**Lecture 3 Supply of Goods and Services: Statutory Modifications of Contract Law**

A contract is made up of terms offered by one party and accepted by another

These terms may be expressed or implied

**Implied Terms**

**Statute: The Sale of Goods Act 1979**

Safeguards are put in place by Parliament in order to protect the consumer by implying certain terms concerning standard and quality of goods in most sale of goods contracts.

The seller is in breach if the goods do not meet the standards, regardless if the seller gives any undertakings expressly to the buyer.

**Trade Custom and Practice**

It is customary for certain practices to prevail in the contracts or for risk to be allocated between the parties

**Terms of a contract fall into three categories:**

* Conditions
* Warranties
* Innominate terms

**CONDITIONS**

Form the main structure of the contract

Breach of a condition gives the injured party the right to free itself from any further contractual duties and claim compensation

**WARRANTIES**

* More minor terms, ancillary to the contract rather than crucial to it
* Breach of a warranty does not entitle the injured party to refuse to perform its side of the contract

The party is entitled to compensation only foe consequential loss (loss resulting from the breach)

**INNOMINATE TERMS**

* Terms that are not immediately identifiable as either a condition or a warranty but are worded broadly to cover a variety of possible breaches some more serious than others.
* The Court would then decide whether the terms are a condition or a warranty

These terms can be sometimes ambiguous; consequently the Court of Appeals reached a decision indicating the criteria for interpreting the status of ignominate terms (Cehave NV v Bremer Handelgesellschaft (The Hansa Nord) (1975, CA)):

**Criteria for interpreting the Status of an Innominate Term**

* The expressed intention of the Parties is paramount: if the contract specifies that a particular breach will entitle a party to opt out of a contract that is conclusive
* The use of words “condition” and “warranty” to describe the term is of evidential value only, if it is not conclusive in itself
* If a party has a statutory right to terminate a contract if a term is breached then the term is a condition
* Consistently implied commercial practice will determine the status of a term
* If the damage resulting from the breach is so extensive that it substantially deprives the innocent party of the benefits bargained for, that party may repudiate their obligations. The damage test is used here as a last resort.

**EXCLUSION OF LIABILITY**

The terms by which a party seeks to limit financial claims against it in the event of loss or damage to the other party, or to exclude itself from legal liability altogether.

It can be through a **Limitation** clause or an **Exclusion** clause

Before an exclusion clause can be effective it must satisfy the following criteria:

* It must be incorporated within the contract
* It must be clear and unambiguous
* It must not be rendered ineffective by statute

**Incorporation**

In order for a term to be incorporated in a contract, the party to be bound by the contract must have sufficient notice of it. Two crucial factors are essential

* **Timing:** The terms including liability must be notified to the other party prior to that party’s acceptance (could be a notice sign displayed or a contractual document. Should be clearly evident)
* **Sufficiency**: a clause will not be binding unless the offeror has taken reasonable steps to draw it to the customer’s attention. The sufficiency rule does not cover signed documents. Customers are expected to have notice of the contents of all documents they sign, if read or not.

**Ambiguity of an Exclusion Clause**

An exclusion clause is not effective if the wordings are unclear.

Its effects can be considered to be against the party who offered it (*contra proferentem*)

Where a breach of contract is so serious that it defeats the whole purpose of the contract, the courts may be prepared to allow an exclusion clause to protect the party in breach

**Statutory Controls on Exclusion Clauses**

**The Unfair Contract Terms Act (1977)**

It applies almost exclusively to contracts giving rise to business liability. It is primarily concerned with buyers and sellers who seek to limit or exclude liability incurred in the course of business

**Substance of the Act**

* Liability cannot be excluded if death or personal injury is caused by negligence
* Negligence liability may be excluded if this is reasonable in the circumstances (not effective against a claim by a third party)

**Breach of Contract**

* Liability for breach of contract may be excluded where a party enters into a contract made on the party’s standard terms (when no negotiation was possible)
* When a party deals as a consumer, unless the exclusion is reasonable

**Implied Terms in Contracts for Sale/ Hire Purchase/ Supply/ Hire of Goods (ss6-7)**

Certain conditions are implied under the Sale of Goods Act 1979, Supply of Goods (Implied Terms) Act 1973 and the Supply of Goods and Services Act 1982 to protect a buyer or hirer of goods.

