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## **Strengthening Consumer Rights: The Case for Lemon Laws in Malaysia's Automotive Industry**

Khadijah Mohd Najid\*, Zati Ilham Abdul Manaf & Muhammad Amrullah Drs Nasrul

Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia,  
53100 Gombak, Selangor, Malaysia

\*Corresponding Author: [khadijahnajid@iiu.edu.my](mailto:khadijahnajid@iiu.edu.my)

Received: 31 August 2024

Accepted: 10 November 2024

**Abstract:** The prevalence of defective vehicles, or “lemons,” in the Malaysian automotive market continues to raise concerns despite the existence of consumer protection laws. This study aims to investigate the efficacy of Malaysia's consumer protection laws in addressing this persistent issue and examine the potential impact of adopting Lemon Laws in Malaysia. Employing a doctrinal methodology, the study examines statutes, case laws, and scholarly literatures to offer a detailed understanding of the current legal landscape and the mechanics of Lemon Laws in selected jurisdictions. The research undertakes a comprehensive analysis of relevant legislation, including but not limited to the Malaysian Consumer Protection Act 1999 to identify potential limitations and areas for improvement. It further explores the concept of “Lemon Laws,” successfully implemented in various jurisdictions, and assesses their potential applicability within the Malaysian context. The research findings advocate for the strategic amendment of the existing Consumer Protection Act 1999 to incorporate provisions analogous to Lemon Laws, thereby strengthening consumer rights and nurturing a more equitable and transparent automotive marketplace in Malaysia.

**Keywords:** Consumer protection; automotive industry; lemon law; defective product; Consumer Protection Act 1999

### **Introduction**

Malaysia boasts a thriving automotive industry and one of the highest rates of motor vehicle ownership in Southeast Asia (Bernama, 2024c; Malaysian Investment Development Authority, 2023; Daim, 2023). Malaysia's automotive sector has witnessed a remarkable surge in motor vehicle sales, with the total number reaching nearly 799,731 in 2023, a significant increase from approximately 529,514 in 2020 (Malaysian Automotive Association, 2023). However, this thriving market is not without concerns. The persistent issue of defective motor vehicles, often referred to as “lemons,” poses a significant challenge to Malaysian consumers. For many Malaysians, a car is not just a convenience, it is a significant investment and represents a substantial financial commitment, especially with the escalating costs in recent years (Zainul, 2024; Azman, 2024; Cheong, 2022). Thus, when that investment turns sour, the financial and emotional repercussions can be devastating, making the need for strong consumer safeguards even more pressing.

The current legal landscape, despite encompassing safeguards like Consumer Protection Act 1999, Sale of Goods Act 1957, Contracts Act 1950, and Hire-Purchase Act 1967 – they often prove inadequate in providing effective redress. According to the Ministry of Domestic Trade and Cost of Living, 261 consumer complaints have been received over the last five years regarding quality problems in recently purchased vehicles, both new and used. Furthermore, the Malaysian Consumer Claims Tribunal handled a total of 1,837 cases related to vehicle quality issues during the same period (Bernama, 2024a). Consumers grapple with

challenges in obtaining spare parts, accessing reliable workshops, and navigating the complexities of seeking compensation (Aiman, 2024). This leaves many consumers feeling stranded and dissatisfied, highlighting a pressing need for a more efficient and responsive consumer protection framework tailored specifically to the automotive sector. The recent case of a brand-new Perodua Bezza breaking down mere hours after purchase, allegedly with sugar found in its engine, highlights the urgent need for stronger consumer protection in Malaysia (Looi, 2024). The consumer is burdened with continuing loan repayments despite the car being unusable and stuck at the service centre as there is no guarantee of loan cancellation under the current system (Zainuddin, 2024).

This persistent issue led certain consumer support groups to advocate the adoption of Lemon Laws (Lai, 2024; Vong, 2024; FMT, 2023), a specialised law that provide a legal framework for recourse when a consumer product repeatedly exhibits significant defects despite attempts at repair (Anbalagan, 2014; Naseer, 2017; Consumer Association of Penang, 2019). This law is envisioned as a crucial tool to address the current shortcomings in consumer protection and establish a more balanced and transparent marketplace. The challenge, however, is to craft a framework that is both effective in addressing Malaysia's specific challenges and harmonises with the existing legal and socio-economic landscape.

