two key concepts, namely individualism (which champions self-interest and personal liberty) and market ideology (which demands contractual certainty and smooth market operations enforced strictly by the courts). This framework birthed the doctrine of laissez-faire, which posits that the law should minimize its interference in commercial affairs, leaving traders free to manage their own transactions. Closely intertwined with laissez-faire is the principle of freedom of contract, which assumes that legal obligations arise purely from free will and a meeting of minds. Carter (1907, p. 337) described liberty as "the first of blessings" and "the aspiration of every human soul".

Under this laissez-faire paradigm, the doctrine of *caveat emptor* (let the buyer beware) flourished in nineteenth-century England. This rule placed the entire risk of product defects on the buyer, assuming that the buyer had exercised their own judgment, skills, and precaution during the purchase. If a buyer required protection under this strict system, they had to secure an express warranty; the state would not intervene to provide statutory safeguards. However, as highlighted by local legal scholars such as Rachagan (1992) and Yusoff (2001), the free-market system in Malaysia created a profound imbalance of bargaining power. Sophisticated traders routinely exploited their superior knowledge, economic

strength, and monopoly over standard-form contracts. This left consumers in a "take-it-or-leave-it" position, forcing them to accept unfair exemption clauses that stripped them of any viable contractual remedies.

This injustice necessitated a transition toward consumer welfarism. Furmston (1999) explains that consumer welfarism seeks to ensure a fair deal for the consumer contracts and, more generally, to relieve against harsh or unconscionable bargains. Historically, this shift began in England during the 1860s, when the House of Lords in *Foakes v Beer* (1884) 9 App Cas 605 began prioritizing contractual fairness over bare agreements, eventually leading to the codification of implied terms. Atiyah (1985) famously observed that it has become "unrealistic to treat the basic principle of law as *caveat emptor* rather than *caveat venditor*". While SOGA 1957 continued to preserve *caveat emptor* in Malaysia, the enactment of the CPA 1999 represents a profound ideological shift. It officially transitions Malaysian sales law from market individualism to consumer welfarism, replacing rigid, seller-centric terms with robust, modern statutory guarantees designed to protect the weaker party.

4.1.1 The Condition-Warranty Dichotomy and Its Remedial Consequences

At the heart of the SOGA 1957 remedial scheme is the rigid classification of contractual terms into either conditions or warranties. Section 12 of SOGA 1957 outlines this division, asserting that a stipulation in a contract of sale may be classified depending on its importance to the contract's main purpose. Under section 12(2), a condition is defined as "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". Conversely, section 12(3) defines a warranty as "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".

This binary classification has been heavily criticized by legal scholars for creating commercial uncertainty and producing inequitable, "all-or-nothing" remedial outcomes. Under this rigid paradigm, a buyer's right to reject non-conforming goods depends entirely on how a court retroactively classifies the breached term rather than the actual severity of the defect or the real world impact of the breach on the buyer. This rigidity is illustrated in the classical English case of *Arcos Ltd v E A Ronaasen & Sons* [1933] AC 470, where the court strictly enforced the condition-warranty dichotomy. In *Arcos*, the buyer ordered timber staves specified to be a half-inch thick to construct cement barrels. Upon delivery, only 5% of the staves conformed exactly to the specified thickness, while the remaining staves deviated by a tiny fraction of an inch (approximately 1/16 of an inch). Although the delivered timber was still fully merchantable and completely fit for its intended purpose, the House of Lords held that the buyer was entitled to reject the entire shipment simply because the goods failed to correspond with their contractual description under section 13 (analogous to section 15 of SOGA 1957). This decision highlights how a merchant can exploit a minor, technical breach of a condition to escape a bad bargain, demonstrating how SOGA's rigid structure can lead to commercially manipulative outcomes.

