Open Price Term under the United Kingdom Sale of Goods Act 1979

(Terma Open Price di bawah The United Kingdom Sale of Goods Act 1979)

FARZANEH AKRAMI
SAKINA SHAIK AHMAD YUSOFF
SUZANNA MOHAMED ISA

ABSTRACT

In the contemporary world, man is witnessing the advancement of science and technology that has led to considerable changes in all areas of human life and in the definition of many concepts. In such a dynamic world, each science should do its part in coordinating with these developments in a manner that does not make any of the aspects of life to be imperfect or disturbed. 'Law' also has certain responsibilities among which the incontrovertible task to update old and insufficient rules. Choosing the subject of 'open price in sale of goods contracts', this article aims to study imperfect and old regulations on this issue in the United Kingdom Sale of Goods Act 1979 and suggest certain amendments through which the amount of the problematic consequences of such rules is expected to decrease. This study is a result of a doctrinal research with a library-based data collection method.

Keywords: Open price term; sale of goods; contract; Sale of Goods Act 1979; United Kingdom

ABSTRAK

Kemajuan sains dan teknologi dalam dunia kontemporari masa kini memperlihatkan perubahan besar berlaku dalam kehidupan manusia dan pendefinisian pelbagai konsep. Dalam dunia yang dinamik ini, setiap bidang sains perlu memainkan peranan masing-masing dalam penyelarasan perubahan ini agar tidak menggugat atau mengganggu sebarang aspek kehidupan. Antara tanggungjawab 'undang-undang' yang tidak dapat digalang-ganti ialah mengemaskini peraturan yang telah lapuk dan tidak efisyen. Mengenegahkan subjek 'open price', artikel ini bertujuan untuk mengkaji peraturan yang lama dan tidak sesuai tentang perkara ini dalam The United Kingdom Sale of Goods Act 1979 dan mencadangkan beberapa penambahbaikan yang dijangka dapat membantu mengurangkan permasalahan sedia ada. Kajian ini bersifat doktrinal dengan menerima pakai kaedah pengumpulan data secara kepustakaan.

Kata kunci: Terma open price; jualan barang; kontrak; Sale of Goods Act 1979; United Kingdom

INTRODUCTION

"The first and most obvious effect of a set of rules that contains vague or conflicting provisions is the additional time and effort required from lawyers, judges, scholars and commentators in order to clarify the uncertainty caused. Such time and effort could be used in a more productive way".[1] Rules governing the subject matter of sale contracts should be enacted in a manner that fulfils the aims of law. Provisions are not supposed to be written in a way that causes the parties suffer any loss. Today, there is rapid technological progress, and a huge flow of unimaginable new products to global markets, coupled with the global appetite for the purchase of those products. Given this

development, and the non-stop, ultra-fast rate of data transfer, which enables even people in the most remote parts of the world to benefit from all developments, staggering levels of deals and contracts are concluded at every moment throughout the world. Those developments compelled merchants to sell their products in order to avoid any loss; for example, by leaving the price open to be fixed at the time of delivery. In fact, contrary to the traditional form of sale contracts, the buyer and the seller would not know exactly how much they are going to pay or receive in their contract. At the same time, however, they are sure that they will benefit from that contract. Some of the other reasons that made merchants resort to this kind of contract were to reduce the level of liquidity, which would help curb inflation, and also supply manufacturers with financial resources, as well as provide them the assurance of selling their products.[2] Nevertheless, in spite of the importance of open price rules, there are still some rules that contain some problematic and defective provisions. Sale of Goods Act 1979 (SGA) is a sample of sale regulations in which although open price term is recognised, but there are certain negative points that are to be studied in this Article.

HISTORY OF THE SALE OF GOODS ACT 1979 (SGA 1979)

In order to begin this part of the discussion, it is worthy to mention Beatson's[3] brief review of the principles of the English law of contract. He maintains that the principles of the English law of contract are, in fact, almost a result of the English courts. He adds that, in this regard, until the recent years, the legislatures did not have an important and significant effect on the development of the principles of the law of contract. He believes that, "the contract law is the child of commerce," and so the development of these principles were mostly formed during the last 200 years in which Britain grew from an agricultural to an industrial and commercial nation. In reality, the economic structure of Britain changed significantly through the Industrial Revolution. Markets of the world embraced new products that were made by manufacturers from the provided raw materials. The enterprises that were active in these fields needed capital that was much more than the capacity of private individuals and it was provided by public subscription. Treitel[4] adds that, "the growth of international trade further led to the creation of international commodity, shipping, insurance, and money markets many of which were centered in London. All of these commercial developments depended - and still do depend - for their successful operation upon contract."

