

Business Law (6th edn)

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p. 201 9. Statutory regulation of contracts

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Abstract

This chapter studies the features of legally binding contracts by examining the manner in which the terms of a contract are regulated through statutory intervention. Such legislative measures have come about as a response to the unequal bargaining positions of consumers as contracting parties in business contracts, and the idea that laissez-faire can be contrary to public policy and fairness, for example with certain exclusion clauses. Some examples include statutes such as the Consumer Rights Act 2015 and the Sale of Goods Act 1979 that imply terms into contracts, and the Unfair Contract Terms Act 1977 that regulates the parties' use of exclusion clauses. This protects the weaker party to a contract from exploitation and provides minimum rights that may not be waived.

Keywords: statutory intervention, legislative measures, unequal bargaining positions, laissez-faire, exclusion clauses, Sale of Goods Act 1979, Unfair Contract Terms Act 1977

Contracts between businesses, and those between businesses with consumers are regulated increasingly through statutory intervention. These statutes control the use of terms, whether exclusion of liability is void or permitted insofar as being reasonable, and other statutes imply or guarantee terms into contracts. Sellers of goods in particular must have an awareness of these laws and ensure they do not negligently or knowingly transgress the provisions. Knowledge of the content and application of the legislation is necessary, as some rights impose strict liability on the seller, whilst others involve negligence liability.

Business Scenario 9

Ghirardelli Curator Ltd is an independent, bespoke chocolatier based in Soho, London. Due to its reputation for extravagant designs and celebrity customers, and because of the recent appointment of Michelin star winning chef Christophe Dupain-Cheng, it has seen a rapid rise in its popularity.

In July, Ghirardelli was contacted by a representative for the company Amelia Barnes Inc, a well-known international banking company, to create a chocolate sculpture of a yacht as the centrepiece for one of its holiday parties for its most important staff and clients. Amelia Barnes Inc was insistent that the sculpture was made from Belgian chocolate with Teja chillies to provide the flavour most suited to its guests. However, following delivery, Amelia Barnes Inc has complained to Ghirardelli that the chocolate used was actually Ghanaian milk chocolate and it contained salted caramel 'walls' within the sculpture which proved to be far too intense, making it inedible.

One week later, Meghan Willis, an American country-singing star, bought a box of custom and handmade couture chocolates from Ghirardelli's shop in Soho. However, Meghan had to cancel her performances in London as she was hospitalised after suffering anaphylactic shock after eating two of the chocolates. It transpires that some of the chocolates contained dry-roasted peanut extract to produce the multisensory effect sought by Christophe, but this was not identified on the packaging or by the retail staff. The costs associated with the cancelled performances are anticipated to be in the region of £1 million.

Learning Outcomes

- Explain the effects of the Consumer Rights Act 2015 on the regulation of consumer contracts (9.1–9.3.5)
- Explain the protection afforded to buyers in contracts for goods and services, through statutory intervention (9.2–9.3.5)
- Explain the protection for consumers concluding contracts through distance selling, on- and off-premises, and through digital downloads (9.4–9.4.11.4)
- Demonstrate how statute restricts the use of exclusion clauses in contracts (9.5–9.5.4).

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9.1 Introduction

This chapter continues to explore the contract in greater detail by examining how the terms of a contract are regulated through statutory intervention. Such legislative measures have been provided due to the unequal bargaining positions of the contracting parties in business to consumer contracts, and the State regarding some aspects of laissez-faire to be contrary to public policy and fairness (such as certain exclusion clauses). For example, statutes, such as the Sale of Goods Act 1979, imply terms into contracts, the Consumer Rights Act

2015 guarantees certain rights, and the Unfair Contract Terms Act 1977 regulates the parties' use of exclusion clauses. This particularly protects the weaker party to a contract from exploitation and provides minimum rights that may not be waived.

From 1 October 2015 the Consumer Rights Act (CRA) came into effect and has changed the statutory sources of protection in business-to-consumer (B2C) contracts, and to business-to-business (B2B) contracts (albeit to a lesser extent in this second category of contractual relationships). The CRA 2015 formed part of the government's initiative to reform consumer rights, in some instances simplifying the current range of legislation, and in other areas seeking to codify and establish a consistent application of the law.

The CRA is comprised of three parts:

- Part 1 is concerned with consumer contracts for goods, digital content, and services;
- Part 2 deals with unfair terms; and
- Part 3 considers miscellaneous provisions such as investigatory powers, enforcement mechanisms and collective redress, and other private actions relating to anti-competitive behaviour in competition law.

Given the overlap between the previous statutory regulation of contracts (which are likely to continue to have effect for several years into the future) and the rights provided specifically to consumers through the CRA 2015, the relevant provisions of the CRA 2015 are incorporated in this chapter in conjunction with existing legislative provisions.

9.2 The Sale of Goods Act 1979 and the Consumer Rights Act 2015

Contracts concluded prior to 1 October 2015 between consumers and a trader are protected by the Sale of Goods Act (SOGA) 1979. Therefore, if, for example, when shopping at a high-street department store you see a sign reading 'No refunds provided for unwanted goods. This does not affect your statutory rights' the store is identifying that it will not provide a refund for a good that is not faulty and is simply unwanted. This approach is lawful and in accordance with statutes including SOGA 1979, but businesses involved in retail must be aware of the implications of SOGA 1979, to adhere to its requirements, recognize its application to contracts involving consumers, and also the effects of this being replaced in business-to-consumer (B2C) contracts by the CRA 2015. SOGA 1979 continues to be applicable in B2B contracts. Remember, under the CRA 2015, the consumer is protected when contracting with a trader.

p. 203 ← For years, the common law and legislation have afforded protection to consumers and businesses (in fact most of the case law on the subject involves B2B disputes). SOGA 1979 was revised and updated from the original Act of 1893 but the main provisions remain remarkably similar to this legislation. Further, whilst case law has provided 'flesh on the bones' of the legislation, it is also worthy of note that protections for those involved in buying and selling goods had been developed through the common law; indeed, the 1893 Act was actually a codification of these rights into one Act of Parliament. From its inception, SOGA 1979 offered protection to 'buyers'. This Act implies the terms into contracts and, in certain circumstances these cannot be removed through waiver or a contractual term to the contrary.

- *Definition:* For protection to be provided through SOGA 1979, a sale must take place (s. 2(1) and s. 5 of the CRA 2015). Whilst this may appear obvious (if for no other reason than the title of legislation) its effect is that barter (exchanging items) and loans are not protected unless a transfer of the ownership has occurred. SOGA 1979 includes contracts of sale (where the goods purchased are taken into the possession of the buyer immediately) and agreements to sell (where the contract becomes a contract of sale when the goods exist and the ownership passes to the other party—s. 2(5)). This second scenario may be evident where a product is sourced/manufactured with a lead-time before delivery is made.
- *The meaning of 'goods':* The transfer of 'goods' invokes the provision of SOGA 1979. Goods are defined as 'all personal chattels other than things in action and money ...; and in particular "goods" includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale and includes an undivided share in goods' (s. 61(1)). In *Computer Associates UK Ltd v The Software Incubator Ltd*, the supply of software (here it was a download) was not 'goods'. Goods must be in a tangible form (e.g. on a disk) for the purposes of legislation such as the Commercial Agents (Council Directive) Regulations 1993 to be considered to amount to a 'sale of goods'.

