

ANALYSIS OF CAVEAT EMPTOR APPLICATION IN ONLINE PURCHASES

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ABSTRACT

Caveat emptor is a common law principle still in use in today's sale and purchase transactions. The application of this principle placed consumers in a weak position, especially in the online purchase context. Therefore, this study aims to discuss in depth the application of caveat emptor in online purchase transactions. This qualitative study analysed the caveat emptor principle of the online purchase contracts. The findings indicate an unbecoming use of the caveat emptor principle in online sale and purchase contracts due to the presence of one-sided elements, particularly to online consumers. The recommendation to review the caveat emptor principle in the legal provisions should be taken into consideration.

Keywords: Caveat Emptor, E-Commerce, Sale And Purchase, Online Purchase, Online Shopping, Consumers.

INTRODUCTION

Caveat emptor is a Latin phrase which literally means let the purchaser beware. The phrase implies that a purchaser is responsible for ensuring that the purchased goods conform with the his purchase requirement (Krishnan et al., 2017). If goods purchased later found to be damaged or unusable, the purchaser could not blame any third party except himself (Kumar 2018).

The application of caveat emptor can be traced back to the middle ages where the barter system served as the primary trade medium. Subsequently, in the late 17th century, this principle was applied in the legal provision in England and America (Adha & Sakina, 2011). Following the footsteps, Malaysia has also applied the caveat emptor principle in several statutes.

Based on the historical account, the application of this principle is more befitting in the conventional sale and purchase context, which involves direct, face to face meeting. However, presently, online sale and purchase have become a widespread trend that captures the heart of the consumer society, including Malaysia. GlobalData's E-commerce Analytics report shows that Malaysia recorded a significant increase in the advancement of e-commerce in 2020 during the COVID-19 pandemic. Popular online shopping platforms such as Shopee receives overwhelming responses as the time spent by consumers on the platform escalated intensely (Hazwan Faisal 2020). The small and medium entrepreneurs have also taken the opportunity to market and sell their products on Shopee, following the phenomenal online buying frenzy during the pandemic (Norshahzura, 2020).

Nevertheless, these online transactions pose threats to consumers with certain risks such as undelivered ordered goods, late delivery, received damaged or unusable goods along with other problems (Siti, 2020). Thus, this article aims to discuss in depth the application of *caveat emptor* in online sale and purchase contracts.

The Principle of Caveat Emptor

The *caveat emptor* principle of the common law emerged following *Chandellor v. Lupos* (1603) Cro. Jae, 4.79 ER 3 case, which calls for the consumers to be meticulous and cautious before purchasing (Jalil & Khalilur, 2010; Billah, 1998). The case's verdict stated that the seller, appointed as the defendant, did not hold any liability on any visible defect of the warehouse sold to the plaintiff. The court decision was due to the plaintiff had had the opportunity to inspect the warehouse to ensure it was clear of any defect; the plaintiff was considered to be contented with its condition before the contract was signed.

As mentioned by Salwani (2010) and Billah (1998), *caveat emptor* is defined as a form of consumer protection by imposing the responsibility upon sellers to allow consumers to inspect goods before any purchase is undertaken. In contrast to these scholars' opinion, Jalil and Khalilur (2010) suggested that *caveat emptor* does not impose any responsibility or obligations among sellers to allow consumers to inspect goods before entering into a sale contract. Vohrah and Aun (2010), Kumar (2018), and Rabiatuladawiah (2018) seconded the definition, other than Mykitiuk who had also mentioned it in her study in 2004. According to these scholars, *caveat emptor* is interpreted as the wary action of the consumers while entering into a sale and purchase contract. Consumers must also take responsibility to meticulously inspect goods to ensure the quality and the suitability of the goods according to the purpose of purchase (Jalil & Khalilur, 2010).