## Methodology

Through a doctrinal analysis encompassing relevant statutes, case laws, and scholarly literatures, this study seeks to offer a refined understanding of Malaysia's current legal framework concerning consumer protection, particularly in the automotive sector. This approach entails an examination of primary legal sources, with a particular emphasis on Malaysian Consumer Protection Act 1999, Sale of Goods Act 1957, Contracts Act 1950, Hire Purchase Act 1967, and relevant case laws (Ibrahim Ali, 2017). By critically examining the strengths and weaknesses of existing legislation, we aim to identify areas for reform and evaluate the benefits and challenges associated with adopting Lemon Laws. The research also extends its scope beyond the confines of Malaysian law by adopting a comparative approach involving a careful examination of legal frameworks in other jurisdictions, particularly those with established lemon laws. By drawing comparisons and identifying best practices from these jurisdictions, the study aims to provide valuable insights into the potential benefits and challenges associated with adopting similar legislation in Malaysia. Through this multi-faceted approach, this research aspires to contribute meaningfully to the ongoing discourse on consumer protection in Malaysia, providing recommendations to empower consumers, enhance market transparency, and foster a more equitable automotive industry.

## Findings

### 1. The Multifaceted Legal Framework for Consumer Protection in Malaysia

In Malaysia, the existing legal framework safeguarding consumers against defective motor vehicles is multifaceted, encompassing various laws that address different aspects of the transaction. The Contracts Act 1950, Sale of Goods Act 1957, Hire Purchase Act 1967, and the Consumer Protection Act 1999; collectively provide a safety net for consumers. This section will provide a general overview of these legal protections and how they interact to ensure consumer rights are upheld in the automotive industry.

### 2. The Contracts Act 1950

Although not specifically tailored towards consumer protection, the Contracts Act 1950 (CA 1950) plays a fundamental role in safeguarding consumer interests in Malaysia. As the principal legislation governing contracts, CA 1950 ensures that all agreements, including consumers contracts, adhere to a general principle, based on the concept of fairness and justice. Rooted in the philosophy of *laissez-faire* and freedom of contract, CA 1950 upholds the sanctity of contracts freely entered into by parties with full capacity (Jayabalan & Randawar, 2017).

### *Balancing Freedom of Contract and Consumer Welfare*

Recognising that unregulated contractual freedom can lead to imbalances in bargaining power, the Act also provides remedies for situations where consent is vitiated by duress, undue influence, fraud, or misrepresentation (CA 1950, Section 19). This fundamental protection extends to all contractual arrangements, including the sale and purchase of motor vehicles. For instance, if a car dealer coerces a buyer into a purchase through threats or intimidation (duress) or misrepresents the vehicle's condition or mileage (fraud), the buyer may have grounds to void the contract under Sections 17 and 19 of the CA 1950.

Despite these safeguards, CA 1950's efficacy in protecting consumers in the modern automotive marketplace has been questioned. Scholars like Cheong (2022) argue that the Act, with its classical contract law underpinnings, may not adequately address the challenges posed by modern day contract. The automotive industry, with its complex transactions involving standard-form contracts, warranties, and financing agreements, often presents scenarios where consumers may find themselves at a disadvantage (Amin & Bakar, 2012). The CA 1950 does not explicitly address specific concerns like warranties, defective parts, or rights to maintenance and repair, which are prevalent in the automotive sector (Saidin et. al., 2022).

Moreover, most motor vehicle transactions in Malaysia involve hire-purchase arrangements, adding another layer of complexity that the CA 1950 might not fully address. While the Act provides for remedies in cases of breach, such as damages under Section 74, these remedies may not be adequate or easily accessible for consumers, especially when dealing with powerful manufacturers or dealerships. The Act's assumption of equal bargaining power between parties may not reflect the reality of the automotive market, where consumers often face a significant power imbalance when dealing with large manufacturers or dealerships (Wahab et. al., 2017).

In essence, while CA 1950 serves as a foundation for contractual fairness, its general provisions and remedies may not be sufficiently equipped to address the specific traits and potential pitfalls associated with motor vehicle purchases. This highlights the need for more specialised legislation to effectively protect consumers in this sector.

### 3. The Sale of Goods Act 1957

The limitations of CA 1950 in addressing the complexities of modern transactions, led to the introduction of the Sale of Goods Act 1957 (SGA 1957). SGA 1957 provides implied guarantees (referred to as conditions and warranties under the Act) of merchantable quality and fitness for purpose, ensuring that goods are of satisfactory quality and suitable for their intended use (SGA 1957, section 16(1)). The concept of merchantable quality, as elucidated in *Henry Kendall & Sons (A Firm) v William Lillico & Sons Ltd & Ors* [1969] 2 AC 31, hinges on the goods being "commercially saleable under that description," fit for their ordinary purpose, and free from defects that would render them unusable or significantly impair their value. The case of *Rogers and another v Parish (Scarborough) Ltd and another* [1987] 1 QB 933 further refined the concept of merchantable quality in the context of motor vehicle purchase where the court held that a new car, even if still driveable, could be considered unmerchantable if it had defects that detracted from the comfort, ease of handling, reliability, and pride in ownership that a buyer would reasonably expect, especially considering the car's price and brand reputation.