The supplier promises implicitly that it has title to the goods (rights of ownership) and is authorised to transfer it and that:

1. The goods match their description, and
2. Are of satisfactory quality (in sales by way of business) and
3. Are suitable for purpose; and
4. Correspond to any sample which has been provided

**The Unfair Terms in Consumer Contracts Regulations**

These are regulations applying to unfair terms in a contract between a consumer and a seller or supplier.

**Unfair terms include terms which:**

1. Permit a seller unfairly to retain a deposit or to impose a penalty on the consumer in the event of non-performance;
2. Bind a consumer who has not had sufficient time to study the term’s implications before entering the contract;
3. Permit the seller unilaterally to alter the terms of the contract or the characteristics of the relevant goods or services;
4. Oblige consumers to perform all their obligations, while not placing a reciprocal responsibility on the other party

A Comparison of UCTA 1977 and the Consumer Contracts Regulations 1999

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| UCTA 1977 | The Regulations 1999 |
| **Scope**  Renders ineffective certain types of exclusion clauses in a contract or non-contractual notice if the exclusion was issued in the course of business  **Protected Parties**  Not necessarily consumers or contracting parties  **Extent of Protection**  Some exclusions are automatically ineffective: example negligence leading to death or personal injury, breach of standard terms contract, or any non-consumer contract  **Burden of Proof**  On the seller  The seller must prove reasonableness where relevant | Scope  Renders any non-negotiable term in a relevant contract voidable by a consumer buyer, if the seller was acting in the course of business  **Protected Parties**  Consumers only: must be contracting parties  **Extent of Protection**  An unfair term is one which does not fulfil the requirement of good faith by causing a significant imbalance of power between the parties to the detriment of the consumer  **Burden of Proof**  On the Buyer  The consumer must prove that the term was unfair |

**SALE OF GOODS CONTRACT**

A contract by which the seller transfers or agrees to transfer the property in goods to the buyer for money consideration called the price. It includes:

* A contract of Sale
* An agreement to sell

**A Contract of Sale**

* The title of ownership of the goods is transferred immediately upon the contract being made
* Contract of sale exists only if the goods already exist and are in possession of the seller and allocated to the contract;
* They must be specific goods which have been identified and agreed upon at the time of sale

**An Agreement to sell**

A binding contract which will become a contract of sale once the goods exist and are specific in the eyes of the law so the ownership of them is capable of being transferred

Does the buyer obtain ownership of the goods immediately upon agreeing to buy them?

No not until the goods have been ascertained because:

Either

* The transaction concerns ‘future goods’, i.e. goods that have not yet been manufactured or acquired by the seller or
* The goods have not yet been made specific.

**Price**

The consideration provided by the buyer must be money, but the actual sum need not be specific in the agreement to sell (covered under s 2(1) of the SGA1979)

**Goods**

* Goods according to the SGA s 2(1) includes all personal property (chattels) capable of physical possession and control, but not property interest like shares in a company or intellectual property such as a trademark or copyright.
* Land or real property is not goods as its transfer are governed by an entirely distinct set of rules. Crops on the land however are covered under this definition.

**Not all contracts** involving goods come under the SGA 1979. Some not covered are as follows:

**Goods and Services Contracts**

* Here the sale of goods is incidental to the provision of the service. Examples are getting your car serviced or double glazing your windows
* Regulated by the Supply of Goods and Services Act 1982

**Hire-Purchase Contracts**

* The person supplied with the goods is in the eyes of the law, the hirer not the buyer.
* The contract gives the hirer possession of the goods but not ownership
* The hirer is entitled to exercise an option to buy the goods, but only when all the instalments have been paid
* The hirer becomes the owner of the goods if and when the option is exercised
* These contracts are regulated by the Consumer Credit Act 1974 and the Supply of Goods (Implied Terms) Act 1973

**Hire Contracts**

* Possession not ownership of the relevant goods passes to the hirer
* Regulated by the Supply of Goods and Services Act 1982

**Contracts of Barter**

* In this situation the parties exchange goods or services; even if goods are involved it is not a sale of goods contract as no money changed hands
* Governed by the Supply of Goods and Services Act 1982
* A part-exchange contract is generally treated as a sale of goods contract under which a buyer is given the option to tender goods in part satisfaction of the contract price

**A Free Gift Linked to a Sale Contract**

This transaction is likely regulated by the Supply of Goods and Services Act 1982 as it is not regulated elsewhere under which title to goods will pass

**Goods Supplied in Return for Trading Stamps**

Regulated by the Trading Stamps Act 1964

In all of the Contracts we have stated here, all the buyers and the hirers enjoy similar protection to the buyer in a sale of goods contract if the goods are defective.

