

# Strengthening Consumer Protection Against Unsafe Goods Through Harmonisation of Laws and Safety Standards

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## ABSTRACT

The right to safety is widely regarded as the most important concern for consumers. Given the increase in international trade of consumer products, consumer safety has become more challenging. Statistics show an increase in the number of injuries resulting from unsafe consumer products. Effective regulatory framework and enforcement is thus needed to safeguard consumer health and wellbeing. Standards and enforcement of product safety laws and regulations in different jurisdictions differ considerably. As such, harmonisation of these regulations becomes essential for protecting consumers. This paper seeks to compare product safety law in selected jurisdictions. This paper then examines the European General Product Safety Regulations (GPSD) which opted for the pre-market intervention regime that seeks to prevent unsafe products from entering the market. This paper highlights the importance of product recalls by manufacturers and retailers. Through legal doctrinal and comparative study, this paper examines on the development of consumer product safety law in the selected jurisdictions. It then focuses on the reforms made by the EU through the GPSD. This paper suggests for the adoption of a similar style regulatory framework following the European style as an effort to harmonise the law for better consumer protection. Apart from harmonising the foundation underlying consumers regulations, this paper also suggests for harmonisation of terminologies used in the consumer regulations in different countries to provide certainty on the scope and application of the regulations. This paper concludes that consumer protection law against unsafe products aligns well with Islamic Law, as both emphasise the principles of safety and fairness in contractual agreements. Islamic principles advocate for strong consumer protection regardless of where the contract is executed.

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## Introduction

Product safety law is a critical area of regulatory governance that seeks to ensure the protection of consumers from harm associated with the use of goods and services. This body of law encompasses a wide range of regulations, standards, and enforcement mechanisms designed to

prevent unsafe products from entering the market and to provide remedies when safety issues arise. The evolution of product safety law reflects the increasing complexity of modern economies, the diversity of products available to consumers, and the recognition

of the need for consistent safety standards in a globalised marketplace.

In a broad sense, we are all consumers. When we walk into a supermarket and pick up an item from the shelf, we do so with the expectation that the product is safe. But does it really matter which country the consumer is in? Should it not be the case that, regardless of the region where the supermarket or shop is located, the goods purchased are safe for the consumer? In an interconnected world, product safety should be a universal standard, ensuring that consumers everywhere can trust the products they buy, no matter where they are.

Unfortunately, this ideal is far from reality. Standards for consumer product safety vary significantly across different jurisdictions. Some countries have implemented higher safety standards, while others have more lenient regulations. Even more concerning is that countries with stringent safety standards often do not impose these same standards on products that are exported. This disparity creates a global market where the level of consumer protection can vary widely depending on geographic location, leaving some consumers more vulnerable to unsafe products than others. This highlights the importance of harmonising product safety regulations across different regions, so that every consumer, irrespective of location, can have confidence in the safety and quality of the products they purchase.

Historically, the development of product safety law has been driven by both

national and international efforts to address the risks associated with consumer products.

Early forms of regulation were often reactive, implemented in response to specific incidents or public outcry over unsafe products. This can be seen in the case of drug thalidomide (Science Museum, 1961) In the few years that thalidomide was available, it was estimated that over 10,000 babies were affected by the drug worldwide. This event forced governments and medical authorities to review their pharmaceutical licensing policies. As a result, changes were made to the way drugs were marketed, tested and approved both in the UK and across the world (Science Museum, 1961). Over time, however, there has been a shift towards more proactive and preventive regulatory frameworks, aiming to anticipate and mitigate risks before they materialise. Key components of product safety law include mandatory safety standards, labeling requirements, product recalls, and the establishment of regulatory bodies with the authority to enforce compliance. The safeguard mechanisms for consumer products typically follow two main approaches: firstly, ensuring product safety through a general safety regime, and secondly, addressing product safety through specialised safety regimes tailored to specific categories of products.

When consumers suffer injuries due to the use of unsafe products, they should have access to support and assistance in claiming redress. It is unrealistic to expect consumers to engage in litigation in every case. For those who have been injured, there

should be a simpler and more efficient way to obtain compensation, rather than facing the complexities and burdens of pursuing a court case under the law of negligence. Additionally, consumers who possess unsafe products need to be promptly informed of the potential dangers these products pose. This emphasises the need for an effective system or mechanism to notify and alert consumers about such risks. Once the manufacturer or retailer becomes aware of the potential harm a product can cause, they must take immediate action to protect consumers. This includes removing the unsafe products from store shelves, discontinuing any advertisements, and initiating a recall if necessary to prevent further injuries. The goal is to minimise harm and ensure consumer safety through proactive and responsive measures.

This paper seeks to examine the regulation of product safety laws in selected jurisdictions, with a focus on the evolution of consumer product safety regulation, the definition of who qualifies to get the protection as a ‘consumer’ under these laws, and the policy considerations underlying these laws. This paper will explore the legal frameworks that underpin these regulations, the safety standards established to ensure product safety, the product recalls, and the path forward for harmonising laws and standards to better protect consumers from unsafe goods. It examines consumer products regulated by general application statutes and broad product safety frameworks. It specifically excludes regulations pertaining to specialised categories, such as food and healthcare

products. Additionally, the paper incorporates an analysis of product safety regulations from Islamic perspectives.

### **The Historical Background**

It is essential to examine the roots and origins of the law in various jurisdictions to understand the factors that led to the introduction of law on consumer protection. By identifying the reasons behind the regulation and the common features shared by these regulations across different jurisdictions, we can better chart a unified and coherent path forward. This understanding allows for a more informed approach to legal development, ensuring that future progress is aligned with the foundational principles that have proven effective in diverse legal systems.

### ***The United Kingdom***

To begin with, many countries have modelled their consumer product safety laws after the UK’s legal framework. Therefore, it is essential to examine the origins of consumer law in the UK to understand the foundational principles that have influenced these regulations globally.

Consumer protection law in the UK, which now emphasises safeguarding consumer rights has its roots in a much earlier era. Before the industrial revolution in the UK, when society was relatively simple, there were few laws specifically designed to protect consumers. During this period, consumers were largely expected to protect their own interests. The evolution of consumer protection law was significantly influenced by developments in the 19th

century, particularly the principles of freedom of contract and *caveat emptor* ("let the buyer beware"). Under these principles, buyers were expected to exercise caution in their transactions, as sellers were not legally obligated to disclose defects. Consumer protection during this time was primarily based on common law principles, especially within the realms of contract law and tort law. One of the earliest forms of consumer protection regulation was the Assize of Bread and Ale, which regulated the quality and price of bread and beer to protect consumers from fraud and poor-quality products (Assize of Bread and Ale, 1266).

UK saw a dramatic increase in the production and sale of goods with the advance of industrial revolution in the 18<sup>th</sup> Century. This period highlighted the need for more formal consumer protection as markets expanded and goods became more complex. The Sale of Goods Act 1893 was one of the significant piece of legislation, codifying the common law principles relating to the sale of goods, providing clearer rules for contracts of sale and outlining the rights and obligations of both buyers and sellers. The implications of such terms in contracts became particularly significant with the substantial increase in the production of manufactured goods that emerged from the mid to late 19<sup>th</sup> century (Oughton & Lowry, 2000). As individual craftsmen were replaced by large manufacturers and society had also evolved into a mass consumption society, such shift introduced complexities and risks that consumers were often ill-equipped to navigate on their own, highlighting the

necessity for stronger legal safeguards in consumer contracts (Unfair Contract Terms Act, 1977).

With the rise of consumerism in the 20<sup>th</sup> Century, there were increasing demands for goods and services and growing awareness of consumer rights. The UK's membership in the European Union (EU) from 1973 had a significant impact on the development of consumer law in the UK. In fact, many consumer protection laws in the UK were influenced or directly derived from EU Directives and Regulations. The Consumer Protection Act 1987, one of the most comprehensive laws on consumer protection implemented the EU Product Liability Directive, which made producers liable for damage caused by defective products. This Act also adopt the concept of strict liability approach as introduced by the EU Product Liability Directive, making a manufacturer liable for injuries caused by defective product without the need to prove negligence.

The UK adopted the General Product Safety (GPS) (General Product Safety Regulations, 2005) framework for consumer product safety, which is closely aligned with the EU's General Product Safety Directive (GPSD). Under the GPS regulations, all consumer products must meet safety standards before they can be placed on the market. The GPSD established obligations for manufacturers, importers, and distributors to ensure product safety and provided authorities with the power to enforce recalls and bans on unsafe products. The Consumer Rights Act 2015, a modern

statute on consumer rights consolidates and updated a number of laws, focusing also on enhancement of remedies and powers of enhancement agencies to protect consumer interests (UK Parliament, 1979). The integration with EU law during the UK's membership in the EU certainly has strengthened consumer protection in the UK.