The Act also mandates that goods sold by description must correspond with that description (SGA 1957, Section 15). In the context of motor vehicles, this encompasses aspects like the make, model, year, features, and specifications advertised or described by the seller or dealer. If the delivered vehicle does not match its description, as exemplified in *Varley v Whipp* [1900] 1 QB 513, the buyer may be entitled to reject the goods and terminate the contract.

Furthermore, if the buyer informs the seller of the particular purpose for which the goods are required and relies on the seller's judgment and recommendation, there is an implied condition that the goods will be reasonably fit for that purpose (SGA 1957, Section 16(1)(a)). This provision empowers consumers to hold sellers accountable when they rely on the seller's expertise and recommendations. If a product fails to serve its stated purpose, according to *David Jones Ltd v Willis* [1934] 52 CLR 110, the consumer has legal recourse to seek remedies. In the context of motor vehicles, this translates to the buyer having the right to expect that a vehicle recommended by a salesperson for a specific purpose, such as off-road driving, will indeed be suitable

for that purpose. If it is not, the buyer can pursue legal action for breach of this implied condition, which allows the option to reject and refund (SGA 1957, Section 12), or monetary compensation which might also include price reductions (SGA 1957, Sections 13, 55 & 59). This is illustrated in the case of *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2012] 1 MLJ 27, where the court held that a new luxury car's repeated failure to start breached the implied condition of merchantable quality, justifying the buyer's rejection of the vehicle.

#### *Gaps in Consumer Protection*

However, while offering some protection to consumers against defective goods, SGA 1975 exhibits certain weaknesses that become particularly pronounced in the context of the automotive industry. The complexities of motor vehicle transactions, often involving hire-purchase agreements, expose a significant limitation of SGA 1957. As highlighted in the case of *Ong Siew Hwa v UMW Motors* [2018] 5 MLJ 281, once a buyer enters into a hire-purchase agreement with a finance company, the contractual relationship with the car dealer is extinguished. This leaves the buyer with no direct recourse against the dealer under SGA 1957, even if the vehicle turns out to be defective (Davies, 1995). This legal lacuna often leaves consumers in a risky position, especially when faced with significant defects or recurring issues with their vehicles.

SGA 1957's primary focus on business-to-business (B2B) transactions may also lead to a less consumer-friendly approach in resolving disputes especially taking into consideration the complex challenges associated with defective motor vehicles. The Act does not explicitly account for the ongoing relationship between the consumer and the manufacturer or dealer, particularly in terms of after-sales service, warranties, and the availability of spare parts. Its exclusive focus on the sale of goods, leaving contracts for services outside its purview as exemplified in cases like *Lee v. Griffin* [1861] 30 LJQB 252 and *Robinson v Graves* [1935] 1 KB; poses challenges in the automotive industry where the sale of a vehicle often involves bundled services such as maintenance and repairs. The remedies offered may not always be adequate to address the significant financial losses and inconvenience that consumers may experience due to defective products, especially in cases of high-value purchases like motor vehicles. This can leave consumers feeling vulnerable and unsupported when dealing with complex technical issues or disputes arising from defective vehicles (Kirkizoglu & Karaer, 2022).

Additionally, the SGA 1957 as it currently stands, does not apply to the states of Sabah and Sarawak (SGA 1957, Section 1(2) & Civil Law Act 1956, Section 5(2)). This means that the consumer protections and remedies provided are not uniformly available throughout the country, leading to disparities in the level of protection afforded to them. This lack of uniformity creates a fragmented legal landscape for consumer protection, potentially leading to confusion and unequal treatment of consumers depending on their location (Masum et al., 2018).

#### 4. The Hire-Purchase Act 1967

The Hire-Purchase Act 1967 (HPA 1967) serves as the principal legal framework governing hire-purchase transactions in Malaysia, a financing mechanism particularly prevalent in the automotive industry due to the significant cost of motor vehicles (Lee, Samen & Detta, 2020). The Act's primary focus lies in establishing a clear and equitable contractual framework between the hirer (consumer) and the owner (usually a financial institution). It meticulously outlines the rights and obligations of both parties, encompassing aspects such as the contents of the agreement, implied warranties and conditions, and procedures for repossession in the event of default (HPA 1967, Sections 7, 15, 16). By regulating these elements, HPA 1967 aims to prevent unfair practices and ensure a degree of transparency in hire-purchase transactions.

#### *The Focus on Protecting Consumers in Financing, Not Product Quality*

However, while HPA 1967 plays a crucial role in safeguarding the interests of parties in the financing process, its scope is primarily confined to the contractual dimensions of the transaction. The Act does not probe into the quality or condition of the goods being purchased under the agreement (Abdullah, 2009). This becomes particularly problematic in the context of the automotive sector, as HPA 1967 offers no direct remedies for consumers who find themselves burdened with defective vehicles. The Act's emphasis on the financial aspects

of the transaction, rather than the quality of the goods themselves, leaves a significant gap in consumer protection.