Conversely, when a genuine consumer suffers a substantial loss, courts applying SOGA's classical framework often restrict the available remedy to mere financial damages. In the Malaysian case of *Tham Cheow Toh v Associated Metal Smelters* [1972] 1 MLJ 239, the seller agreed to supply a metal-smelting furnace, representing that it could reach a temperature of 2,600 degrees Fahrenheit. The furnace failed to achieve this temperature, preventing the buyer from operating it effectively. The court eventually treated the breach of this essential undertaking as a breach of warranty, awarding only damages rather than allowing the buyer to repudiate the contract entirely. This classical approach forces courts to fit complex disputes into rigid statutory categories, leaving Malaysian buyers bound to an outdated nineteenth-century remedial framework.

4.1.2 The Loss of the Right to Reject

Even when a seller commits a clear breach of an implied condition, a buyer's primary remedy the right to reject the goods and obtain a full refund is exceptionally fragile under SOGA 1957. Under section 13(2) of SOGA 1957, once a buyer has accepted the goods, any breach of a condition must be treated merely as a breach of warranty, stripping the buyer of their right of rejection and reducing their remedy to a claim for damages.

The statutory mechanism for losing this rejection right is laid out in section 42 of SOGA 1957, which details three circumstances where a buyer is deemed to have accepted the goods:

1. When the buyer intimates to the seller that they have accepted them;
2. When the goods are delivered and the buyer does "any act in relation to them which is inconsistent with the ownership of the seller"; or
3. When, after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that they have rejected them.

The phrase *any act... inconsistent with the ownership of the seller* has proven to be an invisible trap for consumers. If a consumer attempts to use, test, modify, or even have a defective product repaired by a third party, courts can interpret these actions as asserting ownership over the goods. Under section 42, this inconsistent act immediately deems the goods accepted, stripping the consumer of their right to reject the product and demand a refund. Furthermore, SOGA 1957 does not provide a clear, standardized statutory formula for calculating damages if a buyer is forced to settle for financial compensation under section 57 (for non-delivery) or section 59 (for breach of warranty). Malaysian courts must instead rely on the general principles of causation and remoteness under section 74 of the Contracts Act 1950 or look to English common law cases (such as under section 51 of the UK Sale of Goods Act 1979) to compute damages. This lack of integrated, statutory formulas adds unnecessary complexity and costs to consumer claims.

4.1.3 The Exclusion Clause

Perhaps the most glaring deficiency of the SOGA 1957 remedial scheme is its complete deference to the principle of freedom of contract, which allows sellers to contract out of their statutory liabilities entirely. Section 62 of SOGA 1957 explicitly permits this loophole, stating:

> Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

This provision is widely regarded by legal scholars as anti-consumer since such a clause excludes or modifies contractual obligation. It affects the nature and scope of a party's performance (Fridman, 1999). In the modern consumer marketplace, transactions are rarely negotiated on equal terms. Instead, they are dominated by standard-form, "take-it-or-leave-it" contracts prepared unilaterally by economically superior traders. Under section 62, suppliers can easily insert sweeping exclusion clauses that completely nullify the implied conditions of description, fitness for purpose, or merchantable quality found in sections 14 to 17 of SOGA 1957. This practice effectively deprives the consumer of any legal remedies if the product turns out to be defective (Alsagoff, 1996).

To curb these unfair practices, common law courts introduced judicial techniques of incorporation and interpretation. Under the doctrine of incorporation, an exclusion clause only binds the buyer if they were given reasonable notice of it before or at the time of contracting. For instance, in *Associated Products (M) Sdn Bhd v Tackoh Sdn Bhd* [1986] 1 MLJ 225, the court held that an exclusion clause did not bind the buyer because they were unaware of its existence when the contract was formed. Similarly, under the rule of interpretation (*contra proferentem*), if an exclusion clause contains any ambiguity, the court will interpret it strictly against the party seeking to rely on it (typically the seller). This approach was applied in *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576 to limit the scope of a broad exclusion clause. However, these judicial protections are severely limited. Under the rule in *L'Estrange v F Graucob Ltd* [1934] 2 KB 394, if a consumer signs a written contract containing an exclusion clause, they are legally bound by it. This applies even if the clause is printed in tiny, illegible font and the consumer did not read or understand it. If an exclusion clause is drafted clearly and unambiguously, courts have no choice but to enforce it, leaving the consumer without redress. This was demonstrated in the local case of *Malaysia Airlines System Bhd v Malini Nathan &*

Anor [1986] 1 MLJ 196, where the court upheld clear exclusionary terms printed on a flight ticket, leaving the passenger without a remedy. Ultimately, section 62 of SOGA 1957 allows traders to bypass their statutory obligations. This loophole undermines the efficacy of SOGA's entire remedial scheme, leaving Malaysian consumers vulnerable to unfair terms (Zakuan et al., 2022).