In 1888, Judge Chalmers drafted a set of rules on the Law of Sales of Personal Property, with the object of assimilating the Scottish and English law on this subject. In 1889, it came before the Parliament and, on 20th February, it received the Royal assent.[5] The English Sale of Goods Act 1893, long-titled as, "An Act for codifying the Law relating to the Sale of Goods," was an Act of the Parliament of the United Kingdom of Great Britain and Ireland that regulated sale of goods contracts. The Act was drafted by Sir Mackenzie Chalmers.

To Christie,[6] "the Sale of Goods Act 1893 came into operation under peculiar auspices." As he observes, the "trans-Atlantic cousins" wherein the code was imposed or, better said, that were the scope of operation of the code as well as England, became

secured by one of the essential laws of their constitution. He points out how well the code had been written with regard to the circumstances of that era. In fact, it was the first great step of its kind taken until then. He also maintains that, during the first few years of the operation of the Act, even though it had been the initial years of its enforcement and the possibility was high for various questions to arise from it, there were remarkably few questions raised from the new code. There were few questions considering "the number of points at which the Act comes into touch with the early life of a great commercial people." [7] The Act was so well-drafted that, when it was repealed and reenacted, the successor Sale of Goods Act 1979 was instantly familiar, sharing the same phraseology, structure and even numbering as the Act of 1893.

The Sale of Goods Act 1979 (SGA 1979), long-titled as, "An Act to Consolidate the Law Relating to the Sale of Goods," as Ricquier[8] explains, received Royal assent in December 1979 and took effect in January 1980. It consolidates the original Sale of Goods Act 1893 (SGA 1893) and is an Act of the Parliament of the United Kingdom which regulates English contract law and UK commercial law in respect of goods sold and bought. Since 1979, there have been numerous minor statutory amendments and additions to the Act. The Act was enacted to govern contracts in which the ownership of goods is transferred to another party for a monetary consideration, better said, a sale of goods contract.[9]

Considering the above information and as far as the open price term in the law of England is concerned, it is understood that the history of the legislation dates back to 1888, even though the historical epoch in which such rules and developments have arisen and later practised in the courts, dates back to around 200 years ago from when the evolutions in England started. As Britain was at the centre of the changes and improvements in trading methods witnessed in the region after the Industrial Revolution and the growth in international trade, the need for legislation was felt more and earlier than other countries. That led to the enactment of the SGA 1893 in which an open price term was recognised by the legislators. Although the open price rules in the SGA 1893 and its successor SGA 1979 contain some debatable provisions that may be considered to warrant amendment, on the basis of the scholarly ideas considered above, the SGA 1893 is generally recognised to be a well-written Code with regard to that era. Such recognition provided reasonable motivation and justification for the selection of the SGA 1979 as one of the foci of study in this Article.

Another matter to be considered in relation to the SGA 1979 is the impact of the European Union (EU) directives on the domestic rules of its Member States. It is important to consider this issue in order to determine whether any of the EU directives has affected the SGA 1979. As to the question whether any EU directive has impacted sections 8 and 9 of the SGA 1979, Collins[10] states: "Not yet. But there is a proposed European Regulation on Consumer Sales (though this has not been agreed yet, and may never be)." Thus, the above sections of the SGA 1979 have not been affected by any of the EU directives and they remain enforceable until the present day.

OPEN PRICE RULE IN THE SALE OF GOODS ACT 1979

The aim of this part is to present the imposed rule as to open price term in the SGA 1979 and the issues arisen from it. Sections 8 and 9 of the English SGA 1979[11] impose the same rule and the same concept and idea as sections 8 and 9 of the original Act of 1893. In sections 8 and 9 of the SGA 1979, it is expressed that:

> 8- Ascertainment of price.
> (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.
> (2) Where the price is not determined as mentioned in sub-section (1) above the buyer must pay a reasonable price.
> (3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.
> 9- Agreement to sell at valuation.
> (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided, but if the goods or any part of them have been delivered to and appropriated by the buyer, he must pay a reasonable price for them.
> (2) Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault.