#### 5. The Consumer Protection Act 1999

The Consumer Protection Act 1999 (CPA 1999) was enacted to provide more comprehensive protection for consumers in Malaysia, particularly in situations not adequately covered by previous statutes. CPA 1999's significance lies in its ability to adapt to the evolving consumer landscape, incorporating areas like e-commerce and the inclusion of services under its purview (CPA 1999, Section 2), aiming to ensure that consumers are protected regardless of the nature of their transactions or the advancements in trade practices (Amin, 2013). Comprising of 14 parts dealing with different areas of consumer protection (Masum et al., 2015), it establishes a comprehensive framework, encompassing the rights and responsibilities of all key stakeholders in the marketplace: consumers, businesses, and the government (Sabri, 2014).

#### *A Pillar of Consumer Rights in Malaysia*

In the context of the automotive industry, CPA 1999's implied guarantees provide vital safeguards. Part V deals specifically with "Guarantees in Respect of Supply of Goods," embracing crucial aspects such as title, acceptable quality, fitness for particular purpose, compliance with description and/or sample, reasonable price, and availability of repairs and spare parts (CPA 1999, Sections 30-38). Notably, Section 32 guarantees "acceptable quality," a broader and more consumer-friendly standard than SGA's "merchantable quality." This distinction was highlighted in *Nesbit v. Porter* [2000] 2 NZLR 465, where the court emphasised that acceptable quality encompasses factors beyond mere functionality; it must be fit for all their ordinary purposes, free from any defects, and align with the reasonable expectations of a consumer considering relevant factors such as price and any representations made about the goods. This ensures that vehicles not only operate as intended but also meet the consumers' expectations, as illustrated in *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2012] 1 MLJ 27.

Section 33 further strengthens consumer rights by guaranteeing that goods will be fit for a specific purpose if the buyer informs the seller of this purpose at the time of purchase. This is particularly crucial when buying complex products like vehicles, where consumers often rely on the seller's expertise and recommendations. The case of *Matang Plastic & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler (M) Sdn Bhd & Ors* [2014] 6 MLJ 244 demonstrates the application of this provision, where the court held that a car sold as "the most luxurious, high quality, safest and best car on the market" was not fit for its purpose when it caught fire after a few months of use.

Additionally, Section 37 of CPA 1999 provides an implied guarantee as to the availability of repairs and spare parts for a reasonable period after the goods are supplied. This is particularly relevant in the automotive industry, where the availability of spare parts and repair facilities is crucial for maintaining the functionality and safety of vehicles. In *Fa Wagen Sdn Bhd v Poratha Corporation Sdn Bhd* [2022] MLJU 142, the court held a car dealer breached this implied guarantee by taking an unreasonable amount of time (29 months) to repair a defective vehicle (Anbalagan, 2021).

To further strengthen consumer rights, Part VII introduces a direct liability for manufacturers, bypassing the requirement of privity prevalent under traditional contract law. This empowers consumers to hold manufacturers directly accountable for breach of guarantees, even if they purchased the product from a dealer. These provisions are crucial particularly in cases of defective vehicles, by providing a direct avenue for redress regardless of any contractual relationship with the seller (Zakuan & Yusoff, 2013). It is also noteworthy that the CPA 1999 intentionally uses the term "guarantee" instead of SGA 1957's "conditions" and "warranties." This simplifies legal jargon and takes away the technicalities of distinguishing between the two, making the law more accessible and understandable to consumers.

Beyond product quality, the CPA 1999 also addresses the issue of unfair contract terms, prohibiting suppliers/dealers from including terms that exclude/limit liability for defective products or impose unreasonable restrictions on consumer rights (CPA 1999, Sections 24A-24J). This provision ensures that consumer contracts are fair and balanced, preventing businesses from taking advantage of consumers through exploitative terms (Abdullah et al., 2019). The case of *Ty Auto Car Dealer Sdn Bhd v Tribunal Tuntutan*

*Pengguna & Anor* [2020] MLJU 1257 illustrates this point, where an “as-is” clause in a used car sale was deemed unfair as it was not subject to negotiation and significantly tilted the balance in favour of the seller. CPA 1999 also prohibits unfair trade practices under Part II of the Act (CPA 1999, Sections 8-18), which includes misleading or deceptive conduct, false representations, bait advertising, and other unfair practices that can harm consumers. These provisions aim to ensure that businesses act ethically and transparently in their dealings with consumers.