If defects are found in goods, consumers can decide whether to proceed or decline the purchase before confirming with the transaction (Mane, 2019). However, succeeding the signed sale and purchase contract, consumers are no longer entitled to return, exchange, or demand compensation if defects are later discovered in the goods (Vohrah & Aun 2010; Kumar 2018; Rabiatuladawiah, 2018). For this reason, consumers are given the option to examine the goods that they intend to purchase. Yet, they are not entitled to make any claim from the sellers if the purchased goods do not meet the purpose of the purchase and defects are found just after completing the sale and purchase transaction (Malek et al., 2016).

The original objective behind applying the *caveat emptor* principle is that the parties in the sale and purchase contracts have freedom besides justice for often victimised consumers (Rabiatuladawiah, 2018; Kumar 2018). Thus, the application of the principle is more befitting with the former times' sale and purchase practises, which were conducted through the open market or among neighbours. This sale and purchase system served as the sole option for the consumers, which placed the purchaser and the seller on the same ground.

This condition shows that the conventional purchase is extremely practical and highly suitable for applying the *caveat emptor* principle compared to the online purchase. Consumers have to be fully responsible for the goods purchased. In contrast, the sellers are not accountable for any damage and defect of the goods even though the defect existed before the purchase (Mykitiuk 2004).

Online Purchase

Generally, online purchase can be divided into four phases: information, negotiation, payment and delivery (Niranjanamurthy & Chahar, 2013; Kambol 2018). First, in the initial phase, consumers surf the Internet to survey and decide on choices of goods through the online markets. These online markets consist of several e-commerce platforms such as Shopee, brands' websites such as IKEA, social media such as Facebook, and chat applications such as WhatsApp. These online markets utilise the business-to-consumer (B2C) and consumer-to-consumer (C2C) e-commerce forms.

Next, the second phase involves negotiation, in which the consumers can interact with the sellers if there are further enquiries regarding the goods. Once the price of the goods has been fixed, the consumers will place an order and confirm it with the sellers.

Afterwards, in the third phase that is the payment, the consumers are usually given the option to pay via an e-wallet such as TnG wallet, Internet banking such as Maybank2u, and credit card such as Mastercard. However, some online platforms provide their consumers with the cash on delivery (COD) option; payment is made at the time of delivery. The online purchase is finalised with the delivery of goods phase, under the sellers' responsibility. A purchase is considered complete once the consumers receive the ordered goods within the agreed period (Ainur 2012; Niranjanamurthy & Chahar, 2013). Based on the online purchase process, it is evident that the purchase is poles apart from the conventional purchase that involves face to face encounter. The figure below summarises the process within online purchase (Sandra 2010):

Online Purchase Steps

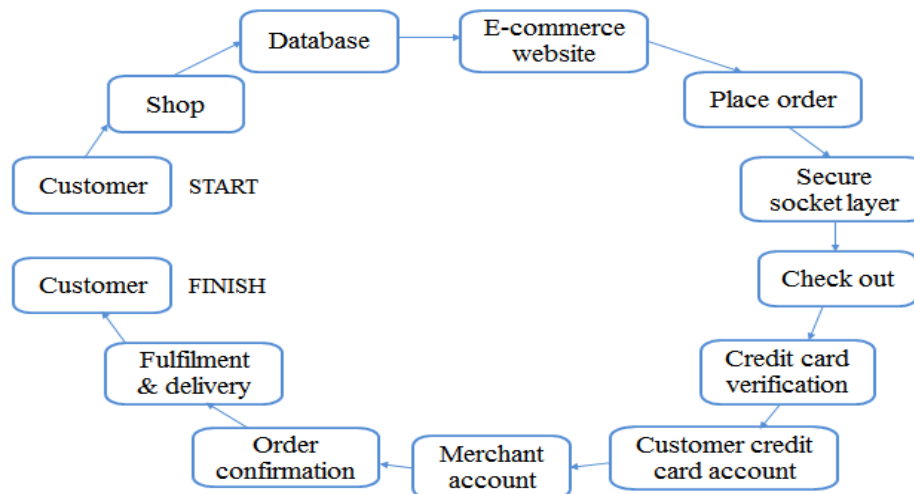


Figure 1
THE APPROPRIATENESS OF THE APPLICATION OF CAVEAT EMPTOR ON ONLINE PURCHASE

Caveat emptor is more suited to the conventional transaction as provided initially. Consumers can be mindful and cautious during selecting goods to be purchased as the goods are physically displayed and can be examined. The face-to-face purchase also enables consumers to enquire the sellers about the goods, thus, reducing the fraudulent risk.