As such, items ordinarily used by consumers including televisions, tables, mobile telephones, and cars will be considered 'personal chattels' and covered by the Act. 'Things in action' is a historical expression for something, unlike personal chattels which involves a tangible good, which must involve the exercise of a legal right in order for it to 'materialize'. A most obvious business example of this would be a guarantee provided when a good is purchased. The paper that the guarantee is written on is not what the guarantee is, but rather provides evidence that a guarantee can be exercised and pursued through the courts if necessary. Things in action are not covered by SOGA 1979. In B2C contracts 'goods' means any tangible moveable items—including water, gas and electricity if, and only if, they are put up for supply in a limited volume or set quantity (CRA 2015, s. 2(8)).

- *Who is protected:* The significance of SOGA 1979 is that certain terms are implied into the contract that offer a level of certainty, and security, for the goods contracted. These place obligations on the seller of the goods to ensure that SOGA 1979, ss. 12–15 are adhered to. These implied terms are held as conditions of the contract and hence allow an injured party to repudiate the contract within a reasonable time if they are breached. Further, after this reasonable time, the terms are held as warranties and allow an injured party to seek damages (but they will not be in a position to repudiate the contract). The other major advantage of SOGA 1979 is that the liability is strict and hence it does not matter how the good fell below the standard required: the seller has responsibility. Sections 12, 13, and 15 apply to all sales contracts. Section 14(2) and (3) applies to contracts made by a consumer with a seller acting in the course of business (prior to contracts concluded on or after 1 October 2015).

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The CRA 2015, s. 2 provides important definitions applicable to qualification to protection under the Act:

- *Trader*—this term refers to a person (both natural (human) and artificial (corporation)) acting for purposes relating to their trade, business, craft, or profession. The term trader applies whether they are acting personally or whether another person is acting in the trader's name or on their behalf.

- **Consumer**—this term refers to an individual acting for purposes that are wholly or mainly outside of that individual's trade, business, craft, or profession. The significance of this definition is that it provides certainty and consistency between consumer protection legislation. Any trader who claims that the individual was not a consumer for the purposes of this law has the obligation to prove it. Such definitions remove the confusion present in the current/previous legislation relating to consumers and traders. The Unfair Contract Terms Act 1977, s. 12 sought to define what 'dealing as a consumer' and acting in 'the course of business' meant in real world scenarios.

R & B Customs Brokers Co. Ltd v Union Dominions Trust Ltd (1988)

Facts:

R & B was a two-person shipping broker company which bought a used car from Union Dominions. R & B intended that the vehicle would be used by its managing director but when delivered, it was discovered that there were problems with the car. This included a leaking roof and R & B attempted to use s. 14(3) of SOGA 1979 in pursuit of a remedy. However, the contract of sale excluded any implied terms relating to fitness for purpose. This would be permitted in business-to-business contracts, but contrary to the Unfair Contract Terms Act 1977 in business to consumer sales. Thus, if R & B was held as a business for the purpose of the sale, the exclusion clause would be permitted and the claim would fail.

Authority for:

R & B was held as having acted as a consumer for the purposes of this sale. This purchase was incidental to the running of R & B's shipping business and not 'in the course of' its business. It was an irregular activity and a degree of regularity is required before such activities can be called an integral part of the business.

Business—includes the activities of any government department or local or public authority.

9.2.1 SOGA 1979, ss. 12–15

For sellers and buyers, significant protections are provided through SOGA 1979, ss. 12–15. Section 12 is applicable to all sales and cannot be waived. Sections 13–15 may be waived ↵ in B2B sales where it is reasonable. Similar provisions are available in B2C sales (with distinctions drawn where appropriate between the statutory provisions).

- **Section 12—title to goods:** A fundamental aspect to a contract of sale is that in order for a 'true' sale to take place, one party must be free to transfer ownership (good title) to the other. The buyer is then able to enjoy 'quiet possession of the goods'. In order to achieve this, the first party must possess the title to transfer or have the owner's consent to dispose of the good.

Rowland v Divall (1923)

Facts:

Mr Divall purchased an 'Albert' motor car and he later resold it for £334 to Rowland. Rowland, a motor car dealer, sold it to a Colonel Railsdon for £400, but the car had been stolen before Divall bought it and it was repossessed by the police. Rowland returned the £400 purchase price to Railsdon and brought an action against Divall to recover the £334 he had paid for the vehicle. SOGA 1893 had implied into every contract of sale 'a condition on the part of the seller that ... he has a right to sell the goods', and if this is not satisfied the buyer has the right to have the purchase price returned. Only a person who holds 'good title' to a property has the right to transfer or convey this, and if the property is in fact stolen, then no passage of title may occur. The Court of Appeal held that Rowland was entitled to have his money returned.

Authority for:

Section 12 provides that in every contract of sale, there exists an implied condition that the seller has the right to sell.

In this case, as the parties had purchased the stolen vehicle in good faith, there was no criminal element to the proceedings, but the seller did not have good title to the goods and hence the contract failed. Colonel Railsdon could claim the return of the price paid to Rowland (despite having use of the vehicle for several months), Rowland had the right to claim the purchase price from Divall, and Divall had the right to pursue the seller from whom he purchased the vehicle and have the money returned (albeit in reality it may be very difficult to find the seller of the stolen goods to pursue the return of the money paid).

Whilst this situation regarding stolen goods appears to be straightforward, the seller has no right to sell the good so cannot pass on good title and the original owner will have the good returned to them, this is not strictly so. In this scenario, the loss would fall on the innocent buyer, as in *Rowland* above, who would have to recover their losses from the rogue who sold the stolen good. There are mechanisms that enable an innocent buyer to obtain good title when they purchase goods in good faith and lacked knowledge of the rights of the owner/seller.

In *Rowland*, the sale was said to be void (did not exist) because the car that was sold had been stolen. If, however, the transfer of ownership is 'voidable' then SOGA 1979, s. 23 is important. It states: 'When the seller of goods has a voidable title to them, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.' Such a situation may occur when the sale is agreed with the rogue on the basis of a misrepresentation

p. 206 ↩ (e.g. taking possession of the goods through providing a cheque in payment that fails to clear), and hence the rogue now possesses a voidable title to the goods that can be transferred. This 'title' can be lost where the true owner takes action to avoid the contract—either through contact with the rogue or through some other means (such as reporting the incident to the police). However, SOGA 1979, s. 25 provides a further

hurdle for the owner. Even where steps have been taken to avoid the contract with the rogue, where the rogue 'buyer' has taken possession of the good (although not ownership of the title) and they sell the good to another buyer who is acting in good faith, the buyer will obtain title to the goods. Sales of goods can occur through the actions of an agent with possession of the owner's good passing on the title to a buyer acting in good faith, and in situations where the owner allows the buyer to believe the seller of the goods has the owner's permission to sell.