Existence of a provision such as the above is a perfect sign for an evolution from the traditional rule to a more flexible one. The United Kingdom and the United States (except for the State of Louisiana) both embrace the common law system. Commentators[12] believe that the concept of open price in modern transactions has marked a significant departure from the common law because in common law, price is a vital feature for all sale contracts. Therefore, under traditional common law, open price term contracts would have been invalidated as 'agreements to agree' and held not to be legally binding. Yet, such provisions are likely to be a base for debates and arguments. As Atiyah[13] explains, one issue is that if nothing is said as to price, does it mean that the parties are still at the stage of negotiations and have not yet come to a conclusion or is it possible to have a binding contract although the price is not settled?

To draft a comprehensive rule that does not cause contradictory interpretations is one of the most important concerns in drafting an article. A rule that contains ambiguity or is not clear and comprehensive enough will result in debates and disputes. The way in which SGA 1979 has mentioned the open price term in section 8 has caused different court decisions because of lack of a clear definition of open price. In other words, although the SGA 1979 has mentioned some conditions in which the contract is called an open price contract and is considered lawful, the mentioned methods are not comprehensive. For example, it has not mentioned the possibility of leaving the price open without mentioning any method for determination of it in future. As Atiyah[14] queries, "when section 8 says that the price can be 'left to be fixed in a manner agreed,' does this exclude the possibility that 'the manner' may simply require the parties to agree on the price?" He maintains that, on this question, different views exist, each of which has led to different results and judicial decisions, even when the situations involved are

similar. One view is that the parties cannot make a binding sale contract at a price 'to be agreed'. This is because in such circumstances, the court will choose a reasonable price for the contract, whereas the intention of the parties was to fix the price through their own future agreement. Thus, the result is that, in practice, a sale contract in which the price is left open to be agreed, is not a binding contract. In fact, as Tarrant[15] notes, in such circumstances, usually, at least one of the parties seeks to enforce the initial agreement. As Howard[16] argues, in cases where the contracting parties intend to be bound by what they have created and the court fills the existing incompleteness of such an agreement, it is not as if the court is making a contract for the parties; it is "merely enabling them to carry out their own intentions."[17]

As to the suggested price by the section, usually, what comes to mind with regard to the term, 'reasonable price' is the 'market price.' However, does the market price always reflect the most fair and "reasonable" price of the goods? Prosser[18] answers this question by referring to some cases:

> In *Kountz v Kirkpatrick*,[19] the court said that an unnaturally inflated market price was not always evidence of actual value, and that the jury could determine from the market price before and after the particular date, and from other sources of information, the "actual market value." In *Lovejoy v Michels*,[20] Champlin, J. said that where there was no fair market value of manufactured goods, because the market was controlled, evidence to establish reasonable value must necessarily be the cost of production, including the cost of labor and materials and a reasonable profit. Where there was no market for railway bonds because there were no sales, evidence of the condition of the railroad was held admissible.

It is also suggested by Benjamin[21] that the provision in section 8, to the effect that where the price is not determined, the buyer must pay a reasonable price and what is a reasonable price is a question of fact dependent on each case, was also applied as a rule at common law. In addition to this, the parties might agree to choose the market price as the contractual price of the goods without specifying any time and place. In this situation, the court may hold that the market price is the price of the market at the time and place of delivery, if no contrary provision or evidence for any contrary intention exists in the contract.[22]

As to the section 9(1), Atiyah[23] explains that according to this section, two different situations must be distinguished from each other. The first possibility is where the parties have agreed to a sale at a valuation without naming any third party as the valuer. As to the case in which the parties have agreed to appoint a person to evaluate the goods but they fail to do so, the agreement is considered to be an agreement for sale at a reasonable price. In fact, in such a case, the contract will be governed under section 8 as a contract for sale at a reasonable price. Atiyah continues that the second situation is where the agreement for sale is formed at a valuation to be made by a specified third party. He states that this is the point when section 9 is applied. However, this is an unjustifiable rule as a third party can terminate an existing contract between the parties.