### ***The European Union***

The origin of consumer law regulation in the European Union (EU) is rooted in the broader goal of creating a single market while ensuring a high level of consumer protection across member states. The development of EU consumer law has been driven by the need to harmonise laws across diverse legal systems and provide consistent rights and protections for consumers throughout the EU. The foundation of the European Economic Community (EEC), the precursor to the EU, was laid with the Treaty of Rome in 1957. The primary focus of the EEC was economic integration and the creation of a common market. While the Treaty of Rome did not specifically mention consumer protection, it established the framework for eliminating trade barriers and promoting fair competition, which would later become essential to consumer protection. The 1970s marked the beginning of formal consumer protection policy within the EU. In 1975, the EEC adopted its first Consumer Protection Program which identified five fundamental consumer rights: the right to protection of health and safety, the right to protection of economic interests, the right to redress, the right to information and education, and the right to

representation of consumer interests. This Program laid the foundation for subsequent legislation, establishing the EEC's commitment in integrating consumer protection into its broader economic policies.

A significant step towards deepening European integration came with the Single European Act of 1986. This Act provided the legal basis for the completion of the single market and explicitly included consumer protection as a key policy area, recognizing its essential role in the functioning of the internal market. One of the pivotal developments of the 1980s was the adoption of the Directive on Product Liability (85/374/EEC), which introduced the concept of strict liability for defective products, holding producers accountable for harm caused by their products, regardless of fault.

In 2001, the General Product Safety Directive (2001/95/EC) further strengthened consumer protection across the EU. This directive mandated that all products placed on the market must be safe and imposed obligations on producers and distributors to ensure that only safe products are marketed. It also established a comprehensive framework for monitoring product safety and managing recalls across the EU. The Directive played a central role in harmonising product safety standards, ensuring that consumers throughout the EU enjoy a consistent level of protection.

The EU places significant responsibility on producers and distributors to ensure that the products they

manufacture, import, or sell comply with safety requirements. This includes conducting conformity assessments, providing clear product information and warnings, and taking corrective actions if safety issues are identified. Traceability is a key principle in EU product safety law, allowing for the identification and tracking of products throughout the supply chain. This enables authorities to quickly trace unsafe products and remove them from the market. Producers and distributors are required to maintain records that ensure traceability. The EU encourages conformity with harmonised safety standards, which provide detailed technical specifications to ensure the products meet safety requirements. Products that comply with these standards are presumed to be safe and can bear the CE marking, indicating conformity with EU safety, health, and environmental protection standards.

The efforts to ensure ongoing protection for consumers did not end there. The European Union has reached another consumer protection milestone with the introduction of the new General Product Safety Regulation (GPSR) 2023/988 (General Product Safety Regulations, 2024). With the introduction of GPSR, national authorities will be able to block websites offering dangerous products; for example, shopping under covered identity, addressing the issue of dangerous products coming outside of the EU. GPSR makes it obligatory for all products it covers to have information on an economic operator responsible for it located in the EU. It will allow authorities to take effective corrective actions against

dangerous products, whatever their country of origin.

In 2022, 67% of Safety Gate notifications concerning dangerous products originated from countries outside the EU single market (European Commission, 2023). This highlights the importance of implementing penalties stringent enough to deter businesses from neglecting their product safety obligations. To further safeguard consumers, enhancing the effectiveness of the EU's rapid alert system, known as Safety Gate, is crucial. Improvements should focus on ensuring the more efficient and faster circulation of information about dangerous products within the EU (European Commission, 2023), allowing for quicker responses and better protection for consumers across the region.

The new General Product Safety Regulation (Regulation (EU) 2023/988 - GPSR) increases the protection of EU consumers against dangerous non-food products sold offline or online. The GPSR provides for new, more future-proof product safety rules reflecting the new reality of EU consumers, by among others tackling the safety of online sales, direct imports or new technology products (European Commission, 2023).

### ***New Zealand and Australia***

New Zealand's legal system was heavily influenced by British law, reflecting the country's colonial history. The origin of consumer law regulation in New Zealand can be traced back to the early 20th century,

with significant developments occurring throughout the 20th and 21st centuries. In the early period, consumer protection was primarily governed by general legal principles found in contract law and tort law. These provided some protection to consumers, particularly through doctrines like "caveat emptor" (buyer beware) and the law of negligence.

In the mid-20<sup>th</sup> Century, the need for more specific consumer protection began to emerge as New Zealand's economy grew and consumer markets became more complex. The New Zealand Sale of Goods Act 1908 was influenced heavily by earlier English legislation. Influenced by movements in the United States and Europe between 1960s to 1970s, New Zealand began to see the formation of consumer advocacy groups and increased public demand for stronger consumer protection laws. New Zealand's consumer protection framework is influenced by international standards and practices, particularly those from Australia and the broader OECD region. The Fair-Trading Act 1986 was a landmark law in New Zealand's consumer protection framework. This Act aimed to promote fair competition and protect consumers from misleading and deceptive conduct, false advertising, and unfair business practices. The law introduced also requirements for accurate labeling and advertising. When the Consumer Guarantees Act 1993 was introduced, more focus was given on ensuring that goods and services meet certain quality standards, giving stronger protection for consumers against unsafe goods. The enforcement aspect was

further strengthened by the establishment of the Commerce Commission, a regulatory body tasked with ensuring compliance with consumer laws. Over the years, New Zealand's consumer protection laws have continued to evolve, with amendments to existing laws and the introduction of new regulations to address emerging issues, such as e-commerce, digital goods, and services.

The origin of consumer law regulation in Australia is similarly rooted in its British legal heritage. Like many Commonwealth countries, Australia's legal system was initially based on English common law, which provided the foundation for its early consumer protection through contract law and tort law (particularly the law of negligence). Protection at this time was not specifically regulated, and consumers relied largely on the principle of "caveat emptor" (buyer beware), with limited legal recourse available in cases of fraud or misrepresentation. As Australia's economy grew and diversified, especially after the industrialisation period, the need for more structured consumer protection became apparent. Early 20th century legislation focused primarily on trade practices, competition, and fair trading rather than direct consumer protection. In the 1950s and 1960s, Australia began to introduce laws that indirectly protected consumers, such as regulations on consumer credit.

A landmark piece of legislation in Australia, The Trade Practices Act 1974 (TPA) represented the first comprehensive effort to protect consumers at the federal

level (Trade Practices Act, Year). The TPA marked the beginning of a unified approach to consumer protection across Australia. Prior to this, consumer protection laws were primarily the responsibility of individual states and territories, leading to inconsistencies. The framework, while comprehensive, was fragmented, with different states and territories having their own laws and regulations. The TPA also established the Australian Competition and Consumer Commission (ACCC), which became the primary enforcement agency for consumer protection and competition laws in Australia.

Realising the need to harmonise consumer protection laws across Australia, the Council of Australian Governments (COAG) agreed to a national approach to consumer protection, leading to the development of a single, unified law bringing into picture the Australian Consumer Law (ACL). The ACL came into effect on 1 January 2011, replacing the consumer protection provisions of the TPA and other state and territory laws. The ACL is now the primary legal framework for consumer protection in Australia. It applies uniformly across all states and territories, providing consistent rights and obligations. ACCC continues to play a central role in enforcing the ACL, monitoring compliance, and taking action against businesses that breach consumer protection laws.

With the evolution of digital goods and services, online shopping, and emerging market practices, the Australian Consumer Law (ACL) has been subject to ongoing

review. However, it is noteworthy that, unlike other Commonwealth countries, Australia has taken a distinctive approach to product safety laws. Australia did not adopt the General Product Safety (GPS) approach that is commonly implemented in other Commonwealth nations. Except for certain specified goods, there is no overarching requirement in Australia for products to meet specified safety standards before being placed on the market. This unique feature sets Australia apart in its regulatory approach to consumer product safety. The Australian government have been considering improvements to the 2010 Australian Consumer Law (ACL) regime, including the idea of adding a European-style general safety provision (GSP) (Nottage, 2020). It highlights various concerns regarding unsafe products in Australia, as well as weaknesses in Australia's ACL regime (in addition to the lack of a GSP), in coordinating with sector-specific regulation, and in private law mechanisms that could more indirectly promote consumer product safety.

### ***Malaysia***

Malaysian law has been very much influenced by the English common law. After gaining independence in 1957, Malaysia continued to use the legal framework inherited from the Brit through the Civil Law Act 1956 which import the English Common law. (Common Law of England, 1956) Consumer protection was still primarily governed by general laws, such as contract and tort law, rooted in



common law, rather than by specific consumer protection statutes.