4.2 Legal Framework for the Supply of Goods Post-1999: The New Paradigm

The enactment of CPA 1999 represents a profound ideological and statutory shift in Malaysian sales law, transitioning from the rigid, merchant-centric framework of SOGA 1957 to a modern consumer-centric paradigm. To overcome the structural weaknesses of SOGA 1957, the CPA 1999 introduces a comprehensive, fair, and flexible remedial scheme specifically designed to protect consumers. This section evaluates how the CPA 1999 fundamentally restructures sales law in Malaysia through the statutory implied guarantees framework, the tiered remedial model under Part VI, right of redress against manufacturer under Part VII, and exclusion clause.

4.2.1 Implied Guarantees

The first major reform introduced by the CPA 1999 is the complete abandonment of SOGA's rigid condition-warranty dichotomy. In its place, Part V of the CPA 1999 establishes a system of statutory implied guarantees that automatically attach to the supply of goods to consumers. By replacing SOGA's terms with statutory guarantees, the legislature eliminated the problematic "all-or-nothing" remedial distinction, meaning a consumer's right to a remedy is no longer restricted by arbitrary classifications of contractual terms. The CPA 1999 introduces several key implied guarantees to replace SOGA's counterpart provisions:

1. Guarantee as to title: Section 31(1)(a) of the CPA 1999 guarantees that the supplier has a right to sell the goods, which is defined under section 31(6) as "the right to dispose of the ownership of the goods to the consumer". Unlike SOGA 1957, which leaves "right to sell" undefined, the CPA 1999 provides a clearer and more extensive statutory meaning.
2. Guarantee as to acceptable quality: Section 32 of the CPA 1999 replaces SOGA's outdated merchantable quality standard with acceptable quality. Under section 32(2), goods are of acceptable quality if they are fit for all the purposes for which goods of that type are commonly supplied, acceptable in appearance and finish, free from minor defects, safe, and durable. This standard addresses the merchantable quality failures under SOGA, where goods were often deemed merchantable if they were fit for only one of their common purposes.
3. Guarantee as to fitness for particular purpose: Section 33 of the CPA 1999 guarantees that the goods are reasonably fit for any particular purpose that the consumer makes known to the supplier or representation made by the supplier. This aligns closely with, but simplifies, the complex multi-step reliance tests under section 16(1)(a) of SOGA 1957.
4. Guarantees as to description and sample: Sections 34 and 35 of the CPA 1999 guarantee that goods must correspond with their description and conform to any sample or demonstration model shown to the consumer.

4.2.2 Consumer Protection Act 1999 Remedial Scheme

The remedial scheme of the CPA 1999 is Part VI, which establishes a dynamic and tiered redress framework. When a supplier fails to comply with any of the implied guarantees under sections 31 to 37, the consumer's right to a remedy is governed by section 41 of the CPA 1999, which structures remedies based on the nature and severity of the failure rather than classical term classifications of condition-warranty. Under section 41(1), the remedial scheme distinguishes between failures that can be remedied and those which are of a substantial character.

1. Failures that can be remedied (Minor Deficiencies)

If a defect is minor and can be repaired, section 41(1)(a) requires the consumer to first give the supplier an opportunity to remedy the failure. The supplier can choose to remedy the defect within a reasonable time by:

- Repairing the defective goods;
- Replacing the goods with goods of identical type; or
- Providing a refund of any money paid if repair or replacement is impractical.