Furthermore, CPA 1999 significantly enhances consumer protection by offering a range of practical remedies in cases of defective products, a distinct improvement from previous statutes. These remedies include the right to repair, replacement, or refund, tailored to the specific nature and severity of the defect. Moreover, if the defect results in any harm or loss, consumers can pursue compensation under the strict liability provisions outlined in Part X of the Act (CPA 1999, Sections 66-72). To further enhance consumer rights, the CPA establishes institutional mechanisms to facilitate redress and promote awareness. The Tribunal for Consumer Claims (TCCM) provides a simple, inexpensive, and speedy avenue for consumers to resolve disputes with suppliers/dealers, offering an accessible alternative to the often complex and costly process of litigation in civil courts (Safei & Abdullah, 2023). The National Consumer Advisory Council (NCAC) was also established under the Act to advise the Minister on consumer protection issues and promote consumer education, ensuring that consumers are aware of their rights and the avenues available to them (CPA 1999, Sections 73-84).

#### *Unveiling the Shortcomings: A Closer Look at the Effectiveness of the CPA 1999 in Safeguarding Malaysian Consumers*

Despite its advancements, the CPA 1999 is not without its shortcomings. Its supplementary nature (CPA 1999, Section 2(4)) can lead to ambiguity in its application alongside other laws, complicating the redress process for consumers (Yusoff et al., 2013). This can be particularly problematic in cases involving defective vehicles, where the interplay between CPA 1999 and other legislations can create confusion and uncertainty. For example, the definition of “supplier” under the CPA 1999 is not tailored to include certain parties in the supply chain, such as car dealers in hire-purchase agreements (*Ong Siew Hwa v UMW Toyota Motor Sdn Bhd* [2018] 5 MLJ 281). This can leave consumers with limited options for redress, predominantly when the dealer plays a crucial role in the sale and representation of the vehicle.

Another challenge lies in the interpretation of its provisions. The subjective interpretation of key terms like “defect” and “acceptable quality” leads to inconsistent outcomes (Amin, 1999). The test for defectiveness under Part X, for example, relies on an ambiguous safety concept, leading to debates over the factual circumstances, degree, and standard required to determine if a product is unsafe and thus defective (Masum et al., 2015). This lack of a clear and objective definition of “defect” can create uncertainty for consumers and make it challenging to establish a claim, especially in cases where the defect is not immediately apparent or manifests over time. CPA 1999’s lack of specific guidelines on repair timelines and the number of permissible repair attempts can also create significant challenges for consumers (CPA 1999, Section 37). The Act’s reliance on the concept of “reasonable time” for repairs, without providing clear benchmarks, lead to protracted disputes and delays, leaving consumers without their vehicles for extended periods.

The TCCM, while offering a more accessible and affordable forum for dispute resolution, has a monetary jurisdiction limit of RM50,000 (CPA 1999, Section 98). This limitation can be problematic in the context of high-value motor vehicles, where the cost of repairs or the value of the vehicle itself may exceed this threshold. In such cases, consumers are forced to resort to litigation in civil courts, a process that can be both time-consuming and expensive (Safei & Abdullah, 2023). In addition to these practical challenges, CPA 1999 also faces criticism for its restriction on legal representation in the Tribunal (CPA 1999, Section 108), leading to a significant barrier to accessing justice (FOMCA, 2021; Chan, 2021). This restriction can be particularly challenging for individual consumers who may lack legal knowledge or confidence to navigate the often complex and intimidating legal system on their own. This limitation can inadvertently favour businesses with greater resources and legal expertise, potentially undermining the CPA 1999’s overall goal of consumer protection and empowerment (Jan, Mohamed & Ali, 2010; Masum et al., 2015).

## 6. A Need for a More Specialised Legislation to Safeguard Consumers in the Automotive Market.[check The Numbering List](#)

While CPA 1999 undoubtedly represents a significant stride forward in consumer protection in Malaysia, its limitations, particularly in addressing the complexities and potential pitfalls associated with high-value and complicated transactions like motor vehicle purchases, highlight the needs for continuous legal reforms. The existing framework, while providing a solid foundation, may not be entirely equipped to handle the evolving challenges of the modern automotive marketplace, where consumers often face complex contracts, sophisticated marketing tactics, and an unequal bargaining power when dealing with large manufacturers or dealerships (Corones, 2016; Ng, 2024).

The ongoing calls for more specialised consumer protection legislation in Malaysia reflect a growing recognition of these limitations (Lai, 2024; Vong, 2024; FMT, 2023). Such legislation could encompass a range of targeted measures, such as enhanced warranties, stricter standards for product quality and safety, clearer guidelines for dispute resolution, and more accessible avenues for consumer redress. By addressing the specific needs and vulnerabilities of consumers in the automotive industry, such legislation could significantly enhance consumer confidence and empower them to make informed choices in the marketplace.