MAIN POINTS FOR CONSIDERATION

Following the above studied points, certain matters should be extracted from the regulation. the first point and question to be answered is whether or not SGA 1979 has accepted the open price term in sale contracts. As to this question, the answer could be easily given by referring to the first sentence of section 8 of the SGA 1979. As to the definition of the open price itself, SGA 1979 has missed to name some of the possibilities of validly concluding a sale contract. This issue will be discussed more clearly in the next part of the Article. As mentioned earlier, based on the SGA 1979, this is the main reason for different court decisions.

Another issue would be the imposed price by the codification in case that an open price contract is brought to the court to decide on the contractual price. As to this matter, the provisions in the SGA 1979 seem to be practical and acceptable as it has suggested the price at the time of 'delivery'. This is different from the position of some other codifications. For example, United Nations Convention of the International Sale of Goods 1980 (CISG) has provided "the price generally charged at the time of the 'conclusion' of the contract"[24]. However, based on the main reason behind the creation of open price term, to impose the price of the time of 'conclusion' of the contract is not the best suggestion.

The next subject to be considered here is if SGA 1979 has explained what a 'price' or a 'reasonable price' could be. As to this issue, SGA 1979 provides a brief idea. It provides that a reasonable price 'is a question of fact dependent on the circumstances of each particular case'. Although reasonableness is a general and comparative concept not to be categorically defined; however, this much of explanation given by the SGA 1979 seems to be helpful for judges.

The issue of valuation of the price by a third party is a matter that has been separated from other methods of price valuation. The provision imposed by the SGA 1979 on this issue is a debatable provision. The last matter to be mentioned in this part is the situation in which the price becomes impossible to be fixed due to the fault of one party. As to this considerable issue, although SGA 1979 has apparently considered this matter, it contains shortcomings as well. In fact, the only considered situation is the third party valuation. Other possible methods are not included.

One of the best ways to amend an existing rule or to draft a new rule is to determine the positive and negative points of the regulation through a correct path. In this way, the best guideline to initiate or amend any regulation will be provided. Thus, initially in this part and more comprehensively in the next part the same steps have been taken in order to enable this Article to reach its final goal which is highlighting the negative points in a regulation and therefore the necessity for amendments. Table 1. below is the result of the above study in brief.

TABLE 1. Main points in SGA 1979 on open price term

Salient features	SGA
Acceptance of open-price Term	Yes
Suggested price	A reasonable price; What is a reasonable price is a question of fact dependent on the circumstances of each particular case.
Significant Advantage	• Has not directly pointed to the intention of the parties • Offers a general explanation of what a reasonable price is
Significant Disadvantage	• Does not provide a comprehensive explanation of different forms of an open price term • The will of a third party can easily make the contract avoided • The provision in section 9(2) concerns other parts of law. It has not mentioned about what would happen to the contract in case of fault of one party • As to the issue of fault of one party, the only considered situation is the third party valuation. Other methods are not included

To sum up the studied issues under last two sub-headings, it should be said that the codification that precedes the SGA 1979, is the SGA 1893. However, in SGA 1979, no amendments were imposed on the former open price rules in the SGA 1893. Based on the SGA 1979, open price provisions are provided in sections 8 and 9. As to the substance, although these sections have considered different aspects of the issue, they have considerable defects and shortcomings as well. Although SGA 1979 has recognised the open price term and has addressed the issues relating to the valuation of a third party and the fault of one party, it also contains considerable shortcomings. Furthermore, the circumstances in which a price is called an open price are not described comprehensively. The valuation of a third party under that Act is also debatable as the relevant section empowers a third person to cancel a contract between another two parties. As to the matter of fault on the part of one party, the Act fails to impose any provision as to the effect of the fault of that party on the contract and its continuation. In addition, Collins opines that none of the derivatives of the European Union have affected sections 8 and 9 of the SGA 1979.

DISCUSSION ON IMPORTANT POINTS OF SECTIONS 8 AND 9 OF THE SGA 1979

As the aim of this article is to review SGA 1979 rules on open price term, five important aspects of open price, namely, open price definition; reasonable price; third person valuation; and impossibility of price fixing due to fault of one party, are the focus of discussion hereunder.