If the supplier refuses or fails to remedy the defect within a reasonable time, the consumer can either have the failure remedied elsewhere and recover all reasonable costs from the supplier, or reject the goods entirely under section 41 (3). This provides a practical middle-ground that prevents consumers from being forced into costly litigation over minor, repairable defects while still ensuring they are not trapped with a malfunctioning product.

2. Failures of a substantial character or non-remediable defects
If the defect cannot be remedied or is of a substantial character, the consumer is not required to give the supplier an opportunity to repair. Instead, section 41(1)(b) grants the consumer the immediate right to:

- Reject the goods and obtain a full refund or replacement; or
- Retain the goods and claim compensation/damages for any reduction in the product's value below the purchase price.

In *Matang Plastik & Metal Work Industries Sdn Bhd v Daimler Chrysler Malaysia Sdn Bhd & Ors* [2014] MLJU 674, a consumer bought a vehicle suffering continuous mechanical defects. The Court of Appeal ruled the Consumer Protection Act 1999's implied guarantees of acceptable quality apply to these goods, entitling the consumer to statutory remedies such as repair, replacement, or a refund for substantial defects. In *Su Tiang Joo v Tribunal for Consumer Claims & Anor* [2020] MLJU 1035, the High Court reviewed a retailer's strict "no refund" policy. The court upheld the Tribunal's authority to strike down such restrictive clauses as unfair terms under the CPA 1999, ensuring consumers' statutory rights to reject defective goods and demand full refunds cannot be bypassed. This tiered model avoids SOGA's deemed acceptance trap under section 42. In the consumer context, a buyer does not lose their right to reject goods simply by attempting to use or repair them. Instead, Part VI of the CPA 1999 gives the consumer a reasonable and flexible window to discover substantial defects, ensuring that the right to reject remains an active, viable remedy.

4.2.3 Rights of Redress against Manufacturers

Under SOGA 1957, the common law doctrine of privity of contract acts as a severe barrier to consumer redress. If a consumer purchases a defective product manufactured by a multinational brand from a local seller, the consumer can only sue the seller. If the seller goes insolvent, the consumer is left without a remedy, even though the defect was caused entirely by the manufacturer's negligence.

Part VII of the CPA 1999 successfully removes the application of privity of contract in Malaysia. Under sections 50 and 52 of the CPA 1999, consumers are granted a direct statutory right of civil action against manufacturers for failures to comply with the implied guarantees under the Act. This right of redress against manufacturer means that if a product is inherently defective or fails to meet quality standards, the consumer can demand repair, replacement, or compensation directly from the manufacturer (Zakuan & Yusoff, 2013). This statutory reform ensures that consumers are not left without remedies due to distribution chain complexities, aligning Malaysian law with modern, global supply chain realities.

4.2.4 Contracting Out

The ultimate protective strength of the CPA 1999 lies in its strict restriction of exclusion clauses. While SOGA 1957 permits traders to contract out of their statutory obligations via section 62, the CPA 1999 completely closes this loophole. Section 6 of the CPA 1999 strictly prohibits contracting out of any provision of the Act. Any contract term that purports to exclude, restrict, or modify any implied guarantee or consumer remedy under the Act is deemed absolutely void. This statutory prohibition completely strips traders of their ability to use standard-form contracts to deny consumers their rights.

Furthermore, the effectiveness of this anti-exclusion framework was significantly bolstered by the introduction of Part IIIA (Unfair Contract Terms) under the CPA (Amendment) Act 2010. Section 24D of CPA 1999 protects consumers against substantively unfair contract terms. A clause is deemed legally void and unenforceable if it is inherently harsh, oppressive, or unconscionable. Specifically, it prevents businesses from using standard-form contracts to unreasonably exclude liability for negligence or breach of contract without adequate justification. In *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor* [2019] 2 MLJ 1, the central issue was whether a sweeping exclusion clause in a loan agreement could validly prevent borrowers from suing the bank to enforce their rights. The Court ultimately dismissed the bank's appeal with costs. While acknowledging the general principle of freedom of contract, the Court firmly ruled that this doctrine cannot be weaponized to enforce oppressive terms that entirely strip a party of their fundamental right to seek legal remedies through the judicial system. Part IIIA grants Malaysian courts and the Consumer Claims Tribunal the power to declare contract terms void if they are substantively or procedurally unfair. This two-pronged statutory defence completely neutralizes the unequal bargaining power that traders previously exploited under Section 62 of SOGA 1957.