The target is to create a legal framework that not only protects consumers from unfair practices and defective products but also fosters a fair and transparent marketplace where both businesses and consumers can thrive. Achieving this balance requires a dynamic and responsive legal system that adapts to the changing dynamics of the market and the evolving needs of consumers (Al Sagoff & Ismail, 2017). While the CPA serves as a crucial foundation, it is essential to continue building upon its strengths and addressing its shortcomings to ensure that consumer protection in Malaysia remains effective in the years to come.

## 7. The Evolution of Lemon Laws: A Comparative Overview of Consumer Protection in the Automotive Industry.[check The Numbering List](#)

The term “lemon” in the context of consumer protection refers to a product that suffers from substantial defects that impair its use, value, or safety, and that persist despite multiple repair attempts (Lexology, 2024). The genesis of lemon laws can be traced back to the growing consumer advocacy movement of the 1960s and 1970s, which sought to address the power imbalance between manufacturers and consumers. The increasing complexity of products, coupled with often opaque and restrictive warranty terms, left consumers with little recourse when faced with defective goods (Ervine, 1985).

Consequently, Lemon Laws were introduced as a remedy and to protect consumers from lemon products. The first lemon law was enacted in Connecticut in 1982, followed closely by California’s landmark legislation in 1983 (Ervine, 1985). These laws aimed to provide a clear and effective process for consumers to obtain redress when they purchased a “lemon” vehicle. The core principle is the establishment of a presumption that a vehicle is a lemon if it meets certain criteria related to repair attempts or time spent out of service due to repairs. If these conditions are met, the consumer is typically entitled to either a replacement vehicle or a refund of the purchase price (Baron, 1989).

Following the pioneering efforts of Connecticut and California, a wave of Lemon Laws swept across the United States. As of today, all 50 states have some form of lemon law, although the specific provisions and remedies can vary significantly. These laws have empowered consumers to obtain compensation for defective vehicles, forcing manufacturers to improve product quality and warranty services. Over the years, the law developed and expanded from vehicular lemon to cover other defective products, with slightly distinct characteristics, varying from one jurisdiction to another, but with the same goal of protecting consumers from “lemon” products (Adams, 2021).

The evolution of Lemon Laws is ongoing. Today, apart from the United States; Singapore, South Korea, China and the Philippines are among countries that have introduced the concept of Lemon Law in their legislation (Mohamed Radhi & Sallehuddin, 2024). Lemon Laws exhibit variations across different countries, reflecting distinct legal and socio-economic landscapes. As technology advances and consumer expectations evolve, legislators continue to refine and expand these laws. The future of lemon laws likely involves addressing emerging issues such as the increasing complexity of vehicle technology, the rise of electric vehicles, and the potential for defects related to software and autonomous driving systems. The ongoing

challenge is to strike a balance between protecting consumer rights and fostering a fair and competitive marketplace.

### *California's Lemon Law: The Pioneering Model for Global Consumer Protection*

In the realm of consumer protection, California's Lemon Law is known as one of the powerful consumer warranty laws in the United States. Encapsulated within the Song-Beverly Consumer Warranty Act (California Civil Code, Sections 1790 – 1795.8), the law provides vigorous protection for consumers who purchase "lemon" vehicles – a new motor vehicle, despite repeated repair attempts, remains plagued by substantial defects (Miller, 2023). The law stipulates that if a manufacturer or its authorized repair facilities cannot rectify defects covered by the express warranty after a "reasonable number of attempts," the manufacturer is obligated to either replace the vehicle or provide the buyer with a full refund, minus a deduction for the vehicle's use before the defect was discovered (California Civil Code, Section 1793.2(d)).

The Tanner Consumer Protection Act, an integral component of the Song-Beverly Act, sets forth specific thresholds for determining when a vehicle has undergone sufficient repairs to warrant intervention under the Lemon Law. Generally, a vehicle is presumed to be a lemon if it has been subjected to four or more repair attempts for the same substantial defect, or if it has been out of service for a cumulative period of 30 or more days due to repair efforts (California Civil Code, Section 1793.2(e)(1)). This provision provides a clear and objective standard, empowering consumers to assert their rights and potentially avoid protracted disputes with manufacturers.

Another distinctive quality of the California's Lemon Law is the incorporation of federal standards for informal dispute resolution procedures (Code of Federal Regulation, Title 16, Part 703). This encourages the use of independent third-party mediation to resolve disputes, offering a less adversarial and potentially more cost-effective avenue for consumers to seek redress (Herrera, 2021).

### *The Singapore Lemon Law: Empowering Consumers Against Defective Goods*

The Singapore Lemon Law, integrated into the Consumer Protection (Fair Trading) Act (CPFTA) – part III of the Act – in 2012, represents a significant advancement in Singapore's consumer rights (CNA, 2012). It provides an effective framework for addressing defective goods, particularly within the crucial initial months after purchase. The law's innovative approach, characterised by its integration with existing legal frameworks and its emphasis on consumer empowerment, has significantly enhanced the landscape of consumer redress in Singapore (Loke, 2014).