**THE TERMS IMPLIED BY THE SALE OF GOODS CONTRACT 1979**

Under ss 12-15 of the SGA 1979, a seller automatically assumes certain obligations to the buyer as a result of terms which are automatically implied in every contract regulated by the Act.

* The seller is required by statute to promise that:
* The seller has lawful authority to transfer ownership of the goods (s 12);
* The goods will match their description (s 13);
* The goods will be of satisfactory quality (s 14 (2));
* The goods will be suitable for any purpose specified by the buyer (s 14(3));
* The goods will match any sample shown to the buyer prior to the contract being made (s 15).

These terms are applicable to all sales of new or second hand goods, apart from terms 3 and 4 which apply only to sellers who are acting in the course of a business.

If there is a breach by the seller of any of these terms, the buyer is put in a strong position because:

1. **These terms all impose strict liability on the seller.** The seller is liable for breach of contract without the buyer having to prove that the seller is at fault. The seller cannot claim to be unaware of the condition of the alleged defect of the goods,
2. **All the terms are defined by the Act as being conditions of the contract**. Breach of a condition enables victims to refuse further performance of their contractual obligation and enables them to recover any money or other property which they have tendered.

**Title: s12**

* In the contract of sale, the seller implicitly promises that he or she has the right to sell the goods (transfer the title to the buyer); or in the case of an agreement to sell the seller implicitly promises that he or she will have such a right at the time when the property is to pass.
* The seller can only fulfil this promise if indeed he or she has the ownership him or herself, or is acting with the real owner’s permission at the time of the transfer

**Description: s 13**

Most goods are sold by **description** and the seller is in breach of contract if this is inaccurate.

* **The form of the description must be accurate**. (If for example you advertise “leather bags for sale”, the bags should be leather)
* Where the sale is by **sample as well as description**, the seller will be in breach of s 13, if even the goods math the sample but they do not match the description.
* **Relationship of description to quality:** the seller’s obligation concerning quality and description may overlap. Example Beale v Taylor (1967, CA)
* Description may be a completely separate issue from quality. Goods can be rejected on the ground of incorrect description even though they are not defective in any way
* **Liability depends on reliance** if the buyer did not know of the description or did not rely upon it (having checked it with a third party). This sale is not by description but by reliance. Examination of goods does not preclude reliance by the customer as the average customer does not have sufficient knowledge to spot that the description is inaccurate. They rely on the seller’s description.

**The Goods Must Be Of Satisfactory Quality: s 14(2)**

Goods must meet the standard which a reasonable person would regard as satisfactory, taking into account all relevant circumstances, including price, and any description attached to the goods (s 14 (2A)).

The Courts objectively assessed the quality of the goods with reference to the expectations of the average buyer and gives examples of some factors which might be ‘relevant circumstances’

* Whether the goods are fit for the purposes of which such goods are normally used;
* Appearance and finish
* Freedom from defects;
* Safety and durability

Regulation 2 of the Sale of Goods to Consumers Regulations 2002 amended s 14 (2) to give additional protection to consumers. The Act now states (s 14(2D) that the ‘relevant circumstances’ include public statements about the product by the ‘producer or his representatives’ such as advertising or labelling.

The seller can only avoid liability for the statement if he can prove that he or she did not know or was not reasonably aware of the statement or, before the relevant contract was made, the seller (s 12 (2E)) had publically corrected or withdrawn the statement.

**How Liability arises under s 14(2)**

Goods which are physically dangerous or do not work at all are clearly not of satisfactory quality, whether they are cheap or expensive, reduced in a sale, new or second hand.