It is important to recognize that when the title to goods has passed, this is effective even before the payment has reached the seller (however, payment must have been intended). This may occur where one business transfers goods to another business and payment is made, for example, at the end of each month. If ownership has transferred, but the other party fails to pay for the goods and those goods have been resold, or the party is liquidated, the seller may have difficulty in obtaining payment. As such, a contract may incorporate a reservation of title clause whereby the seller has the ability to recover the goods for non-payment. The reservation of title clause is effective where the contract states that the goods remain in the possession of the seller until payment is made (at which point the title to the goods will transfer), the goods are still in the buyer's possession, and the goods are readily identifiable (hence the goods have not been joined with other goods and they can be identified).

Borden v Scottish Timber Products Ltd (1981)

Facts:

Resin was supplied to a chipboard manufacturer on retention of title terms. The resin was used, and thereby incorporated into the chipboard, thus changing its identity with the manufacture of a new product.

Authority for:

The supplier's claim of the retention of title was defeated.

These clauses are referred to as 'simple' but it may not be realistic or in the best interests of the seller to incorporate such a clause that may prevent the buyer using the goods. Hence, a particularly important judgment was made in the following case.

Aluminium Industrie Vaasen v Romalpa Aluminium Ltd (1976)

Facts:

The sellers of aluminium wanted protection against possible non-payment and therefore contracted with the buyers on the basis that the goods supplied were to be maintained separately from the buyer's other goods, the sellers would have ownership of ↵ the buyer's products that had been made with the seller's goods, these products must be stored separately from other goods, and the proceeds from any sales of the goods were put into a separate bank account so the sellers could be assured of payment when requested. When the buyer's business failed and it was wound up the sellers were successful in obtaining its goods supplied, but unused, and the money it was owed.

Authority for:

The case was decided largely on its facts so its application may be limited. 'Romalpa clauses' effectively provide the seller with a charge over the goods supplied. However, due to the restrictions on how charges can be made over a company's property, and to circumvent possible legal issues with the effects of this case, the buyers were considered as bailees of the seller's goods.

- *Section 13—description of goods (B2C contracts see s. 11 of the CRA 2015):* Goods that are sold by description must correspond to that description. This may be evidenced in situations involving the sale of products where it may be particularly difficult or time-consuming for the buyer to verify the claims. It enables sales to take place with the protection for the buyer that the item possesses the features that they were assured.

Consider

Amelia Barnes Inc has requested a specific type of chocolate to be used in the production of the sculpture and this is agreed. Hence the product is being bought according to the description provided by Ghirardelli Curator Ltd. As such, a remedy may be available for breach of s. 13 SOGA. However, as the chocolate itself is of satisfactory quality and fit for its intended purpose, there is no breach of ss. 14(2) or 14(3) SOGA.

Section 13 allows the buyer protection when they rely on the description provided, but it does not where the buyer has not relied on the description and has taken the responsibility for verifying the good.

Harlingdon and Leinster Enterprises v Christopher Hull Fine Art (1990)

Facts:

The claimant bought a painting described in an auction catalogue as by a German painter 'Munter' for £6,000 from the defendant. The defendant sellers were not experts in paintings of this type and the claimant sent his own experts to inspect the painting. Following the purchase, the claimant discovered the painting was not by this artist and was actually worth less than £100. The buyer claimed a breach of s. 13 of SOGA as the painting was not as described.

Authority for:

The claim was rejected. The court held that to use s. 13, the claimant must have relied on the description and by using their own experts resulted in this not being a sale by description.

p. 208 ← The protection of s. 13 also applies to advertisements and sales materials that the buyer relies on (see the Unfair Commercial Practices Directive). It is important to note that whilst the sections of the Act are separated, they may work independently of each other or in unison. For example, s. 13 is not concerned with the quality of the product, which may be perfectly fine in terms of its quality and fitness for purpose, but not as described. This would still allow a remedy under SOGA 1979.

Arcos v Ronaasen (1933)

Facts:

An agreement for the sale of wooden staves to be used in the making of barrels identified the staves as being of half an inch thickness. However, when delivered, some of the staves were of slightly different thicknesses (although they were still usable for the intended purpose). The buyer attempted to reject the staves as not being as described.

Authority for:

The court held there was a right to reject the goods. They were not as described.

The significance of the overlap of the provisions can be seen in relation to the seller. Section 14 requires the good to be of a satisfactory quality, but this is only an implied term in sales in the course of business (i.e. the buyer has to possess the status of a consumer as noted earlier). Where goods are sold privately the buyer has no protection unless a warranty is provided (and usually this is not—*caveat emptor*).

Beale v Taylor (1967)

Facts:

A private seller sold a car that was described as a Triumph Herald, but in reality was two cars welded together (with only one half of the car corresponding to the description).

Authority for:

The Court of Appeal held, whilst the buyer could not rely on s. 14 as to the car's quality, an action was permitted under s. 13 (as it applied to all sales).

- *Section 14(2)—quality of goods (B2C contracts see s. 9 of the CRA 2015)*: Section 14(2) incorporates a term in sales established in the course of business requiring the goods to be of a satisfactory quality. Note, this will not prevent a business from seeking protection under the Act where the sale is not part of the 'course of business' and in essence the buyer is acting as a consumer.

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Stevenson v Rogers (1999)

Facts:

The defendant was a fisherman who sold his fishing boat to the claimant. The claimant considered the boat not to be of satisfactory quality and thus a breach of s. 14. The defendant argued that s. 14 did not apply as the boat was not sold in the 'course of business'. The fisherman's business was in catching fish, not selling boats.

Authority for:

The Court of Appeal held s. 14 did apply. The buyer was acting as a consumer.

'Quality' will vary between products depending on issues such as whether the good was brand new or used. Section 14(2) is applicable in each scenario, but the interpretation of the word will differ. If the item is sold as new, it should have such a condition (free from scratches, in its new and original packaging, and so on).

Clegg v Anderson (2003)

Facts:

The contract involved the purchase of a yacht. The keel of the vessel was to be built to the manufacturer's standard specification but when installed, it was heavier and the claimant rejected the yacht. The defendant argued that the rejection of the yacht was unreasonable given the manufacturer had offered to rectify the defect.

Authority for:

The right to reject had not been lost despite the offer of a repair. There is no requirement that the right to reject is subject to consideration of reasonableness.