The cornerstone of the Singapore Lemon Law is the presumption of non-conformity within six months of delivery (CPFTA, Section 14(3)), shifting the burden of proof from the consumer to the seller. If a defect arises within this timeframe, it is assumed that the defect existed at the time of sale, compelling the seller to demonstrate otherwise (Chin & Yusoff, 2017). This presumption not only simplifies the claims process for consumers but also prompting sellers to prioritise product quality and customer satisfaction.

The Lemon Law offers a two-tiered system of remedies that empowers consumers with a range of options. The first tier prioritises repair or replacement of the defective good, ensuring that consumers receive a functional product that meets their expectations (CPFTA, Section 15). If these remedies prove impractical or cause significant inconvenience, consumers can escalate their claim to the second tier, seeking a price reduction or rescission of the contract (CPFTA, Section 16). This tiered approach provides flexibility and ensures that consumers have access to appropriate remedies tailored to their specific circumstances. The law also preserves the court's discretion to order alternative remedies if deemed more appropriate, further safeguarding consumer rights and promoting fairness in the marketplace (CPFTA, Section 18).

The effectiveness of the Singapore Lemon Law is further enhanced by its seamless integration with existing legal frameworks, such as the Sale of Goods Act. This integration ensures clarity and consistency in the application of the law, minimising ambiguity and potential disputes (Loke, 2014; Chin & Yusoff, 2017). It significantly enhances consumer protection by empowering consumers, promoting fairness, and encouraging businesses to prioritise quality (Lim, 2016). It addresses the challenges faced by consumers when dealing with defective goods, especially the difficulties in proving the existence of latent defects at the point of delivery. By providing a clear and effective framework for addressing such issues, the Lemon Law fosters



a more equitable and transparent marketplace. Singapore's success in the implementation of their Lemon Law had sparked the impetus for consumer groups in Malaysia to call for similar laws to be enacted in the country to ensure the rights of consumers in the country is adequately protected (Anbalagan, 2014; Naseer, 2017).

## Discussion

### 1. The Path Forward: Empowering Consumer Protection within Existing Legal Framework

While California and Singapore's Lemon Laws present a compelling model for consumer protection, its direct implementation in Malaysia faces potential hurdles. The primary challenge lies in adapting the law to Malaysia's unique legal and socio-economic context. The definition of "substantial defects" and the specific remedies offered may need to be tailored to align with Malaysian consumer expectations and the market's dynamics. Striking a balance between protecting consumer rights and fostering a conducive business environment will be essential where the automotive industry's concerns about potential costs and operational complexities associated with the law need to be addressed through careful consultation and collaboration.

The current laws offer a reasonable degree of protection, but they are not without their shortcomings. The dynamic and rapidly evolving nature of the automotive marketplace necessitates a legal framework that can adapt and respond effectively to emerging challenges. Given this, instead of introducing an entirely new Lemon Law, which could dictate a lengthy legislative and implementation process, a more pragmatic approach could involve strengthening CPA 1999 by incorporating provisions akin to Lemon Laws. This approach would upgrade existing framework, simplify the process, and avoid potential redundancies or conflicts between different laws. It could also lead to quicker implementation and enforcement, providing consumers with more immediate and effective protection against defective vehicles, without unnecessary regulatory complexities.

### 2. Strengthening Consumer Rights: Incorporating Lemon Law Provisions into the CPA 1999

The following recommendations aim to fortify CPA 1999, equipping it with the necessary tools to tackle the complexities of defective vehicle cases and provide consumers with meaningful redress:

#### *Explicit Definition of "Substantial Defects"*

CPA 1999 needs a clear and comprehensive definition of "substantial defects" to ensure fairness and clarity for both consumers and manufacturers. This definition should encompass issues such as the nature of the defect, its impact on the vehicle's functionality, and potential safety risks. Malaysia must formulate its own definition of "lemons," clearly outlining which cases fall within its scope and which do not. This necessitates consultation with both consumers and manufacturers as key stakeholders to ensure a balanced and fair approach. The definition should also address critical questions such as whether second-hand cars are included. By establishing clear parameters and a well-defined definition of "lemons," CPA 1999 will provide a strong framework for addressing consumer grievances related to defective vehicles while promoting transparency and fairness in the automotive industry.

#### *Establishment of a Reasonable Timeframe and Procedures for Remedies*

Amendments to the CPA should not only stipulate a clear and reasonable timeframe within which consumers can seek remedies for substantial defects but also outline a specific process for implementing these remedies. The timeframe should strike a balance between providing consumers with sufficient time to identify and report defects and ensuring that manufacturers are not unduly burdened by claims for older vehicles. Singapore's timeframe of 6 months could be considered for the Malaysian context. A well-defined process would ensure clarity and efficiency in handling claims, benefiting both consumers and manufacturers.