A. ‘Open Price’ Definition

The advantage of considering this issue will be to ensure a higher possibility for the validity of contracts made between the parties. In this way, the first and main question is if the parties fix the price implicitly or agree on a method for determination of the price and later due to any circumstances it becomes impossible to fix the price, then, will the contract be considered as a valid sale contract with an open price term in it? Will the parties still be ‘considered to have impliedly made reference to the alternative price imposed by the law, or will this situation fall outside the provisions in the SGA 1979 which results in the nullification of the contract?

The provision in the SGA 1979 states that, “where the price is not determined as mentioned in sub-section (1) above, the buyer must pay a reasonable price” (section 8(2)). Similarly, in this codified set of rules, nothing is mentioned about cases where the parties have agreed on the special situations described in sub-section (1), but due to some circumstances, it becomes impossible to determine the price in the manner agreed. Through some examples, the importance of ratification of a comprehensive set of rules to govern the issues identified above is highlighted hereunder.

Considering section 8 of the SGA 1979, the failure to indicate whether the parties can leave the contractual price completely open, to be fixed through a future agreement, creates a possibility for disagreements, as well as conflicting judicial decisions. As Atiyah[25] queries, “when section 8 says that the price may be ‘left to be fixed in a manner agreed’, does this exclude the possibility that ‘the manner’ may simply require the parties to agree on the price?” He continues that, on this question, different views exist, each of which has led to different results and judicial decisions, even when the situations involved are similar.

B. Reasonable Price

The time of delivery, or time of execution of the contract, can be seen in some codifications. In fact, the matter of timing will appear to be essential by considering the ‘volatile price fluctuations’ or the ‘continuous inflationary economies’.[26] Section 8 of the SGA 1979 has not entered into this issue and has just imposed that the price to be fixed is supposed to be a ‘reasonable price’ and apparently has given the court the authority to chose. However, which of these laws are more practical and reasonable? This question should be answered based on what the main reason for creation of an open price term is. In the coming parts of this article, the above question will be answered considering the reasons of creation of open price term.

To avoid any risk caused by price fluctuations is the reason why parties to a sale contract may choose to use an open-price term.[27] This is the main reason why they are usually unwilling to adopt, in their agreement, the price prevailing at the time of the contracts’ formation. They prefer not to agree on the price until the goods are ready and are delivered. In that case, whatever the reasonable price of the goods is at the time of

their delivery will be the contractual price. The SGA 1979 is silent as to the above issue. It merely states that the price will be a 'reasonable price.' That Act may, nonetheless, have its advantage as it provides a brief explanation of the meaning of 'reasonable price.' It states that, "what is a reasonable price is a question of fact dependent on the circumstances of each particular case."[28] In short, it seems to be proper to give a brief description of the suggested price in order to make it clearer what the legislator means by the provision. Bearing in mind the fact that 'reasonableness' is a relative matter that can be different in each situation, one cannot expect that an exact and unchangeable definition on what a 'reasonable price' is, should be in the written provisions.

C. Third Person Valuation

As to this issue, SGA 1979 has imposed an unusual provision that seems to be unfair. According to the SGA 1979 if the third person cannot or does not make the valuation, the agreement is avoided.[29] The SGA 1979 provision in section 9(1) seems truly unjustifiable. In this provision, the legislature has surprisingly donated the power to invalidate a contract that has been validly concluded between the contractors, to a third person. In this section, it is expressed that 'where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided'. Although the provision continues by providing that 'but if the goods or any part of them have been delivered to and appropriated by the buyer he must pay a reasonable price for them', yet, it does not cover the unfair imposed provision by it at all. In fact, this provision has weakened the power of the parties of the contract and has given the power of termination of it to a third person.

D. Impossibility of Price Fixation Due to Fault of One Party

This is a positive point for a regulation if it considers different aspects and consequences of the imposed provision. As to the issue of sale contracts with an open price term, the issue of fault of one party through which the price determination has failed is a considerable subject. Fault of one party may have two reasons; one is the mistake of the party that has happened by no ill will; and the other reason could be the party's bad intention.