If the good is used, some general 'wear and tear' must be expected but it must still be of 'satisfactory' (formerly known as merchantable) quality.

Thain v Anniesland Trade Centre (1997)

Facts:

The claimant bought a used Renault car. It had an automatic gearbox, approximately 80,000 miles on the odometer, and was priced just below £3,000. Ms Thain was offered the opportunity to purchase three months' warranty with the vehicle but declined. After a couple of weeks' use, the vehicle made droning noises which was later diagnosed as a failing gearbox. Thain continued using the vehicle for more weeks until it broke down. The cost of replacing the gearbox was uneconomic and Thain tried to reject the car as not being fit for purpose and recover her purchase price.

Authority for:

The court held that the car made no noise when it was bought and as such was fit for its purpose when supplied. A used car, and one with such high mileage, could fail at any time and the reasonable person accepts this risk.

For the purposes of SOGA 1979, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant), and all the other relevant circumstances (which may include the precautions the reasonable person would undertake in the use of a good).

Heil v Hedges (1951)

Facts:

The claimant brought a claim against a butcher on the basis that pork chops that had been sold to the claimant were not fit for purpose. When eaten, the claimant contracted a tapeworm infestation due to parasites in the meat.

Authority for:

The court held the meat was fit for its intended purpose. The claimant had not properly cooked the meat to kill the parasites and it was generally known that pork had to be cooked for a substantially longer time than other meats. It has been suggested, however, that given the risks involved in some foods, it is incumbent on the seller to warn customers of potential dangers.

The issue of quality extends from the good itself, to include the packaging in which it is contained, and to 'external factors' that would make the good fall below the quality required.

Wilson v Rickett Cockerell (1954)

Facts:

The claimant purchased a bag of coalite from the defendant. When it was lit, the coalite exploded as it contained detonators. The claimant argued the coalite was not of satisfactory quality.

Authority for:

The defendant argued that it was the detonators that were not of satisfactory quality, but the coalite was. However, the court considered that as the coalite was sold in a unit (in a bag), the contents of the bag were to be determined on the basis of satisfactory quality. Therefore, damages were awarded for a breach of s. 14(2).

p. 211 ← Features to be considered when assessing the quality of a good include:

1. fitness for all the purposes for which goods of the kind in question are commonly supplied;
2. appearance and finish;
3. freedom from minor defects;
4. safety;

5. durability.

This last aspect—durability—may also assist buyers when considering the life span of the goods. For example, if you purchase a television, you may receive a one-year manufacturer's warranty. However, under SOGA 1979, it may be considered that it should last much longer, and if used correctly, would provide the owner with the right to have the item repaired or replaced if a defect appears within six years (after a reasonable time the term will be considered a warranty—again, general 'wear and tear' or damage caused other than a defect will not enable a claim under the Act). Hence, even though replaced in consumer contracts on 1 October 2015, the SOGA 1979 will remain significant for consumers (and traders who will be responsible for claims made under this legislation) for several years into the future.

The main value of s. 14(2) is that the liability is strict and hence it does not matter how the defect in the good was created, as many businesses simply resell goods bought along the supply chain: if there is a defect, protection is granted under s. 14(2).

Consider

The statutory implied terms contained in s. 14(2) of SOGA requires the relevant good to be of satisfactory quality. This imposes a strict liability where the contract applies between businesses as is the case between Amelia Barnes Inc and Ghirardelli Curator Ltd. Section 14(2) imposes a basic obligation, whilst s. 14(2A) introduces an objective element into judging whether satisfactory quality is present or not. The fact that the wrong chocolate is used in such a contract would be a sufficiently serious breach to affect the quality of the goods in the entire contract.

Whilst these protections exist, defences are available to sellers against what could be considered as 'unfair' claims. Section 14(2C) outlines situations where protection under s. 14(2) will not extend. For example, if a product is purchased and a defect has been pointed out, particularly where an incentive has been provided in 'compensation' for the defect, the buyer cannot later rely on s. 14(2) for this specific problem.

Bartlett v Sidney Marcus Ltd (1965)

Facts:

Sidney Marcus was a car dealer specializing in the sales of Jaguar and Ford motor cars. Sidney Marcus sourced a car at the request of Mr Bartlett and whilst its sales executive travelled in the car to show Bartlett, he noticed the oil pressure gauge was defective and ↵ the clutch was not operating perfectly. These defects were identified to Bartlett and hence he was offered the car for £575 (with the car repaired), or for £550 and Bartlett could have the repairs completed by his garage. Mr Bartlett agreed with the latter offer as he believed he could get the repairs necessary completed for between £2–3. When the car broke down and it was sent for repair, Bartlett was informed the cost of repair

would be over £84, and he initiated his claim for damages for the cost of the repair. Bartlett's claim was based on a breach of s. 14(1) and (2) SOGA, but the Court of Appeal held that there was no breach of SOGA 1979, and Mr Bartlett could not claim damages.

Authority for:

Where defects have been brought to a buyer's attention before the sale, any subsequent claim on this basis for breach under s. 14(2) will fail due to the application of s. 14(2C).

Likewise, if the buyer had examined the good themselves before the purchase, and that examination ought reasonably to have revealed the defect, then this will be a defence to the seller (s. 14(2C)(b)). This does not require that the buyer should identify every defect, but very obvious defects where it could reasonably have been expected that the buyer would have seen and could have taken action on, may provide a defence against holding the term as a condition.

Satisfactory quality, in the CRA 2015, adopts a similar standard as under previous legislation. The standards of quality should be what a reasonable person would agree would be satisfactory. Used/second-hand goods will have evidence of wear and tear and they are not likely to be expected to be as durable as a new item (but then this would presumably be reflected in the price). Goods which are advertised and sold at a considerably lower price than comparable goods would likely not be deemed to be unsatisfactory if they did not match the same standards of quality as much more expensive goods (items such as televisions, watches, computers can have 'similar' features, but the price charged may be markedly different. Such differences may reflect the quality of components used in these devices and thereby affect the experience of them—speed, durability, etc.).

- *Section 14(3)—fitness for purpose (B2C contracts see s. 10 of the CRA 2015):* The Act continues regulating the quality of goods by providing that the item should be fit for its intended purpose. If the item purports to provide some function, it must do so.

Grant v Australian Knitting Mills Ltd (1936)

Facts:

Dr Grant brought an action against Australian Knitting Mills claiming damages on the grounds that he contracted dermatitis from woollen underpants sold under the name 'Golden Fleece'. Australian Knitting Mills had been negligent in failing to remove a chemical used in the manufacture of the underpants (free sulphate—which, when combined with sweat, produces successively sulphur dioxide, sulphurous acid, and then sulphuric acid). As such, Grant claimed the underpants were sold but were not 'fit for their purpose'. ↵ The presence of the chemicals in the garment was a hidden and latent defect, and could not be detected by any examination that could reasonably be made.