#### *Clear Hierarchy of Remedies*

The CPA 1999 should establish a clear hierarchy of remedies, prioritising repair or replacement of the defective vehicle or component. If these options prove impractical or cause significant inconvenience to the consumer, the law should provide for price reduction or rescission of the contract as alternative remedies. The two-tiered remedial regime in Singapore can be considered and adapted to our Malaysian context.

### *Adoption of Best Practices*

Any amendments to the CPA 1999 should incorporate successful elements from Lemon Laws in other jurisdictions, such as California's emphasis on dispute resolution and consumer empowerment. The inclusion of provisions for mediation or arbitration can facilitate swift and cost-effective resolution of disputes, avoiding protracted litigation.

### *Special Provisions for Hire-Purchase Agreements*

The CPA 1999 should include provisions that address the unique challenges faced by consumers who finance their vehicles through hire-purchase agreements. These provisions should empower consumers to seek remedies under the law, even if they are not the registered owners of the vehicles. One approach could be to implement a simplified process where the financier (owner) provides consent or authorisation to the consumer (hirer), enabling the hirer to pursue remedies available under the Lemon Law.

### *Enhancing the Tribunal's Capacity and Accessibility*

The jurisdiction of the TCCM should be expanded beyond the current RM50,000 cap to reflect the contemporary reality of car prices. The existing cap can impede the swift resolution of defective vehicle cases, forcing consumers into lengthy and costly court proceedings, a deterrent for many seeking redress. Furthermore, to level the playing field between consumers and often well-resourced car manufacturers or dealerships, access to legal representation or consumer support association should be permitted within the Tribunal. This would ensure that consumers, who may not possess the legal acumen to navigate complex claims, have adequate support in presenting their cases effectively.

By incorporating these recommendations, CPA 1999 can be transformed into a powerful tool for protecting consumers from the financial and emotional burdens associated with defective vehicles. The strengthened framework would provide clear guidelines for both consumers and manufacturers, facilitating fair and efficient resolution of disputes. It would also act as an incentive for manufacturers to prioritize quality control, leading to improved product reliability and enhanced consumer confidence in the automotive market.

### *Navigating the Challenges: Financial and Political Considerations*

It is imperative to recognise and tackle some possible fiscal and political obstacles linked to amending the CPA to incorporate provisions akin to Lemon Law. According to Corones (2016), the implementation of effective systems for resolving disputes may necessitate additional government expenditure. In addition, the possible rise in warranty claims and car replacements might influence manufacturers' profits, resulting in changes to prices or cost-cutting initiatives that eventually have an indirect effect on customers. Political opposition to the establishment of these rules may also come from powerful industry players who view the restrictions as onerous to their commercial interests (Bernama, 2024b). Careful consultation and cooperation will be necessary to strike a balance between the demands of the automotive sector and the requirement of consumer safety. It is important to guarantee that the suggested modifications are fair, rational, and do not obstruct innovation or economic progress. All stakeholders must be included in a complete and inclusive strategy for these obstacles to be successfully navigated. Open dialogue, transparent communication, and evidence-based policymaking will be pivotal in addressing the complexities and ensuring that the final outcome benefits both consumers and the automotive industry.

## **Conclusion**

In conclusion, although Malaysia currently lacks a dedicated Lemon Law, amending the existing CPA to incorporate provisions akin to Lemon Laws presents a viable solution for strengthening consumer protection in the automotive sector. By adopting best practices from other jurisdictions and tailoring them to the Malaysian context, the government can empower consumers, stimulate manufacturers to prioritise quality, and foster a fairer marketplace for all. Integrating Lemon Law concepts into the CPA 1999 is a sensible and effective way to tackle the problems caused by defective vehicles, guaranteeing that consumers have the legal tools to pursue solutions and maintaining a just equilibrium between consumers and manufacturers. As Ong and Yusoff (2017) point out, providing effective remedies is the key to protecting consumer rights against

unfair practices. In this case, empowering consumers with effective legal tools not only protect their rights but also encourages businesses to maintain high standards of quality and service, fostering a climate conducive to economic advancement and development in Malaysia. The proposed changes to the CPA are a significant step towards achieving this goal and eventually aligning with Malaysia's broader goals of sustainable development, contributing to a society that is fairer, safer, and healthier, as well as an economy that is more just and efficient.

**Acknowledgement:** This study is part of the research funded by Harun M. Hashim Research Grant. Research Code: [HAREG20-001-0001]

**Conflicts of Interest:** The authors declare no conflict of interest.

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