*Recognising the importance of consumer education, Malaysia witnessed the emergence of its earliest consumer movement in the 1960s with the establishment of key consumer association groups, including the Penang Consumers' Association and the Selangor Consumers' Association (SCA). (Hilton, 2007) By the end of the 1960s, the SCA had launched a complaints service, published its own magazine, Berita Pengguna (Consumer News), and actively engaged in public outreach by giving talks at schools, rotary clubs, and other community organisations (Hilton, 2007).*

In 1990, the Malaysian government established the Ministry of Domestic Trade and Consumer Affairs (now known as the Ministry of Domestic Trade and Costs of Living). This ministry was tasked with overseeing matters related to domestic trade, including consumer protection. The government began recognising the need for specific legislation to protect consumers in a rapidly developing economy. The dire need for more safeguard for consumers in Malaysia has led to the introduction of the Consumer protection Act (CPA) 1999. This Act was Malaysia's first comprehensive piece of legislation dedicated solely to consumer protection. The CPA is heavily influenced by the Consumer Guarantees Act 1993 (New Zealand), the Trade Practices Act 1974 (Australia), the Consumer Protection Act 1996 (Statute of Saskatchewan), the Supply of Goods and

Services Act 1982 (United Kingdom) and the Consumer Protection Act 1987 (United Kingdom). Consumer Protection Act (CPA) 1999 (or Act 599) came into force on the 15th of November 1999 to provide legislative provisions for consumer protection (Consumer Protection Act, Year).

The Act codified several key consumer rights, including the right to information, the right to choose, the right to safety, and the right to redress. It also introduced regulations for product safety and established mechanisms for the enforcement of consumer rights. Since the enactment of the Consumer Protection Act 1999, Malaysia has introduced some amendments and additional regulations to strengthen consumer protection. These include regulations on product labeling, false advertising, and unfair contract terms (Multimedia Act, 1998).

### ***Pakistan***

Pakistan's legal system was heavily influenced by British colonial law. During the colonial period and shortly after independence, consumer protection was not a distinct area of law. Consumer issues were generally addressed under contract law, the law of torts (especially the law of negligence), and some basic regulations concerning trade and commerce. After gaining independence Pakistan inherited a legal system based on the common law tradition. However, specific consumer protection laws were not immediately developed. Consumer rights were largely governed by general legal principles, and

there was no comprehensive framework specifically addressing consumer protection.

During the 1980s and 1990s, Pakistan began to liberalise its economy, leading to an expansion of consumer markets. This period saw increased consumer activity, but it also highlighted the need for laws that specifically addressed consumer rights and protections. The growing complexity of the market and the increase in imported goods and services brought new challenges, such as product safety, misleading advertising, and unfair trade practices. In response to these challenges, the government began considering the need for consumer protection legislation. However, the process was slow, and comprehensive consumer protection laws were not yet in place.

The first major step towards consumer protection in Pakistan was the enactment of the Islamabad Consumer Protection Act 1995. This was a significant development as it provided a legal framework for consumer rights and established mechanisms for addressing consumer grievances in the Islamabad Capital Territory (ICT). Following the Islamabad Consumer Protection Act, several provinces began to develop their own consumer protection laws. (Punjab Consumer Protection, 2005) Although consumer protection in Pakistan is primarily a provincial matter, the federal government has also taken steps to promote consumer rights, particularly in sectors that fall under federal jurisdiction, such as telecommunications and banking. The

Pakistan Standards and Quality Control Authority (PSQCA) Act plays a crucial role in regulating product standards and ensuring that products meet certain safety and quality criteria before they reach consumers.

### **The Theoretical Framework**

In governing consumer product safety, the legislature has considered and integrated a wide range of theories including legal, ethical, behavioral, and economic, into a comprehensive regulatory framework. This multidisciplinary approach ensures that consumer protection laws are not only effective in preventing harm but also aligned with broader societal values, promoting responsible behavior among both consumers and businesses. Among the various theories that have influenced the regulation of consumer protection, this section will specifically examine the paternalistic theory, which has strongly advocated for government intervention in establishing product safety laws. Future changes to product safety regulations will likely continue to rely on this paternalistic approach, reinforcing the government's role in protecting consumers from harm.

### ***Theories in Support of Product Safety Regulations***

#### ***Paternalistic approach: Classical Paternalism theory and Soft Paternalism Theory***

Many jurisdictions have adopted the paternalistic approach when enacting law on product safety. The classical paternalism theory which can be traced back to early philosophical thought, particularly within

the works of ancient philosophers such as Plato and Aristotle introduce the concept of a ruler who governs with superior wisdom and knowledge, often making decisions for the people in their best interest, even if those decisions are against their immediate desires. This idea embodies the essence of paternalism—acting for the good of others, sometimes against their will. In today's context, classical paternalism theory asserts that the government has a legitimate role in protecting individuals from harm, especially when they might lack the necessary information or capacity to make informed decisions. This includes, for example, a ban on the purchase of cigarettes by minors. Mandatory safety standards introduced in many jurisdictions are justified under Paternalism theory as necessary measures to protect consumers.

The market in modern days differs significantly from the village market setting where consumers and sellers gather to transact with each other. Much of today's modern consumer statute law, which has developed from the 1970s onwards, has arisen in response to a changing marketplace where the disparity in bargaining power between consumer and trader has increased.

The theory of soft paternalism, which has also become a foundational approach for regulating product safety laws, emerged and gained prominence in the late 20th century building on earlier philosophical ideas as philosophers and legal theorists sought to balance the need for protecting individuals with respect for their autonomy. Unlike classical paternalism,

which justifies intervention even when individuals make informed and voluntary choices, soft paternalism advocates for intervention only in cases where individuals' choices are not fully voluntary or informed.

### ***Guidance from International Bodies***

#### *United Nations Guidelines for Consumer Protection*

The United Nations has established a set of principles and guidelines related to consumer product safety within the broader framework of consumer protection. These principles are primarily encapsulated in the United Nations Guidelines for Consumer Protection (UNGCP), which were first adopted in 1985 and have been revised several times. The guidelines provide a comprehensive framework for consumer protection, including specific recommendations on product safety. These principles are intended to guide Member States in developing and implementing national policies and regulations to protect consumers from unsafe products. They also serve as a reference for international cooperation and the harmonisation of product safety standards worldwide. The UNGCP aims to ensure that consumers everywhere can access safe products and are protected from harm in a globalised marketplace.

The Guidelines promote the protection of consumers' rights, including the right to safety, the right to be informed, the right to choose, and the right to be heard. They emphasise the need for governments to take appropriate measures to protect

consumers from hazards to their health and safety, and to ensure that consumers have access to accurate and sufficient information to make informed choices. In the sphere of product safety, specific area of focus is on physical safety. The Guidelines suggest governments to encourage producers to ensure that products and services provided to consumers are safe and meet established safety standards.

***Guidelines from the Organisation for Economic Co-operation and Development on Consumer Protection***

The Organisation for Economic Co-operation and Development (OECD) provides guidelines and recommendations for consumer protection, including specific guidance on consumer product safety. These recommendations are designed to help member countries develop effective policies and regulatory frameworks to ensure the safety of consumer products. Governments are encouraged to adopt a proactive approach to product safety, emphasising prevention over remediation. This includes the establishment of comprehensive regulatory frameworks that ensure products are safe before they reach the market. Effective market surveillance systems are crucial for monitoring the safety of products in the market. The OECD recommends that member countries establish mechanisms for continuous monitoring, testing, and inspection of products to ensure they comply with safety standards. Surveillance should also include monitoring of online markets and imports. The OECD emphasises the importance of having mechanisms in place

for a rapid response to product safety issues. This includes the ability to quickly recall or withdraw unsafe products from the market and communicate effectively with consumers about potential risks.

The OECD recommends that governments ensure consumers have access to accurate and clear information about product safety, including labels, warnings, and recall notices. Additionally, it suggests that there should be systems in place for sharing information about unsafe products among different jurisdictions and with the public. The OECD Global Recall Portal is a vital platform for consumers seeking information on the latest unsafe products. It serves as a valuable resource for staying informed about product recalls and ensuring consumer safety across different markets. A key recommendation from the OECD emphasizes the importance of strong international cooperation in the area of product safety. This includes harmonising safety standards, sharing best practices, and collaborating on enforcement actions across borders to ensure that unsafe products do not reach consumers in different countries. Such coordinated efforts are crucial for protecting consumers globally and maintaining high safety standards across all markets.

***The ASEAN (Association of Southeast Asian Nations) Principles on Consumer Protection***

The ASEAN (Association of Southeast Asian Nations) has developed principles and guidelines aimed at enhancing consumer protection across its member states, including aspects related to consumer

product safety. These principles are part of broader efforts to harmonise and strengthen consumer protection laws and regulations within the region, recognising the importance of safe products for a healthy and sustainable consumer market.

Consumers in ASEAN member states have the right to be protected from products that pose risks to their health and safety. This principle underlines the commitment of ASEAN countries to ensure that consumer products in the market are safe for use. ASEAN promotes the harmonisation of product safety standards across member states. This involves developing common technical regulations and standards that member countries can adopt to ensure consistency in product safety requirements throughout the region (ASEAN Consumer, n.d.). Effective market surveillance systems are crucial for ensuring product safety. ASEAN member states are encouraged to establish or enhance their market surveillance mechanisms to closely monitor product safety, enforce compliance with safety regulations, and swiftly take action against unsafe products. This proactive approach is vital for protecting consumers and maintaining high standards of safety across the region.