Authority for:

In the case of implied reliance on the quality of the good, the buyer can gain protection from either implicit or explicit reliance on the relevant term.

Products sold for a particular purpose must be suitable and 'fit' for that purpose. In the case of Dr Grant, these were underpants that would be worn against the skin. Due to the chemicals present, this was impossible and hence the garment failed under s. 14(3).

Consider

Section 14(3) of SOGA requires the relevant good to be fit for its intended purpose. Again, this imposes a strict liability between Amelia Barnes Inc and Ghirardelli Curator Ltd. The use of salted caramel which has rendered the sculpture inedible would clearly mean that this good, which is intended to be eaten, would not be fit for its intended purpose and would breach this section of the Act. With regards to Meghan Willis, as an individual consumer her claim would be for a breach of s. 10 of the CRA 2015. The use of nuts, especially dry-roasted peanuts which are widely considered to elicit the most severe reaction in allergy sufferers, would make the chocolates unfit for their intended purpose for a person with such an allergy. However, for persons without an allergy the goods would be fit. Hence, should Ghirardelli have been under a duty to identify the use of nuts, or should Meghan have identified her allergy prior to purchase?

Protection is provided where the buyer seeks assurances from the seller as to the suitability of a particular good for a specific task. In this case the buyer is relying on the judgement of the seller, and if this is reasonable, then even if this request is beyond what would normally be associated with a reasonable use of the good, the law will still protect the buyer.

Ashington Piggeries Ltd v Christopher Hill Ltd (1971)**Facts:**

The buyers were manufacturers of animal feeds and had contracted for herring meal to be used in mink food. The sellers knew of the purpose of the herring meal but had no experience of making food for mink. The herring meal had become contaminated so as to make it poisonous to all animals that it was fed to, but would be fatal if given to mink.

Authority for:

The House of Lords held that there was a breach of s. 14(3) as the buyers had relied in part on the judgement of the sellers to sell them appropriate materials.

p. 214 ← The CRA 2015 also provides consumers protection in a contract to supply goods by reference to a model of the goods that is seen or examined by the consumer before entering into the contract. A term is thereby guaranteed to the effect that the goods will match the model. An exception is provided to the extent that any differences between the model and the goods are brought to the consumer's attention before the consumer enters into the contract (s. 14).

- *Section 15—sale by sample (for B2C contracts see s. 13 of the CRA 2015):* If a sale of goods takes place through a sample of a larger consignment the bulk of the consignment must correspond to the sample (in practical terms, this section is of most use to businesses). The goods should also be free from defects that would make their quality unsatisfactory that would not have been apparent on a reasonable inspection.

Godley v Perry (1960)**Facts:**

A young boy bought a plastic catapult from a local retailer. When used, the elastic band on the catapult snapped and severely injured his eye. Damages of £2,500 were awarded. Further, the retailer refused to sell any more of the catapults. He had purchased a consignment of the catapults from the wholesaler and wished to reject them all.

Authority for:

Following a reasonable inspection, where a sample of a consignment proves to be of poor quality, the purchaser may treat the remaining items as of equally poor quality.

SOGA requires that in a sale by sample, the bulk must correspond to the sample. This means that if the sample is of a good quality, the buyer can expect the remaining items to be of a similar standard. This also works in reverse: where the sample is of a poor standard the bulk can be considered as being of a similar quality.

Figure 9.1 identifies the consequences for breach of SOGA 1979.

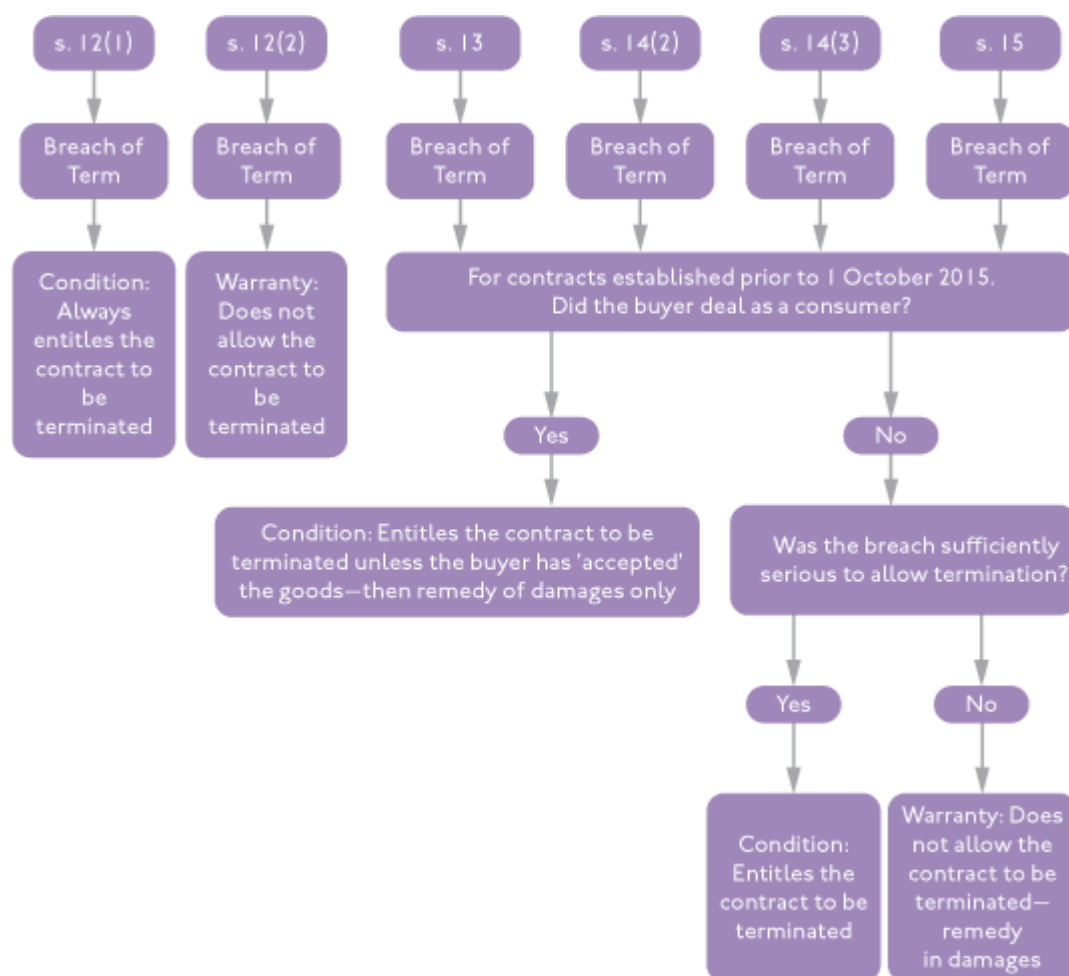


Figure 9.1 Consequences for breach of SOGA 1979

9.2.2 Remedies for Breach of the Sale of Goods Act

The terms implied through ss. 12–15 are conditions that allow the injured buyer to claim damages and repudiate the contract. The buyer must act within a reasonable time to allow the term to be treated as a condition. After this reasonable time, the term will be considered a warranty and the buyer will not be able to repudiate, but they may seek damages/the goods to be repaired or replaced.