However

Second hand goods will not be as good as new goods and cheaper goods will not have the same finish as a more expensive one

* Section 14(2) protects the buyer against inherent defects of quality. The buyer merely has to prove the defect, not how it happened or that the seller was in any way at fault.
* Liability may arise from goods which are of satisfactory quality in themselves but are contaminated by foreign bodies, since these impurities prevent normal use

**Limits to liability under s 14(2)**

* Section 14 applies only where the sale arises **in the course of business**, not where sale is by a private seller
* The seller is not liable if the **buyer knows about the defects** (s 14(2C))

**Pre-sale notice could be acquired in two ways:**

1. **Notice of the defects may be given by the seller**. It must explicitly describe the defects ( dents in the can; instruction manual missing)
2. **Inspection by the buyer**. Buyers do not have to inspect a good, but if they do they cannot claim that the seller is liable for any defects which should have been reasonably evident, given the level of inspection to which they subjected the goods.

**There are other cases where there is a limit to liability**

* If the buyer **does not follow the instructions supplied** with the goods, the seller is not liable for any resulting damage.
* The seller is also not liable for the **buyer’s mistreatment** of the goods
* If the buyer does not take precautions which would normally be employed when using the relevant type of goods
* The buyer does not take ordinary precautions if no special processes are spelt out by the seller

**Goods Must be Suitable for their Purpose: s 14(3)**

* Goods are sold in the course of business must be reasonably suitable for any purpose for which such goods are normally sold.
* Must also fulfil any special purpose which the seller claim for them, provided that the buyer reasonably placed purpose on the seller’s skill.

**Liability arises for the seller only if it is shown that the buyer placed reliance on the seller whether explicitly or implicitly**

**Implicit Reliance**

When the buyer who is not knowledgeable inspects the goods to check the suitability, and does not asks any questions about them but relies implicitly on the seller providing a suitable good.

* **The breach occurs** if the good turns out to be unsuitable for the usual purpose for such goods, or for any particular uses specified by the buyer.

**Explicit Reliance**

When the buyer questions the seller about what the goods may be used for, or asks the seller to recommend the goods which will best suit the buyer’s purposes.

**The Goods Must Correspond With Their Sample: s15**

It is an implied condition in a contract for sale by sample that:

* The bulk will correspond with the sample in quality
* The goods will be free from any defect rendering them unsatisfactory which would not be apparent on reasonable examination of the sample.

Generally a sale by sample will also be a sale by description so these requirements need to be studied in conjunction with those concerning s 13

**The Right to Reject the Goods**

* Breach of the terms implied by the sale of goods is a breach of condition, which means that the buyers are entitled to reject the goods and recover the price from the seller.
* Buyers however have a limited time to exercise that right. If they delay too long, it can be deemed to be an acceptance regardless of the defect.
* Once acceptance has taken place, the breach becomes one of warranty rather than of condition

**IMPLIED CONDITIONS IN OTHER ACTS**

The Supply of Goods and Services Act 1982

Conditions under the Supply of Goods and Services Act 1982 apply to all goods supplied under a contract of hire or a contract for goods and services

* Title: s 2
* Description: s 3
* Satisfactory quality and suitability for purpose: s 4
* Sample: s 5

**The Following Terms are implied in all contracts involving a supply of services:**

* The work will be performed with all reasonable care and skills: s 13
* The work will be carried out within a reasonable time: s 14
* The price charged will be reasonable: s 15

In the 1982 Act, it specifies that these are terms only; therefore are not designated as conditions or warranties. Their status depends on what if anything is agreed in the contract. They are innominate terms.

**Supply of Goods (Implied Terms) Act 1973**

* The same conditions concerning goods are implied in hire-purchase contracts.
* The Sale and Supply of Goods to Consumers Regulations 2002 as amended now give the same protection to the buyer regarding public statements as that enjoyed by the buyer under s 14(2D) of the sale of Goods Act 1979 (Public statement about the product by the producer or his representative such as advertising or labelling)

**Unfair Contract Terms Act 1977**

Liability for breach of implied terms as to **title** in a Sale of Goods Contract, or a supply of Goods and Services Contract or a Hire –Purchase Contract cannot be excluded or limited at all.

Liability for breach of implied terms concerning description, quality and purpose cannot be excluded in any consumer sale, but may be excluded in sale or hire to a person buying inthe course of a business if this is reasonable.

**Unfair Terms in Consumer Contracts Regulations 1999**

The terms are relevant to all the above contracts if the buyer is a consumer and the seller a business