Table 1: Comparison of Rights and Remedies Under SOGA 1957 and CPA 1999

Feature	Sale of Goods Act 1957 (SOGA 1957)	Consumer Protection Act 1999 (CPA 1999)
Underlying Philosophy	Market individualism, *caveat emptor* (buyer beware), and freedom of contract.	Consumer welfarism, prioritizing fairness and protection for the weaker party.
Classification of Terms	Rigid condition-warranty dichotomy leading to arbitrary, "all-or-nothing" remedial outcomes.	System of automatic implied guarantees (e.g., acceptable quality, fitness for purpose).
Quality Standard	Merchantable quality (often satisfied if goods are fit for just one common purpose).	Acceptable quality (goods must be fit for all common purposes, safe, durable, and defect-free).
Right to Reject & Remedies	Extremely fragile; right to reject is lost if the buyer "accepts" or tries to repair the goods, limiting them to financial damages.	Tiered model: Suppliers can repair minor defects, while buyers retain an immediate right to reject and refund for substantial defects.
Privity of Contract	Strictly enforced; buyers can only sue the direct seller, leaving them without a remedy if the seller is insolvent.	Privity barrier removed; consumers are granted a direct statutory right to claim redress against the manufacturer.
Exclusion Clauses	Expressly permitted (Section 62); sellers can use standard-form contracts to completely exclude their statutory liabilities.	Strictly prohibited (Section 6); contracting out is void, and unfair contract terms can be struck down by courts or tribunals.

Source: Authors

5. CONCLUSION

The comparative analysis of the SOGA 1957 and the CPA 1999 reveals a fundamental ideological and statutory clash in Malaysian sales law. Historically, SOGA 1957 was built upon nineteenth-century English common law principles, which prioritized market individualism, laissez-faire economics, and absolute freedom of contract. Under this classical commercial framework, transactions were governed by the strict doctrine of *caveat emptor*, placing the entire burden of precaution, inspection, and risk on the purchaser. This classical approach assumed equal bargaining strength between contracting parties, an assumption that modern, complex distribution chains and standard-form contracts have completely shattered. This systemic imbalance was further reinforced by SOGA's rigid condition-warranty dichotomy under section 12. By dividing contractual terms into conditions and warranties, SOGA 1957 created an "all-or-nothing" remedial regime. This rigid structure often led to unjust or commercially manipulative outcomes. Moreover, section 62 of SOGA 1957 operated as a powerful loophole, allowing economically superior sellers to contract out of their statutory liabilities entirely, leaving consumers

without any meaningful legal redress. The enactment of the CPA 1999 represented a monumental shift toward consumer welfarism and the principle of *caveat venditor*. By introducing a modern framework of statutory implied guarantees in Part V, the legislature bypassed SOGA's rigid, classical classification of terms. Consumers are now protected by robust, non-excludable guarantees regarding title, acceptable quality, fitness for purpose, and correspondence with description. Under Part VI, the CPA 1999 establishes a flexible, tiered remedial model that scales remedies such as repair, replacement, refund, and direct compensation according to the actual severity of the product defect. By removing the common law barrier of privity under Part VII and rendering exclusion clauses void under section 6, the CPA 1999 is able to correct many of SOGA's most glaring consumer protection failures.

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DATA AVAILABILITY
The data supporting the findings of this study are available from the corresponding author upon reasonable request.

CONFLICT OF INTEREST
The authors report no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

ETHICS APPROVAL
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USE OF GENERATIVE ARTIFICIAL INTELLIGENCE
The authors used AI to assist with drafting the manuscript. All output was independently verified by the authors, who take full responsibility for the final content.

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