9.2.2.1 Buyer's remedies—SOGA

As has been noted at 9.2.2, a breach of the various sections of SOGA will entitle the buyer to reject the goods and have the price paid returned, or to have the good repaired. These rights are dependent upon the terms of the contract which have been breached and when this has occurred. ↩

- *The right to reject goods:* Rejection is permissible where the seller has breached a condition such as by delivering the wrong quantity of goods, where the seller has repudiated the contract, and where the goods are not of satisfactory quality. The injured party can reject the goods and refuse to pay the sum agreed, or to claim for any money paid. Conditions of SOGA include ss. 13–15 and enable the buyer acting not in the course of business to reject. However, such rights are lessened in B2B sales (s. 15A) and the

defect in those situations has to be reasonable to allow a rejection. This further involves a partial rejection under s. 35A, where the buyer can accept those goods that correspond with (e.g.) s. 14(2), and reject the rest of the consignment. In order to reject the goods, s. 35 lays down a requirement for quick action and any delay may result in the buyer losing the right. There was a statutory extension to this provision through s. 35(5) which enabled the buyer a reasonable time to inspect the goods before it was determined that they had 'accepted' them, but the reality was the courts had generally included this element in their deliberations in deciding the case. The decision of the court in respect of 'quick' action is based on the individual facts of the case, and clearly each case will differ, but it appears that the price of the good and the corresponding expectations will be factors considered by the courts.

p. 216

Rogers v Parish (1987)

Facts:

The claimant purchased an as-new Range Rover vehicle that was very unreliable and had suffered various mechanical problems. It was replaced but the replacement proved to be equally unsatisfactory and spent much of its existence from purchase in the garage being remedied. Despite the fact that it was seven months old, and having travelled some 5,000 miles, the claimant attempted to reject the car.

Authority for:

The Court of Appeal enabled the good to be rejected under s. 35. An unreasonably delayed rejection will prevent the buyer from rejecting the good, but here the cost of the vehicle allowed for higher expectations of the buyer than for someone buying a cheaper vehicle.

Consider

The implied terms of ss. 13, 14(2), and 14(3) SOGA 1979 and s. 10 CRA 2015 have been breached. As implied terms, they are each regarded as conditions and thus Amelia Barnes Inc and possibly Meghan Willis can repudiate the contract as well as claiming damages. Of course, the right to repudiate the contract only applies where the goods have not been accepted under s. 35 SOGA.

The buyer also has the right to have the goods repaired instead of rejecting the goods. This may be a route taken because the buyer is unaware of their rights under SOGA 1979, s. 35(6), which enables the buyer to have the good repaired without any inference from this action that they have accepted the good. Therefore, it preserves their right to later reject the good if it is unsatisfactory.

- *The right to claim damages:* As with any breach of a condition of the contract, the injured party (the buyer) is entitled to claim damages and to end (repudiate) the contract at their discretion. Under SOGA, the right for damages usually involves the non-delivery of goods (s. 51) where there is a difference in price between the cost of the goods at the time of the contract and the cost when the good has not been supplied. As always with damages (which is covered in **Chapter 10**) it is designed to place the injured party, as far as possible, in the position they should have been before the breach.

Consumer's rights to enforce terms about goods (s. 19 of the CRA 2015)

p. 217 The protection afforded to B2B contracts through implied terms is similar in many respects to those terms guaranteed in B2C contracts. Existing/previous legislation sought to categorize contractual terms as either conditions (which go to the heart of the contract) or warranties (lesser terms), breach of which determined whether the consumer could reject the contract (a right only allowed for a breach of a condition) or to affirm the contract and ↩ seek damages. There was some distinction between the remedies for breach of the terms depending on the legislative instrument which provided the right, and as such the CRA 2015 seeks to add a consistency to the approach of remedies (see **Table 9.1**).

Table 9.1 CRA 2015 rights and remedies

The right	Available remedy
Section 9 (goods to be of satisfactory quality)	(a) the short-term right to reject (ss. 20 and 22)
Section 10 (goods to be fit for particular purpose)	(b) the right to repair or replacement (s. 23); and
Section 11 (goods to be as described) Section 13 (goods to match a sample)	(c) the right to a price reduction or the final right to reject (ss. 20 and 24)
Section 14 (goods to match a model seen or examined)	
Section 16 (goods not conforming to contract if digital content does not conform)	
Section 12 (other pre-contract information included in contract)	The consumer has the right to recover from the trader the amount of any costs incurred as a result of the breach, up to the amount of the price paid or the value of other consideration given for the goods
Section 15 (installation as part of conformity of goods with contract)	(a) the right to repair or replacement (s. 23) and
	(b) the right to a price reduction or the final right to reject (ss. 20 and 24)

The right	Available remedy
Section 17 (trader to have right to supply the goods etc.)	The consumer has a right to reject (subject to s. 20)

Right to reject (s. 20)

The right of rejection is exercised if the consumer indicates to the trader that they are rejecting the goods and treating the contract as at an end. This indication may be something the consumer says or does, but it must be sufficiently clear to be understood by the trader.

Once the right to reject has been invoked, the trader has a duty to give the consumer a refund, and the consumer has a duty to make the goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed. Regardless of whether or not the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning the goods in person to the place where the consumer took physical possession.

Time limit for short-term right to reject (s. 22)

p. 218 A consumer who has the short-term right to reject loses it where this is not exercised according to the limits outlined below (unless the trader and the consumer agree that ↵ it may be exercised later—which must not be a shorter timeframe than the minimum established in law).

The short-term right to reject is the end of 30 days, beginning with the first day after these have all happened:

- (a) ownership or (in the case of a contract for the hire of goods, a hire purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
- (b) the goods have been delivered, and
- (c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

Note: in the event that the goods are of a kind that can reasonably be expected to perish after a shorter period than the right to reject above would give, the time limit for exercising the short-term right to reject is the end of that shorter period.

Where the consumer requests or agrees to the repair or replacement of goods, the periods outlined above stop running for the length of the waiting period.