ASEAN Principles encourages transparency and the sharing of information among member states, businesses, and consumers regarding product safety. This includes reporting unsafe products, sharing data on product-related incidents, and ensuring that consumers have access to accurate and clear information about the

safety of products they purchase. Raising consumer awareness and educating consumers about product safety are critical components of ASEAN's principles. Member states are encouraged to implement programs that inform consumers about the risks associated with products and how to use them safely. The ASEAN Principles emphasises the importance of cooperation among member states and with international partners to enhance product safety (ASEAN Consumer, n.d.). This includes participating in global and regional initiatives, exchanging best practices, and collaborating on cross-border enforcement action (ASEAN Consumer, n.d.).

### **The 'Consumer' Concept**

A consumer is generally understood to be an individual or entity that purchases or uses goods or services for personal use. This broad definition can encompass private individuals, corporations, and even manufacturers who consume raw materials. However, the definition of 'consumer' for the purposes of protection under consumer protection law varies across different jurisdictions. In this section, we will explore the meaning of 'consumer' specifically in the context of obtaining protection under the consumer protection law.

A "consumer" is defined in Malaysia to mean a person who "acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption" (ASEAN Consumer, n.d.). The inclusion of the word "uses" in the definition is highly significant because it recognizes that a

consumer does not necessarily have to be the contracting party. Simply by using the goods or services, a person qualifies as a consumer and is therefore entitled to protection under the CPA. It effectively addresses issues related to privity of contract, which traditionally posed a challenge for consumers who did not directly purchase the goods but were still affected by unsafe products.

Under paragraph (b) of Section 3 of the Malaysian CPA, a person is considered a 'consumer' if they do not acquire the goods or services, nor represent themselves as acquiring the goods or services, for the purpose of:

- (i) resupplying them in trade; or
- (ii) consuming them in the course of a process of production or manufacture; or
- (iii) in the case of goods, repairing or treating in trade other goods or fixtures on land

The above paragraph enumerates situations that would amount to a purchase made for commercial or business purposes. To qualify as "consumer", the person must purchase the goods or services for personal use and not for retail. Those who purchase goods for retail purpose, i.e. to resupply the goods in business are excluded from the meaning of "consumer" and are not afforded the protection in the CPA. However, this exclusion does not leave them without recourse. Their remedies can be found in the law of contract and sale of goods law which provide some level of protection for them.

The definition of "consumer" in the Consumer Protection Act 1999 (CPA 1999) closely mirrors the definition found in the New Zealand Consumer Guarantees Act 1993 (CGA 1993), with one notable difference: the inclusion of the phrase "acquires from a supplier" in the CGA 1993. Aside from this slight difference, it is evident that Malaysia's definition of 'consumer' in the CPA 1999 was heavily influenced by, and likely adopted from, the definition found in New Zealand's Consumer Guarantees Act 1993.

Under New Zealand law, the definition of a "consumer" is primarily established in both the Fair-Trading Act 1986 and the Consumer Guarantees Act 1993, with the Consumer Guarantees Act 1993 offering the same definition to that of the Fair Trading Act 1986.

It can be observed that whether a person qualifies as a "consumer" under the CPA 1999 and CGA 1993 depends largely on the nature of the goods or services they acquire. The key consideration is whether the purchase involves goods or services "ordinarily acquired for personal, domestic, or household purposes, use, or consumption." In other words, a consumer is someone who acquires or uses goods or services for private, non-commercial purposes.

However, in practice, the position in Malaysia is somewhat unclear in certain respects compared to its New Zealand counterpart, particularly regarding the treatment of those who receive consumer products as 'gifts' or in gratuitous way. The

key question is whether a person who receives a gift fall under the definition of ‘consumer.’ Notably, New Zealand's legal framework explicitly extends protections to recipients of goods that are not purchased, such as gifts, ensuring that these individuals are afforded the same consumer protections as purchasers. Section 2(1) of the Fair-Trading Act in New Zealand defines “acquire” in relation to goods as including those *“obtained by way of gift, purchase, or exchange; and also includes taking on lease, hire, or hire purchase.”*

In contrast, the Malaysian Consumer Protection Act (CPA) defines “acquire” and “acquiring” in relation to goods as including obtaining goods *“by way of purchase, exchange, or taking on lease, hire, or hire-purchase”*. The term “gifts” is not mentioned or included within the meaning of “acquire” under the Malaysian CPA, leaving recipients of gifts in a grey area regarding their status as consumers and the protection they are entitled to under the Act.

Secondly, while both the CPA 1999 and CGA 1993 use the term “person,” the Malaysian CPA does not explicitly define who qualifies as a “person” under the Act. By referencing the Malaysian Interpretation Act 1967, it can be inferred that a company may be considered a consumer. This raises the question: can a company be a “consumer”? In the case of *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd*, the Malaysian court allowed a claim made by a private company, suggesting that companies can indeed be considered consumers under Malaysian law. The decision of this case

leaves the door open for companies to claim that they fall under the definition of a ‘consumer’. This raises important questions about which types of companies should be entitled to such protection. The CPA is primarily aimed at safeguarding the interests of weaker parties in transactions. Should all companies, regardless of their size or resources, be afforded the same protection, or should the Act's protections be limited to smaller businesses or those in specific circumstances where they are more vulnerable in the marketplace? These considerations are crucial in determining the appropriate scope of consumer protection.

The New Zealand law provides a clear and comprehensive definition of who qualifies as a “person” under its consumer protection laws. Section 2(1) of the Fair-Trading Act defines “person” to “include a local authority, and any association of persons whether incorporated or not.” This broader and more explicit definition helps to clarify the scope of who is protected under New Zealand's consumer law.

In contrast to Malaysia and New Zealand, Australia's Australian Consumer Law (ACL) offers a broad definition of who qualifies as a consumer. Under the ACL, a consumer is defined as any person who acquires goods or services that are either valued under \$100,000 AUD, are typically used for personal, domestic, or household purposes, or involve the purchase of a vehicle or trailer for transporting goods.

Meanwhile, in the EU, a consumer is defined as any natural person acting for purposes outside their trade, business, craft,

or profession. This definition explicitly excludes companies, clearly distinguishing the scope of consumer protection from that in Australia.

This means that the individual is acting in a private capacity when purchasing goods or services. In addition, the goods or services must be acquired for personal, domestic, or household purposes, rather than for commercial, professional, or business activities. Under EU law, the definition of a "consumer" is contained in several key directives and regulations, and it remains consistent across these various pieces of legislation.

In light of the discussion above, it is clear that a person may be considered a 'consumer' in one country but not in another, due to varying definitions across jurisdictions. Harmonising terminologies is a crucial first step in strengthening consumer protection on a global scale, ensuring that individuals receive consistent rights and protections regardless of where they are located.

### **Safeguard Mechanism: Prohibition Against Unsafe Goods**

The safeguard mechanism for consumer products generally may take two routes: product safety through the general safety regime and product safety through specialised safety regimes which include high risk products, for example, medicines, electrical goods, pesticides, automobiles. In Malaysia, the CPA provision on prohibition against unsafe goods falls under the general safety regime, placed under the power and

surveillance of the Ministry of Domestic Trade and Cost of Living (Advertisement and Sale) Act, 1956).

The Malaysian law on safety of goods and services under Part III CPA followed the general safety regulation approach (GSR) which is the key feature introduced in the UK 1987 Act and the EU law which seek to ensure that only safe products are placed in the market, through the setting of specified standards of compliance. Part III of CPA primarily concerns safety standards, the making of mandatory safety standards, as well as bans on consumer goods and services. Under section 19(1) of the CPA, the Minister may, on the recommendation of the Controller and with consultation with the competent agency adopt in whole or in part the safety standard used by the competent agency or obtain advice from experts in the relevant field (Consumer Protection Act, S. 19), Where safety standard in respect of goods and services relates to a matter specified in section (19) of the CPA, a person (New Zealand. Title of the relevant Act) must not supply, or offer to supply, or advertise to supply those goods and services unless that product safety standard is complied with in respect of those goods and services. "Competent agency" here refers to any person, body or authority that has determined or has the expertise to determine safety standards for any goods or services.

Apart from the requiring the goods to comply with certain standards to ensure safety, mandatory information standards are



introduced to ensure that consumers are provided with important details of a product to enable them to make appropriate personal choices. “safety” with reference to s 23(1) of the CPA relates to goods or services which have caused or are likely to cause injury to any person or property or is otherwise unsafe”. This definition is the resembles the meaning of “safety” in the Consumer Protection Act UK 1987 which include in the “context of risks of damage to property, as well as in the contexts of risk of death or personal injury”. As such, unsafe goods and services are those that pose harm of injuries to the consumer or damage to one’s property. Part III of CPA sets the safety standard for the purpose of imposing criminal liability for supplying or offering to supply unsafe consumer goods or services.