What the SGA 1979 has provided for is out of expectation. This codification has considered the matter of fault of one party; however, its odd point is that the provision has imposed no rule to govern and clarify the situation of the contract after the fault of the party and impossibility of specification of the price through the agreed method. In fact, the effect of the fault on the continuity of the contract itself is the missing element in this section. Instead, section 9 provides that "where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault".

The provision that is supposed to be imposed in this part is whether the contract will be cancelled due to the fault of one party or a reasonable price will be determined or any other suggestion that clarifies the future situation of the contract. In fact, the

possibility of maintaining an action for damages against the party at fault is a separate issue and an undeniable right. Nonetheless, the section has not clarified what will happen to a contract in which the fault of one party has caused the open price failed to be fixed. The matter of claim for damages is another issue; it is in fact the right of the party not at fault to claim for any probable damages that he has suffered from due to the fault of the other party. To maintain an action for damages is a right that the party not at fault can perform either if the contract remains enforceable by fixing a reasonable price or in case of cancellation of it. Thus, SGA 1979 has not determined what will happen to the contract in which the fault of one party has disturbed the agreed process of price specification. The issue of validity and enforceability of the contract and the possible options that the party not at fault may have are the missing issues in this part of section 9.

CONCLUSION

Intertwined with contemporary legal issues are the imperfect and unamended regulations in which the reason for many court cases and conflicts between people might be hidden. The provisions for open price term in sale of goods contracts in the United Kingdom Sale of Goods Act 1979 (SGA 1979) is one of such regulations. This article has discussed a starting point for the reconsideration of the said rules. Such reconsideration will entail a further elaboration of some fundamental aspects of open price term, namely, 'open price' definition, reasonable price, third person valuation and impossibility of price fixation due to fault of one party. In fact, updating legislations that provide a better, easier and more efficient way of living is an unignorable task of the law. Unfortunately, in some cases, rules contain incomplete, old and defective provisions. As such, any improvements to existing legislation of each country should be the most highlighted concern of legislators and authorities.

ACKNOWLEDGEMENT

This article contains the findings of the research project FRGS/2/2014/SSI10/UKM/02/1.

NOTES

[1] Akrami, F., Yusoff, S. S. A. & Isa, S. M. 2014. A Comparative Review of Open Price Term in Uniform Commercial Code and the Sale of Goods Act 1979. The Social Sciences 9(6): 442-449.
[2] M. Noori, 'Sale contract with an open price from Shari'ah point of view', p 35.
[3] J. Beatson, *Anson's Law of Contract*, 27th Edn, Oxford University Press, New York, 1998, p1.
[4] G. H. Treitel, *The Law of Contract*, 11th Edn, Sweet & Maxwell, London, 2003, p 10.
[5] Anon, English and Scotch Law. Sale Act. Reviewed work(s): Harvard Law Review, 8th Vol, The Harvard Law Review Association, United States, 1894, p 54.
[6] R. J. Christie, 'Sale of Goods Act (1893) and recent cases' (1897) 9 (3) *Juridical Review* 275, p 279.
[7] R. J. Christie, 'Sale of Goods Act (1893) and recent cases', p 276.
[8] W. J. M. Ricquier, 'United Kingdom Sale of Goods Act 1979 and its applicability in Singapore [comments]' (1980) 22 (1) *Malayan Law Review* 145, p 146.