Right to repair or replacement (s. 23)

Where the right to repair (making the goods conform to the required standard) or replacement of the goods applies, and where the consumer requires the trader to perform this task, the trader must:

- (a) do so within a reasonable time and without significant inconvenience to the consumer, and
- (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

The consumer cannot require the trader to repair or replace the goods if that remedy is impossible, or is disproportionate compared to the other of those remedies. 'Disproportionate' involves the imposition of costs on the trader which, compared to those imposed by the other remedies, are unreasonable, taking into account:

- (a) the value which the goods would have if they conformed to the contract,
- (b) the significance of the lack of conformity, and
- (c) whether the other remedy could be effected without significant inconvenience to the consumer.

Questions as to what is a reasonable time or significant inconvenience are to be determined taking account of the nature of the goods, and the purpose for which the goods were acquired.

Consider

Given that Ghirardelli sold chocolates to Meghan Willis which contained nuts, and this was not identified to her as a customer, they are in breach of s. 10, and arguably ss. 9 and 11 too. Hence, Meghan is entitled to the remedies to reject, repair, or replacement, or to a price reduction or a final right to reject. It would appear that given the nature of the product and that it could not be repaired, and a replacement may not be what Meghan would like after the reaction she has suffered, a rejection under ss. 20 and 22 of the CRA 2015 may be most appropriate. Also, note that remedies under contract and the sale of goods deal with the contract itself—that is, the sale of the chocolates. Refer to Chapters 10 and 11 regarding remoteness of loss and the implications of a negligence action for the recovery of damages for the cancelled performances.

p. 219

9.2.2.2 Seller's remedies—SOGA

As the buyer has remedies under SOGA, so does the seller for a breach by the buyer. This may occur if the buyer refuses to pay for the goods ordered (s. 49) or if they refuse to accept the supply of the goods (s. 50). These rights are typically used when the seller is selling the goods to another business, which may become insolvent and therefore not have the means to pay for the good. In the event of the buyer refusing to accept

goods under the contract, the seller may claim damages. The assessment of damages is based, if an available market exists at the time for the goods subject to the contract, on the difference between the contract price and the market price at the time of non-acceptance. Damages will also be available for other reasonably foreseeable losses incurred due to the buyer's breach. However, it is possible that the parties may wish to exclude liability for potential losses (although this is most often seen in commercial contracts rather than between a private individual and a business).

Glencore Energy UK Ltd v Cirrus Oil Services Ltd (2014)

Facts:

Glencore contracted to sell oil to Cirrus which Cirrus intended to sell to a third party. When the third party refused to accept the oil from Cirrus, Cirrus refused to accept the oil from Glencore. Glencore brought its action against Cirrus for breach of contract, but Cirrus argued that an exclusion clause in the contract restricted any claim for loss of profits and Glencore's claim was for loss of anticipated profits rather than repudiation of the contract.

Authority for:

The court held that Glencore was entitled to damages in excess of \$2.5 million on the basis of its 'loss of a bargain' rather than loss of profits. The exclusion clause did not extend to loss of a bargain and, in relation to non-acceptance of goods, SOGA requires that this is calculated on the basis of 'how much worse off the seller would be, if at the time of the breach, he had sold the goods to a substitute buyer'.

This case relates closely with the use and extent of exclusion clauses and demonstrates the need for careful drafting and review to ensure the clause protects the parties in the way and to the extent they expect.

p. 220 ← A further right is for the seller to retain possession of the goods until payment has been made (s. 41), unless the seller waives the right or the price is paid (s. 43); the seller may stop the goods in transit and therefore restrict the physical passing of the goods to the buyer (where the buyer is insolvent—s. 44); and the seller may resell the goods to another buyer to mitigate any potential losses (where the goods are perishable or the seller has notified the buyer of the intention to sell if payment is not received—s. 48).

9.3 The Supply of Goods and Services Act 1982

Note: for B2C contracts, this Act's provisions are replaced by the CRA 2015. The Supply of Goods and Services Act is amended so that it covers B2B contracts and consumer to consumer contracts only.

The legislation governs the supply of services, and the supply of faulty goods and materials provided with the services in B2B contracts. It requires that a supplier of a service, acting in the course of business, provides that service with reasonable skill and care, within a 'reasonable' time (unless there is an express agreement to the contrary), and make a reasonable charge for the service. Part I of the Act provides protection by implying terms into contracts involving the transfer of property in goods, and into contracts for the hire of goods. The Act complements the rights provided in SOGA 1979.

9.3.1 Transfer of Property in Goods

A contract under this part of the Act includes any contract where the title to the goods passes to another, and is not a contract for the sale of goods, or contracts under hire-purchase agreements (as other statutes offer protection). An example of such a contract would be for a boiler to be installed in a house.

The Act gives protections as outlined in **Table 9.2**:

Table 9.2 Protection provided by the Supply of Goods and Services Act 1982 (relevant for consumer contracts prior to 1 October 2015)

Protection	Condition or warranty
The right to transfer the property (s. 2(1))	A condition
Quiet possession and freedom from encumbrances (s. 2(2))	A warranty
Correspondence with description (s. 3(2))	A condition if the buyer deals as a consumer
Satisfactory quality (s. 4(2))	A condition if the buyer deals as a consumer
Fitness for purpose (s. 4(5))	A condition if the buyer deals as a consumer
Correspondence with sample (s. 5(2))	A condition if the buyer deals as a consumer

9.3.2 Contract of Hire

Here, the title to the goods is not passed (transferred) to the other party, but a temporary possession is provided.

p. 221 The Act gives the protections as outlined in **Table 9.3**: ↩

Table 9.3 Rights provided by the Supply of Goods and Services Act 1982 (relevant for consumer contracts prior to 1 October 2015)

Protection	Condition or warranty
Right to hire (s. 7(1))	A condition

Protection	Condition or warranty
Quiet possession and freedom from encumbrances (s. 7(2))	A warranty
Correspondence with description (s. 8(2))	A condition if the buyer deals as a consumer
Satisfactory quality (s. 9(2))	A condition if the buyer deals as a consumer
Fitness for purpose (s. 9(5))	A condition if the buyer deals as a consumer
Correspondence with sample (s. 10(2))	A condition if the buyer deals as a consumer

9.3.3 Supply of a Service

Part II of the Act covers the very important protections afforded where a service is supplied. These terms are implied into contracts and are not included in SOGA 1979.

- *Section 13—duty to exercise reasonable care and skill:* There is an implied term that a supplier (who is acting in the course of business) will exercise reasonable care and skill. The protection is different from the implied term as to quality in s. 14 of SOGA 1979, which imposes a strict liability standard, in that the test as to reasonable care and skill is based on the test established in torts law (see **Chapter 11**). With the supply of a service, an outcome cannot be guaranteed as easily as with the sale of a good.
- *Section 14—performance within a reasonable time:* Where a supplier, acting in the course of business, provides a service but the time for the service to be carried out and/or completed is not identified in the contract, s. 14 provides that this must be achieved within a ‘reasonable’ time. The section of the Act, when read in conjunction with s. 14(2), provides that what is reasonable is for the courts to decide when investigating the facts of each case.
- *Section 15—the obligation to pay a reasonable price:* This section provides that, regardless of whether the supplier is acting in the course of business or not, there is an implied term of a reasonable price to be paid. Note that the section is not implied where the price has already been agreed in the contract, or has been agreed between the parties in the course of their dealings with each other. It is also relevant to be aware that a quotation is generally determined as a price at which the contract is to be performed. If the section is implied into the contract, s. 15(2) states that a reasonable price is to be determined on the facts of the case.