S 21 of the Consumer Protection Act 1999 Malaysia prohibits the supply, or offer to or advertise for supply, any goods which are not reasonably safe having regard to all the circumstances, including—the manner in which, and the purposes for which, the goods are being or will be marketed; the get-up of the goods; the use of any mark in relation to the goods; and instructions or warnings in respect of the keeping, use or consumption of the goods.

The minister can prescribe a mandatory safety standard in respect of any goods or class of goods through making regulations (Consumer Protection Act, S. 19). This safety standard in relation to goods which must be complied with include technical specifications, and testing, packaging, instruction and warning

requirements. Safety in relation to technical specifications relates to the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods. Safety aspects also include the testing of the goods during or after manufacture or processing as well as the form and content of markings, warnings or instructions to accompany the goods (Consumer Protection Act 1999).

Consumerism Standards Division under the Ministry of Domestic Trade and Cost of Living is responsible for reviewing, designing, and implementing legislation related to consumer goods safety standard (KPDN, n.d.). The Standards Development Division was set up in 2003 under the Consumer Affairs Division (KPDN, n.d.). One of its objectives is to collaborate with relevant Government agencies in implementing legislation on consumer goods safety standards. In addition, this Division also collaborate with agencies at national and international level involving activities standardisation, issues related to product safety consumer and consumer goods recall (Department of Standards Malaysia, n.d.; Standard of Malaysia Act 1996).

Given that children fall into the category of vulnerable group, strict adhere to certain standard is necessary to safeguard children from harm posed by toys. As such, manufacturers whether local or outside Malaysia that wishes to supply toys to local market must comply with the nation’s toy safety standards. Toys are among the six types of consumer goods that are regulated

by the ministry and have to comply with the mandatory safety standards.

The Minister, under the recommendation of the controller of consumer affairs to declare any goods or any services to be prohibited goods or prohibited services where the goods or services will cause or are likely to cause injury to any person or property or is otherwise unsafe. The order must be published in the Gazette. An order of prohibition may require the supplier, at the supplier's own expenses, to do any or all of the following (Consumer Protection Act 1999, S. 23):

- (a) recall the prohibited goods;
- (b) stop the supply of, or the offer to supply, the prohibited goods or prohibited services;
- (c) stop the advertisement of the prohibited goods or prohibited services;
- (d) disclose to the public any information relating to—
  - (i) the characteristics of the prohibited goods or prohibited services which render them unsafe;
  - (ii) the circumstances in which use of the prohibited goods or prohibited services are unsafe;
  - (iii) any other matter relating to the prohibited goods or prohibited services or the use of the prohibited goods or prohibited services as may be specified;
- (e) repair or replace the prohibited goods or prohibited services;
- (f) refund to any person to whom the prohibited goods or prohibited services were

supplied the price paid or the value of the consideration given for the prohibited goods or prohibited services or any lesser amount as may be reasonable having regard to the use that that person has had of the prohibited goods or prohibited services.

The above provision does not differ much from the New Zealand Fair Trading Act, s 32(2) which states that where a supplier has in trade supplied goods which are goods of a kind in relation to which there is in force the notice mentioned above, (Consumer Protection Act 1999, S. 31) and the supplier has not recalled the goods or taken satisfactory action to recall the goods, the Minister may by notice to the supplier require the supplier to take the action specified in subsection (3). The Minister may require the supplier, in a manner and within a period specified and at his own expense, to do all or any of the following:

- (a) recall the goods;
- (b) disclose to the public information relating to—
  - (i) the characteristics of the goods which render them unsafe; or
  - (ii) the circumstances in which use of the goods is unsafe; or
  - (iii) any other matters relating to the goods or the use of the goods as may be specified;
- (c) repair or replace the goods or refund to any person to whom the goods were supplied or resupplied the price paid for the goods or any lesser amount as may be reasonable having regard to the use that person has had of the goods.

Effective enforcement is crucial to ensuring compliance with the safety standards mandated by law. In Malaysia, this responsibility is entrusted to the Ministry of Domestic Trade and Costs of Living, which is granted substantial authority to oversee the safety regime for goods and services. Any individual or entity that violates the provisions outlined in Part III of the Consumer Protection Act (CPA) commits an offence under Section 25 of the CPA, subjecting them to legal consequences. A corporate offender is liable to a fine not exceeding RM250,000 and for a second or subsequent offence, of fine not exceeding RM500,000. In the case of a non-corporate offender, the fine imposed does not exceed RM100 000, and for a second or subsequent offence, a fine not exceeding RM250,000 or to imprisonment for a term not exceeding six years or both. In the case of a continuing offence, the offender shall, in addition to the penalties, be liable to a fine not exceeding RM 1000 for each day or part of a day during which the offence continues after conviction (Consumer Protection Act 1999, S. 25).

The fines imposed in Malaysia are relatively low compared to the penalty regime in New Zealand. Imposing more substantial fines could serve as a stronger deterrent against non-compliance. In Malaysia, there is a noticeable lack of cases that test the effectiveness of these provisions. Despite numerous incidents, it is uncommon to see manufacturers or suppliers being prosecuted for supplying unsafe goods. To explore the implications and effectiveness of such regulations, we will

refer to cases from New Zealand where suppliers were held accountable for providing goods that did not comply with product safety standards. In *Commerce Commission v 2 Boys Trading Ltd*<sup>1</sup> the defendant company, 2 Boys Trading Limited was charged for failure to comply with the applicable product safety standard. The charges relate to the company's supply of three sets of toys- baby rattles, soft plastic dolls and squeeze aquatic toys. The toys were tested by the Commerce Commission who arranged for the purchase of these sets of toys, and found some of the toys were found to be defective. When notified, the Commission 2 Boys Trading Limited removed the toys from sale, provided recall notices, and initiated a recall notice. Prior to the supply of the toys, the company did not conduct any of its own checks on the toys apart from generally checking that the product was as ordered and relied on the guidelines marked on the products which stated they were for use for children aged three years and more. When imposing the penalty, the court took into consideration of the fact steps taken by the defendant company to remedy the default. The District Court imposed a fine of \$110,000.

In a comparable case, *Commerce Commission v manufacturers marketing limited* (Commerce Commission, n.d.)(MML), MML is a small distribution business engaged in importing and supplying a range of homeware and toy products, primarily sourced from China. The toy comprises a series of musical instruments including a whistle, two maracas and a trumpet. Commerce

Commission staff purchased three units of the toy from a retailer, supplied by MML. The testing by an independent and certified laboratory showed the toys failed the relevant tests in relation to the Product Safety Standards (Children's Toys) Regulations 2005 (the regulations) issued pursuant to s 29 of the FTA. The toy was labelled as unsuitable for use by children under three years of age. Such labelling has been the subject of judicial comment in the past. Referring to *Commerce Commission v Myriad Marketing Limited* (Commerce Commission v Myriad Marketing Ltd, 2001) pankhurst J in that case said that the subjective intention of a manufacturer or marketer cannot determine for what and for whom a product is manufactured, designed, labelled, or marketed for the purposes of the regulations.

As observed above, the Commerce Commission plays a crucial and rigorous role in enforcing compliance with product safety laws, ensuring that businesses adhere to the standards set to protect consumers.

### **Product Recall**

Manufacturing companies would usually have rules and procedures to ensure the products manufactured are safe for consumers. Injuries caused by unsafe products will expose the manufacturer to a legal suit. In the tech sector, for example companies must ensure the use of quality parts and proper assembly. Using poor-quality parts and incorrect assembly in tech sector may lead to serious harm. Nevertheless, there have been many instances where the goods manufactured

have caused injuries to consumers. Many incidences of harm to consumers caused by hardware malfunction or faulty electrical goods have been reported in various countries. This includes cases of handphone exploding, causing consumers to suffer burns and other injuries.

When consumers suffer injuries or their properties are damaged due to defective products, the first points of contact are typically the suppliers or manufacturers. Consumers alert these parties about the harmful effects of the goods, prompting action. Manufacturers and suppliers generally monitor their products for safety issues, and when a product is identified as unsafe, it is common practice for companies to initiate a recall. A product recall is the removal from distribution, sale, or use of a consumer product that does not comply with the safety standards or due to the discovery of harm caused to consumers. In many other countries recall of products to protect consumers from risk of injury or death is common phenomenon. For example, manufacturing mishap may lead to the product being recalled. In one instance, traces of glass were found in jam caused by broken jar during the manufacturing process (Global Recall, n.d.). This recall can be on a national or even global scale, depending on the extent of the risk posed by the product. For example, Takata, one of the world's largest airbag manufacturers recalled approximately 67 million airbags after many deaths and injuries caused by their faulty airbag. Investigations revealed that the

inflator and propellant devices of their airbag had deployed improperly, causing shooting out metal fragments, injuring and killing passengers.