Contrastively, the online purchase process takes place solely on the Internet, which sellers and consumers do not meet directly. Consumers do not have the option to touch, inspect, scrutinise, and not to mention to test the suitability of the goods to be purchased (Yen & Lu, 2008; Sinha, 2017). As for the information of the goods, consumers have no choice to assess the goods personally but to resort to the advertisement provided by sellers (Billah, 1998).

The online purchase puts consumers on a weak bargaining power compared to the sellers as they only rely on the information the sellers supply via the platform of purchase. This situation can lead to an information imbalance in contracting (Nasser, 2018).

Moreover, problems may arise when sellers posted misleading and ambiguous advertisement. The consequence of these circumstances is that consumers may receive goods different from those purchased, such as different colours or sizes compared to the goods viewed online. On top of that, some sellers display testimonials and comments that gravitate only towards their best reputation (Wu et al., 2020). Such action can also deceive consumers and thus strips away the consumers' trust towards the online market, generally (Jana, 2015).

In fact, in the event of fraud affecting the consumer's side, it is not easy to ensure the extent of the seller's validity or the company's identity (Halim, 2018) as the identity can be forged (Coteanu, 2005; Jayabalan, 2012). Consumers are also incapable of ensuring that the description mentioned is free from deception. The authorities have received numerous complaints on online purchase issues; one of them is that the goods received are not identical to those offered (Socklingam, 2021). The situation becomes even worse when sellers have gone missing, creating difficulty for consumers to claim.

Besides that, consumers have no way to ensure that the goods are delivered safely and soundly. Consumers' complaints regarding the goods delivery are often responded to by shifting the blame onto the third party, the courier service. The response is also similar for goods that are damaged during delivery. These situations show that the application of the *caveat emptor* principle is unbecoming for the online sale and purchase contract as consumers bear no power to ensure the transaction conforms with the purchase requirement (Sakina et al., 2016).

Paul Sinha (2017) also suggested that the caveat emptor principle is irrelevant for the online sale and purchase contract due to the consumer's part limitations. The online purchase transaction requires sellers' transparency and honesty to guarantee that consumers also gain equal rights.

Hence, the application of caveat emptor is deemed unbecoming with the modern business transaction due to several conditions of online purchase that are incompatible with the principle. The relevance of caveat emptor must be examined, especially in the online sale and purchase contract. The point of equilibrium between the caveat emptor principle and sellers' responsibility in providing significant and sufficient information for consumers should be identified so that justice for consumers can be well served.

CONCLUSION

The caveat emptor principle emphasizes that consumers should be cautious and prepared to bear the risk of the purchase transaction made. This is on the grounds that once the purchase is completed, consumers can no longer claim compensation for the defect of the goods paid as the responsibility to ensure the purchased goods conform to the purchase's purpose rested on the consumer's shoulders.

The let the buyer beware principle could pose several issues in the online sale and purchase contract. It opens the possibilities for sellers to reap hefty profits from consumers through various foul means, such as deplorable quality products, goods received differed from the goods ordered as well as late delivery.

On that account, the consumers' role to always be alert when conducting purchase should be shifted onto the sellers, in the same manner that the sellers should also be held responsible in the contracts. The sellers should act more cautiously in their effort to gain the consumers' attention to purchase. The sale, advertisement and promotional activities, mainly conducted online, must be done transparently to avoid any misunderstanding in contracting. Prompted by this circumstance, it is compelling if the recommendations for implementing the latest legal provision that can regulate consumer protection can be materialised to guarantee a safe online sale and purchase.

ACKNOWLEDGEMENT

Appreciation and thanks to FRGS/1/2019/SSI10/UKM/03/1 Grant and the National University of Malaysia (UKM) for the research funding and financial support.

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