[9] D. P. Flambouras, 'Amendments in the Sale of Goods Act 1979 following the implementation of directive 1999/44/EC in the United Kingdom' (2011) 64 *Revue Hellenique de Droit International* 463, p 464.
[10] Statement by Hugh Collins, the Vinerian Professor of English Law at the University of Oxford, (Personal Communication 4 November 2013).
[11] Long Title: "An Act to consolidate the law relating to the Sale of Goods".
[12] D. C. Berry et al, 'Open price agreements: Good faith pricing in the franchise relationship', p 45.
[13] P. S. Atiyah et al, *The Sale of Goods*, 9th Edn, Pitman, London, 2010, p 28.
[14] P. S. Atiyah et al, *The Sale of Goods*, p 28.
[15] J. Tarrant, 'Preliminary agreements' (2006) 3 *University of New England Law Journa*l 151, p 158.
[16] M. Howard, 'Contracts – Sale of goods – Problems of "Uncertainty"' (1973) 51 *Canadian Bar Review* 668, pp 668-669.
[17] M. Howard, 'Contracts – Sale of goods– Problems of "Uncertainty"', p 675; Also: M. Howard, 'Problems of indefiniteness in the formation of contracts for the sale of goods' (1974) 4 (3) *University of Tasmania Law Review* 258, p 261.
[18] W. L. Prosser, 'Open price in contracts for the sale of goods', p 742
[19] (1872) 72 Pa. St. 376, 13 Am. Rep. 687.
[20] (1891) 88 Mich. 15, 49 N. W. 901, 13 L. R. A. 770.
[21] J. Benjamin et al (eds), Benjamin's Sale of Goods, 8th Edn, Sweet & Maxwell, London, 2010, p 143.
[22] W. L. Prosser, 'Open price in contracts for the sale of goods', pp 753-754.
[23] P. S. Atiyah et al, *The Sale of Goods*, p 31.
[24] Article 55
[25] Patrick S. Atiyah, John Adams, and Hector Macqueen, *The Sale of Goods*, Longman, London, 2010, p 28.
[26] Daniel E. Murray, 'The 'Open Price' Sale of Goods Contract in a Worldwide Setting' (1984) 89 *Franchise Law Journal* 491 at 493.
[27] Franklin R. Edwards and Ma W. Cindy, *Futures & Options*, Mc. Graw Hill, Singapore, 1992, pp 5-6.
[28] Section 8 (3) of *SGA 1979*
[29] Section 9 (1) of *SGA 1979*

REFERENCES

Akrami, F., Yusoff, S. S. A. & Isa, S. M. 2014. A Comparative Review of Open Price Term in Uniform Commercial Code and the Sale of Goods Act 1979. *The Social Sciences* 9(6): 442-449.

Noori, S. M. 2000. Sale contract with open price according to the Islam rules. *Nameh Mofid* 22: 33-70.

Beatson, J. 1998. *Anson's Law of Contract*. 27th New York: Oxford University Press.

Treitel, G. H. 2003. *The Law of Contract*. 11. London: Sweet & Maxwell.

Anon. 1894. *English and Scotch Law. Sale Act. Reviewed Work(S); Harvard Law Review*. United States: The Harvard Law Review Association.

Christie, R. J. 1897. Sale of Goods Act (1893) and recent cases. *Juridical Review* 9(3): 275-290.

Ricquier, W. J. M. 1980. United Kingdom Sale of Goods Act 1979 and its applicability in Singapore [Comments]. *Malayan Law Review* 22(1): 145-148.

Flambouras, D. P. 2011. Amendments in the Sale of Goods Act 1979 following the implementation of directive 1999/44/Ec in the United Kingdom. *Revue Hellenique de Droit International* 64: 463-476.

Berry, D. C., Byers, D. M. & Oates, D. J. 2007. Open price agreements: Good faith pricing in the franchise relationships. *Franchise Law Journal* 147: 45-56.
Atiyah, P. S., Adams, J. & Macqueen, H. 2010. *The Sale of Goods*. 12th Edition. London: Pitman.
Tarrant, J. 2006. Preliminary agreements. *University of New England Law Journal* 3: 151-186.
Howard, M. 1973. Contracts - sale - problems of "uncertainty". *Canadian Bar Review* 51: 668-679.
Prosser, W. L. 1932. Open price in contracts for the sale of goods. *Minnesota Law Review* 16(7): 733-790.
Murray, D. E. 1984. The 'open price' sale of goods contract in a worldwide setting *Franchise Law Journal* 89(9): 491-500.
Edwards, F. R. & W, M. C. 1992. *Futures & Options*. Singapore: Mc. Graw Hill.

Dr. Farzaneh Akrami
Islamic Azad University
Tehran
Iran
Email: farzaneh.akrami@yahoo.com

Associate Professor Dr. Sakina Shaik Ahmad Yusoff
Faculty of Law
Universiti Kebangsaan Malaysia
43600 UKM Bangi
Selangor
Email: kinasay@ukm.edu.my

Associate Professor Dr. Suzanna Mohamed Isa
Faculty of Law
Universiti Kebangsaan Malaysia
43600 UKM Bangi
Selangor
Email: zie@ukm.edu.my