Most jurisdictions implement both voluntary and mandatory recall mechanisms to address product safety concerns. In Malaysia, product recalls are governed by the Consumer Protection Act 1999 (CPA) and related regulations, such as the Consumer Protection (Safety Standards) Regulations 2009. The Ministry of Domestic Trade and Cost of Living serves as the key regulatory body overseeing these recalls. Manufacturers, importers, and suppliers are obligated to initiate a recall if a product is found to be unsafe. They must inform the Ministry, take steps to remove the product from the market, notify consumers, provide remedies, and ensure that recalled products are properly disposed of or repaired. Some of the voluntarily recalled products are listed on the Ministry's official website, specifically on the mySAFE portal, which provides information on consumer product safety.

However, there are significant challenges with the recall mechanism in general. If a supplier becomes untraceable or goes missing, consumers are left without any recourse, creating gaps in the effectiveness of product safety enforcement. To date, most recalls in Malaysia have been voluntary, initiated by manufacturers or suppliers. Mandatory recalls are rare; thus far, only one order has been issued under Section 23 of the CPA by the Ministry.

In New Zealand, Australia and other jurisdictions recalls can fall either under voluntary or compulsory recall. In New Zealand, a voluntary product recall as provided in s 31A Fair Trading Act applies where the supplier voluntarily recalls goods on three grounds. First, the goods will, or may, cause injury to any person (Consumer Protection Act 1999, S. 31A). Second, a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person (Consumer Protection Act 1999, S. 31A). Third, the goods do not comply with a product safety standard (Consumer Protection Act 1999, S. 31A) and there is no other requirement, under any other enactment, for a supplier in those circumstances (Consumer Protection Act 1999, S. 31A) to either report to a government agency or do any other thing in relation to those goods. The chief executive must be notified within 2 working days after recalling the goods. ( Consumer Protection Act 1999 (S. 31A) The notice must be expressed in plain language and must contain the following information(Consumer Protection Act 1999):

(a) a description of the goods, with sufficient detail to enable a consumer to readily identify the goods to which the notice relates; and

(b) a description of the danger (including the risk of damage or harm occurring as a result of that danger) that led to the goods being recalled; and

(c) details of what a consumer needs to do in response to the recall (Consumer Protection Act 1999).

The ministry must make this notice available to the public for at least two years after the date on which the voluntary recall was notified. Voluntary recall in NZ was added into the FTA in 2013. Prior to that, recall only relates to compulsory recall.

Compulsory recall falls within the purview of the Commerce Commission New Zealand. The compulsory product recall in New Zealand requires a person (a supplier) who has in trade supplied goods which do not comply with a product safety standard prescribed in respect of the goods or are goods of a kind which will or may cause injury to any person (Fair Trading Act 1986, S. 32). The Minister may, by notice to the supplier, require the supplier to recall the product if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods supplied by the supplier will, or may, cause injury to any person (Fair Trading Act 1986, S. 32). In deciding whether to issue such notice, the Minister must have regard to all the circumstances, including—

(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods:

(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:

(c) whether such injury is likely to be a frequent occurrence:

(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:

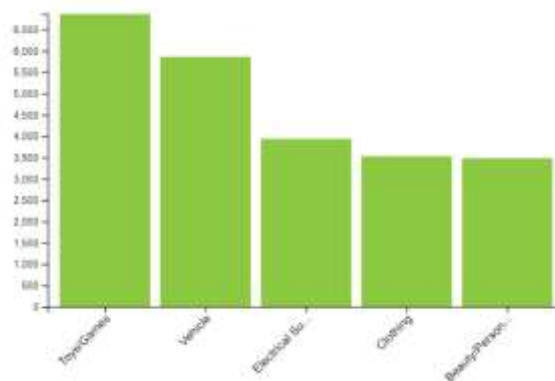
(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours the issuing of a compulsory product recall notice (Fair Trading Act 1986, S. 32).

Consumers should not be left in the dark about goods that could potentially cause them harm. Therefore, the dissemination of information is crucial. In this digital age, one effective way to spread this information is through online portals that record and provide details of products that have been recalled. These platforms ensure that consumers have easy access to up-to-date information on unsafe products, helping them make informed decisions and avoid potential risks. The ability to trace products, especially high-risk products, into the hands of consumers will ultimately improve recall effectiveness. At the same time, product traceability enables suppliers to undertake more targeted and therefore more cost-efficient recalls and assures regulators that the risk posed by high-risk products in particular will be addressed as quickly and as effectively as possible (Australian Competition and Consumer Commission ACCC, Year).

The ASEAN Product Alerts for example, aim to be a one-stop portal compiling all information on recalled products which are traded within the ASEAN region. (ASEAN Consumer, Year) However, looking at the data, it does not seem that this portal provides sufficient information on unsafe goods circulated in the market. By contrast, the Global Recalls portal which is on the OECD platform

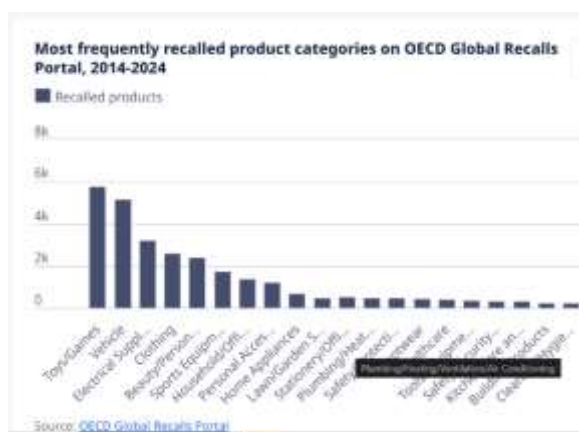
which seek to bring together information on product recalls being issued around the world, is more reliable. The portal includes information on mandatory and voluntary consumer product recalls which were issued by governmental bodies and are made publicly available in its jurisdiction. As of mid-August 2024, there were 45,409 items which have been recalled, as published on the Global Recall portal. ( Global Recalls Portal, 2024) However, there is noticeable lack of data on product recall coming from certain states from ASEAN region. For instance, the data on the Global Recall portal indicates product recalls where Malaysia is listed as the origin country. However, this information is conspicuously absent from Malaysia's own recall portal, mySAFE(KPDN, Year) which primarily posts data on voluntary recalls by manufacturers, as well as from the ASEAN Product Alerts website (ASEAN, Year).

As illustrated in the graph above, between 2014 and 2024, toys and games have consistently been the most frequently recalled category of consumer goods.



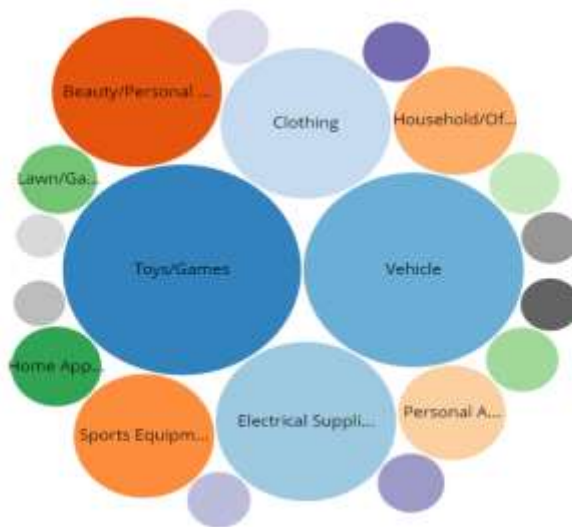
Graph 2(OECD, Year)

The graph above presents the latest data from the OECD recall portal for 2024. The top five categories of recalled products this year are toys and games, vehicles, electrical



This discrepancy highlights a significant gap in the availability and dissemination of critical safety information within the region.

Graph 1



supplies, clothing, and beauty products, with toys and games once again leading as the most frequently recalled consumer goods (OECD, 2024).

Graph 3 illustrates the top 20 consumer products recalled in 2024, encompassing a diverse range of items including tools, footwear, furniture, kitchenware, stationery, and tableware.

In Australia, recalled products are listed on the ACCC's product safety website, which is accessible to the public. (Australian Government, Year) Over a period of 20 years, over 10 000 products have been recalled in Australia. (Australian Government, Year) General consumer product recalls are the responsibility of the ACCC and account for 25 per cent of all safety recalls (Australian Government, Year). The law in Australia provides that manufacturers, importers, and suppliers are required to recall products if they are found to be unsafe. They must notify the ACCC within two days of initiating a recall. The ACCC monitors the recall process and may enforce compliance. In 2019, the ACCC reported that Australians could be at risk of injuries or even death from 6.6 million individual products currently under voluntary recall (Australian Government, Year). Estimates show there are around 780 deaths and 52,000 injuries per year from unsafe consumer products in Australia (Australian Government, Year).

In the UK, product recalls are governed by the Consumer Protection Act 1987 and related regulations, including the General Product Safety Regulations 2005. Currently, the UK retains similar standards to those of the EU but operates independently. The Office for Product Safety and Standards (OPSS) is responsible

for overseeing product safety and recalls. Manufacturers and distributors must inform the OPSS and take immediate action to recall unsafe products. The business must notify the relevant authorities and consumers, providing clear instructions for returning the product or obtaining a remedy. Recalled products are listed on government websites, the Office for Product Safety and Standards (OPSS). For instance, early this year, OPSS has taken enforcement action and warning consumers about the UPP brand of e-bike batteries, which have been linked to numerous fires across England. Withdrawal Notices have been issued to four online marketplaces, requiring them to cease supplying the UPP batteries in their role as distributors. Additionally, OPSS has directly issued Withdrawal Notices to 20 individual sellers and the China-based manufacturer responsible for the product.

In the EU, product recalls are regulated under the General Product Safety Directive (2001/95/EC), which applies to all member states. The EU's Rapid Alert System for dangerous non-food products (RAPEX) is a key tool in managing recalls across the EU. RAPEX publishes weekly reports on dangerous products, including those that have been recalled, offering transparency and vital information to consumers across the EU. This portal provides an excellent resource with the latest and most accurate information, helping consumers identify unsafe items before making a purchase. Additionally, it assists consumers in determining whether products they have already purchased should not be used due to potential harmful effects.



In Pakistan, product recalls are less comprehensively regulated compared to other jurisdictions. The relevant laws include the Pakistan Standards and Quality Control Authority (PSQCA) Act and provincial consumer protection laws. The recall process is not as clearly defined as in other countries. However, businesses are expected to remove unsafe products from the market and inform consumers if a product poses a risk. There is a general expectation that businesses will notify consumers and provide remedies, but the legal obligations may vary depending on the region and specific regulations.

In summary, across all these jurisdictions, the primary goal of product recall laws is to protect consumers from unsafe products. Businesses are generally obligated to notify authorities, inform consumers, and provide remedies such as refunds, repairs, or replacements. Public databases and other communication channels are utilized to keep consumers informed about recalled products, ensuring they are aware of potential risks and can take appropriate action to safeguard their well-being. Australia, the UK, the EU, and New Zealand have well-defined, centralized regulatory bodies that actively manage and oversee product recalls. The EU (through RAPEX), Australia (via the ACCC), and New Zealand (through the Commerce Commission) have developed robust systems for publicizing recalls, making them more effective in protecting consumers compared to other jurisdictions. While Malaysia has a structured system in place, the recalled products listed on mySAFE

represent only a small fraction of the potentially unsafe items available in the market, suggesting that many hazardous products may go unaddressed. In contrast, Pakistan's system is more decentralised, requiring greater efforts to effectively manage and remove unsafe products from the market.

In summary, these differences reflect the varying levels of regulatory development and enforcement across regions. More developed countries typically have more comprehensive and transparent systems for managing product recalls, ensuring greater consumer protection and more effective removal of unsafe products from the market.

### **Consumer Protection and Product Safety in Islamic Law**

The Islamic system of laws, governance and ethics provides a holistic framework for rectifying relationships between diverse economic participants including producers, service providers, traders, marketers as well as various types of beneficiaries such as receivers of goods and services, as end users or otherwise. Although the overall system thus provides for ensuring rights and obligations of all relevant parties, for the purpose of a specific discussion of aspects relevant to a certain segment of economic actors, viz. consumers in this case, there can be no bar to analysing the selective approach of Islamic law to the class identified as consumers in conventional law. Thus, rules and other details that are in place to ensure the interests of consumers as per the conventional legal definition can be discussed, from the limited perspective of

ensuring safety of goods. Islamic law places emphasis on the discharge of rights and obligations duly, and avoiding causing harm through commission, omission, negligence, and other means, to those with whom there is a contractual relationship, as well as others. Rather, while rules and regulations for achieving the fulfilment of minimum rights of all parties ('adl) are laid down, giving others more than their due right and providing benefit (ihsan) are encouraged, means to do which, are elaborated in Islamic sources.

Discussing product safety principally involves the rights of consumers who are the recipients of products and services in contracts, as against those who provide them against a consideration. As such, the protective measures laid in place in Islamic law for safeguarding rights of those who receive an item or service in contracts of purchase, manufacture and hire can be looked into. An examination of the relevant Islamic legal provisions will indicate that significant aspects of consumer protection as well as product safety can in many instances be ranked under well-established rules and principles in Islamic law. Furthermore, many of the protective measures come under what the Islamic government may impose and require under the prerogatives available to it for regulating transactions and establishing justice. These comprise of various forms of preventive measures for eliminating negative aspects such as deception, fraud and uncertainty, provisions for ensuring due performance towards the recipient in goods and service related contracts, various forms of options made

available for remedying unfavourable outcomes when these occur in transactions, and measures limiting contractual freedom in some instances for the purpose of addressing contracts and contractual terms that could be unfair towards the consumer. Other general provisions seek to eliminate situations where consumer injustice may result, such as restrictions on monopoly, interest, gambling and speculation as well as restrictions and controls on transactions involving vulnerable segments such as minors and the mentally deficient, among others. In order to ensure implementation of consumer-friendly provisions in day-to-day transactions, an overseeing authority called *hisbah* is prescribed. The institution of *hisbah*, while being multifaceted in nature, had a section assigned with rectifying transactions and related aspects in high-consumer-vulnerability areas such as bazars and markets. These provisions, if adhered to and implemented, have the potential of minimising injustice towards consumers and providing remedy in cases where harm to consumers' interests had resulted. While product safety, too, is ensured to a high degree under these provisions, the state is allowed to resort to additional overall measures such as mandatory safety requirements, bannings and recalls as suggested in conventional systems, within the parameters of Islamic law.

### **Theoretical Framework for Consumer Safety in Islamic Law**

The overall theory for transactions in Islamic law has multiple provisions in place for ensuring consumer protection and

product safety. Although the general provisions address all economic players including producers, goods and service providers and others, in practice, these are more relevant to the recipients of goods and services who happen to be more vulnerable in a transactional setup. While these happen to be many, we may draw attention to some prominent aspects, which seek to eliminate harm to consumers or to provide redress in situations where harm had materialised. A significant portion of consumer vulnerability results out of information asymmetry, where the providers of goods and services happen to be better aware of the relevant products as well as the market situation. A number of measures are prescribed in Islamic law for minimising such imbalance of knowledge, such as the need for correct reference to goods and services with all vital details in contracts, and avoidance of uncertainty and ambiguity (*gharar*) as well as misconception (*ghalt*) and deception (*tadlis*). The ways and forms these can occur are described in Islamic law, which may pertain to providing false information about the state of the product wilfully, or change of the appearance of the product for concealing its defectiveness, or through non-disclosure of defects. Unlike early English law and some other legal systems, Islamic law makes it mandatory on each contractor to disclose any defective aspect in the countervalue submitted that may make the product unsuitable for the other party. In the event of non-disclosure, if any suitable non-liability clause too is not included in the contract, the recipient of the defective product may have the option to rescind the contract, termed

*khiyar al-'ayb*. This is an inbuilt principle available to all contractors in the system of contracts in Islamic law, that does not require to be expressly included or spelled out at the time of transaction. Similarly, misinformation provided regarding the product through incorrect portrayal of the nature of the product or false advertising resulting in misconception too may lead to voidableness of the contract, where the affected party may abandon the contract unilaterally. Under this, it could be said that in situations involving mass-production of goods where provision of individual description of the item to every contractor is not feasible or practicable, it would be within the power of the state to impose mandatory labelling requirements in Islamic law so as to ensure an informed choice is made by consumers, especially in areas where deception is common or can result in public harm. It would also be recommended that systems such as *hisbah* be in place to ensure adherence to it by producers.

Another significant measure to minimize infringement on consumer interests is through restriction imposed on disproportion in countervalues in contracts of exchange involving products and services. From a consumer protection perspective, this would mean over-charging for products and services in such a manner that the relevant market value is significantly exceeded. Such excessive pricing is prohibited and affects the very validity of the contract in situations where a party recognized as a vulnerable side is involved such a minor or mentally impaired person transacting through a guardian, while

in other situations, the affected contractor may obtain the right to terminate the contract unilaterally, especially where such excessive pricing is combined with any form of deception or misinformation. However, this is subject to detail, as where the disproportion of values is intended by the parties based on willing consent, this will not give rise to any subsequent remedy, as the situation may not require intervention or rectification. This provision is also related to the obligation of contractors in exercising due care and verification before expressing consent in a binding manner.

For the protection of parties who may foresee or suspect possible harm in a transaction due to any doubtful aspect involving the quality or pricing of a product prior to finalizing it, Islamic law has prescribed a special provision termed option through stipulation or *khiyar al-shart*. This especially aimed at addressing situations of over-pricing where a transactor is not aware of the value of the goods, and may attempt to reverse the contract later in the event of finding the price to be excessive. In such situations where the transaction needs to be finalized so as not to lose an opportunity, one may include in the contract a clause reserving the possibility of unilateral termination, which, while allowing the transaction to be finalized, will allow him to abandon the contract without any further liability in the event of finding the goods to be over-priced. This is a significant measure for minimizing consumer harm through information asymmetry, as through this provision, verification of the market and resorting to expert advice is facilitated. In

fact, the right to terminate the contract can be assigned by the contractor to an expert third party, who can forthwith end the transaction if it is seen unfavourable.

Another provision available in Islamic law enables inspection of a product upon receipt, when it had not been inspected at the point of transacting. Specific individual units that form subject matter of contracts where their inspection had not been feasible before, can entitle the purchaser to rescind the contract when they are found not to be in accordance with the specifications provided, subject to details. It should be noted that with regard to generic goods that are transacted based on specifications agreed, the consumer is always entitled to demand replacement of the goods where needed, without termination of the contract.

In addition to the above, there are multiple regulations in place in Islamic law, that provide safety to the consumer, in disadvantageous situations arising from information asymmetry or otherwise. Among these are unfair contractual terms, through which a party who enjoys a more powerful bargaining position may attempt to direct the contract more in his favour, either by claiming entitlement to more than what is usually due to him in similar contracts by demanding additional benefits, or including terms unfavourable for the weaker party, usually the consumer. Here, Islamic law may dictate the invalidity of the whole contract due to its unfair nature, or may term the specific provisions in the contract unenforceable due to their harmfulness, thus

absolving the consumer from fulfilling them despite of their inclusion in the overall contract.

Furthermore, Islamic law dictates certain varieties of contracts unlawful principally due to the possibility of resulting in harm to a party, such as contracts involving unrealistic future-related terms or contracts dependant on contingencies, those involving interest and exchange of debts, producers and traders exercising undue influence on the market and consumers through hoarding and monopoly, as well as transactions incorporating chance and speculation in unacceptable forms. These specific provisions are provided with detailed treatment of all necessary aspects in Islamic law. The state is required to ensure compliance of the comprehensive system involving all forms of transactions and dealings so as to achieve justice and fair play.

Prescribing safety standards with regard to selected products, as well as mandating labelling and other requirements, lies within the prerogative of the state, where consumer harm is envisaged. Adherence to these can be ensured through the mechanism of *hisbah*, which is a major and multifaceted institution of the state. While redress to consumers can be provided in the event of harm resulting in situations such as non-disclosure and faulty products in manners prescribed in Islamic law, these would always be based on and be proportionate to factual losses suffered, to the exclusion of assumed losses such as loss of possible income or profit. Measures for

redressing adverse effects suffered by third parties other than direct contractors, who may derive benefits or otherwise may indirectly enjoy any outcome of a product, are treated in Islamic law under assigning liability (*daman*) for intended or unintentional consequences of actions. Islamic law adopts a cautious approach in assigning liability, and in many circumstances may require a clear relationship between cause and consequence, rather than assigning liability based on presumption. Thus, producers and traders being liable for losses related to or arising from products and services will usually be a subject of individual case study, as Islamic law strives to establish justice for all parties involved.

### **Conclusion**

In this paper we observed that the statutory laws on product safety have largely originated from a common source, with the UK and the EU playing leading roles in shaping these regulations. The consumer protection laws, particularly those related to product safety, in Commonwealth countries are heavily influenced by the UK law. However, despite this shared origin, differences in technicalities, such as the varying definitions of ‘consumer’ across different jurisdictions, create uncertainties. For example, an individual who qualifies as a ‘consumer’ in one country may not be recognised as such in another, leading to potential disparities in legal protections and rights.

Protecting consumers from unsafe products requires concerted efforts from all

parties involved: producers, consumers, suppliers, and governments. Various international bodies have developed guidelines and principles aimed at achieving the common goal of consumer protection from unsafe goods and services. These principles have significantly influenced the shaping of regulations in member countries and have encouraged cooperation between nations. They also promote the standardisation of safety standards across borders. However, it is evident that some countries have achieved higher safety standards than others. Consumers residing in countries with stringent safety regulations benefit from a more secure marketplace, with regulatory bodies actively ensuring that the products on shelves are safe. Unfortunately, the same high standards are often not enforced when these goods are exported, depriving consumers in the importing countries of the benefits of these high-quality products. This disparity emphasises the need for greater global consistency in harmonising and enforcing safety standards, ensuring that all consumers, regardless of location, have equal protection from unsafe products.

The provisions in statutes are frequently tested in the courts, providing insight into how the judiciary interprets the law. Decided cases in New Zealand, for example, have consistently demonstrated that there is no compromise when it comes to safety standards. Even if a supplier receives assurances from a producer outside the country certifying that the goods are safe, the supplier is still obligated to independently verify the safety of the

products before supplying them. These rulings highlight the courts' firm stance in some jurisdictions on enforcing stringent safety regulations, ensuring that consumer protection remains a priority.

International and regional bodies also recommend that countries establish mechanisms to effectively alert consumers about unsafe products, thereby preventing harm on a large scale. However, not all countries are able to implement these mechanisms to the same standard, resulting in varying levels of consumer protection and safety awareness across different regions. Having a proper system in place will greatly assist consumers from harm posed by unsafe products. Recalls can be more successfully targeted if the cause of the deficiency is identified, particularly if it can be traced to a particular batch or lot number or product stream. Additionally, this can reduce the risk of the manufacture and supply of unsafe products in the future.

Consumer protection against unsafe products aligns well with Islamic Law, as both emphasise the principles of safety and fairness in contractual agreements. Islamic principles advocate for strong consumer protection regardless of where the contract is executed.

Despite having laws similar to those in the UK, Commonwealth countries can experience varying outcomes in the application of statutes related to unsafe products. It is crucial for countries to focus on harmonising their legal frameworks and

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enhancing the enforcement of regulations to ensure comprehensive consumer protection against unsafe products. By aligning legal

standards and strengthening enforcement mechanisms, nations can offer a consistent level of safety for consumers worldwide.

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## References

- ASEAN. (2024). *ASEAN consumer protection portal*. Retrieved from <https://aseanconsumer.org>
- Australian Competition and Consumer Commission. (n.d.). *Over a million recalled products still in circulation in Australia*. Retrieved from <https://www.accc.gov.au/media-release/over-a-million-recalled-products-still-in-circulation-in-australia>
- Australian Competition and Consumer Commission. (n.d.). *Review of the Australian product safety recalls system*. Retrieved from <https://www.productsafety.gov.au/system>
- David Oughton, & John Lowry. (2000). *Textbook on consumer law*. Oxford University Press.
- European Commission. (2023, July 1). EU, consumer protection the new General Product Safety Regulation factsheet. Retrieved from <https://commission.europa.eu/>
- Global Recalls Portal. (2024). *Global recall dashboard*. Retrieved from <https://globalrecalls.oecd.org/#/dashboard?fromYear=2010&toYear=2024>
- Hilton, M. (2007). The consumer movement and civil society in Malaysia. *International Review of Social History*, 52(3), 373-406. <https://doi.org/10.1017/S002085900700322X>
- L. Nottage. (2020). Improving the effectiveness of the consumer product safety system: Australian Law Reform in Asia-Pacific Context. *Journal of Consumer Policy*, Springer Nature. <https://doi.org/10.1007/s10603-020-09441-w>
- Malaysia Consumer Protection Act 1999. (2024). S 19(1)–S 32 of the Fair Trading Act 1986.
- Ministry of Domestic Trade and Consumer Affairs, Malaysia. (2024). *Standards Division: Department of Consumerism and Standards*. Retrieved from <https://www.kpdn.gov.my/en/corporate-info/departament/consumerism-standards-division>
- OECD. (2024). *Global recall website: Products Safety*. Retrieved from <https://globalrecalls.oecd.org/#/>
- Science Museum. (1961). *The link between thalidomide and its impact on development of babies*. Retrieved from <https://www.sciencemuseum.org.uk/>
- Science Museum. (n.d.). *The Assize of Bread and Ale of 1266*. Retrieved from <https://www.sciencemuseum.org.uk/>
- Supply of Goods and Services Act 1982.
- Takata Airbag Incident. (2013–2018). *Faulty airbags and the death toll in Malaysia*. Global recall website.
- UK Government. (2023). *Office for Product Safety and Standards takes enforcement action over dangerous e-bike battery*. Retrieved from <https://www.gov.uk/government/news/opss-takes-enforcement-action-over-dangerous-e-bike-battery>
- Unfair Contract Terms Act 1977 (UK). (1977).
- Unfair Contract Terms Act 1977 (UK). (1982)