9.3.4 Consumer Contracts for Services—The CRA 2015

The CRA 2015 guarantees various terms into contracts for the supply of a service. The main provisions are included in ss. 49–52 which provide:

9.3.4.1 Service to be performed with reasonable care and skill (s. 49)

Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill. This, consequently, no longer requires such a term to be referred to as being 'implied' into the contract. Further, the CRA does not provide a definition for 'care and skill' although it will likely follow the definition used in the previous applicable legislation (the Supply of Goods and Services Act 1982 s. 13) and case law identifying that this will differ between industries, and 'reasonable' will also be a variable concept, determined presumably with reference to the price paid for the service.

9.3.4.2 Information about the trader or service to be binding (s. 50)

Every contract to supply a service is to be treated as including, as a term of the contract, anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service. This becomes effective where the information is taken into account by the consumer when deciding to enter into the contract, or where it is taken into account by the consumer when making any decision about the service after entering into the contract.

This is an entirely new provision in the legislation (not previously incorporated in the Supply of Goods and Services Act 1982) and operates where promises/statements are made by a trader or on their behalf which induce the consumer to enter into the contract.

Further, given the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the requirement imposed on traders to supply certain information to consumers, where such information is provided, s. 50 allows the consumer to use that information as forming a term of the contract.

9.3.4.3 Reasonable price to be paid for a service (s. 51)

This section applies to a contract to supply a service if the consumer has not paid a price for the service, the contract does not expressly identify/establish a price, or the contract is silent on how the price is to be reached (see Table 9.4). In such circumstances, s. 51 holds that the contract is to be treated as including a term that the consumer must pay a reasonable price for the service, and no more. What is a reasonable price is a question of fact for the courts to determine in the specific circumstances.

Table 9.4 Rights and remedies for services in the CRA 2015

The right	Available remedy
Service to be performed with reasonable care and skill (s. 49)	The right to require a repeat performance (s. 55), and if that is impossible, or not done in a reasonable time or without significant inconvenience the right to a price reduction (s. 56)
Information about the trader or service to be binding (s. 50)	The right to a price reduction in price (s. 56)

The right	Available remedy
Service to be performed within a reasonable time (s. 52)	The right to a reduction in price (s. 55)

9.3.4.4 Service to be performed within a reasonable time (s. 52)

Where a contract to supply a service does not expressly fix the time for the service to be performed, it does not identify how it is to be fixed, and the information that is to be treated under s. 50 as included in the contract does not fix the time either, the contract is to be treated as including a term that the trader must perform the service within a reasonable time. Reasonableness, as with s. 51, is determined on the basis of a question of fact.

p. 223 9.3.5 Remedies and Implications

In the event that a trader seeks to exclude their liability for breach of these guaranteed terms, such as that relating to the exercise of reasonable care and skill or information about the trader or service to be binding, s. 57 establishes that such a clause will not be binding on the consumer. Further, the consumer will always possess the right to seek a refund of the price of the service where there has been a breach of the terms as identified above. Any term or clause inserted into a contract which seeks to restrict their liability to an amount which is less than a contract price, will not be binding or enforceable. Note also that where the restriction in liability in the contract relates to a price above or in excess of the contract price, such a clause may be accepted where it satisfies the test of fairness (s. 62).

9.4 The consumer contracts (information, cancellation and additional charges) regulations 2013

The Regulations affect retailers in their relations with consumers and are part of a broader move by the EU and the Government to reform consumer laws. The Regulations took effect on 13 June 2014 and they replace and revoke the Distance Selling Regulations 2000 and the Off Premises (Doorstep) Regulations 2008. These Regulations form a minimum standard and traders are within their rights to offer more favourable terms if they so wish (and indeed may use this as a unique selling point through which to gain custom).

9.4.1 The Focus of the Regulations Includes:

- identifying information which a trader must give a consumer before or after making a sale, including how that information should be given;
- delivery times for purchases and information regarding the passing of risk;
- rights of consumers, when buying at a distance or off-premises to change their minds (cooling-off periods) and cancel orders; and

- prohibitions on consumers having to pay additional sums in excess of the basic rate of post-contract helplines, or in any additional payments which appear as a default option.

9.4.2 Contracts Affected

The Regulations may be applicable to contracts which are concluded on-premises—hence these are made in person and at the traders' business premises; they also apply to contracts agreed to off-premises—such as doorstep sales and any sales where the trader and consumer are not physically together and the contract is concluded at a place which is not the business premises of the trade. Note that a business premises can include a movable business structure such as the use of market stalls or vehicles in so far as the trader carries on their business there on a usual basis. They apply to distance contracts, which are typically those concluded online or through a telephone sales system. However, some contracts, such as for package travel are excluded from the scope of the Regulations.

p. 224 ← The Regulations recognize three forms of contract:

1. sales contracts;
2. service contracts;
3. contracts for digital content supplied through downloads/streaming services.

A sales contract may include the sale of a tangible good such as a DVD but, importantly from the provisions included in these Regulations, it further includes digital content. Given the increase in purchases of digital media, especially in the advent of iTunes, and streaming services such as Netflix and so on, the increase in protection for consumers in this medium is particularly important and was not, arguably, protected sufficiently through previous consumer protection legislation. Further, sales contracts cover contracts for the supply of goods alone, and they also cover mixed contracts for the supply of goods and the fitting of appliances.

9.4.3 Contracts Excluded from the Regulations

The Government's practice guidelines give details on the implementation and application of the Regulations. These details also include contracts to which the Regulations will not apply (they are exempted):

- gambling contracts as provided through the Gambling Act 2005;
- package travel contracts;
- timeshare contracts;
- most financial services contracts (with the exception of warranties, credit agreements, and insurance offered as part of an ancillary contract);
- purchases from vending machines;
- construction and sale of immovable property such as new buildings;
- contracts for the letting of residential properties;

- single telecom connections (payphones and so on);
- the supply of consumables by regular roundsmen (e.g. milkmen and their deliveries).

9.4.4 Contracts Partially Covered

- items dispensed on prescription are exempt from the information and cancellation provisions;
- contracts with a value of less than £42 (identified as low value) and agreed off-premises contracts are exempt from information and cancellation provisions. They are, however, subject to the additional payments, charges, delivery, and risk elements of the regulations;
- passenger transport contracts are exempt from the cancellation rights and from most of the information provision requirements.

9.4.5 Cancellation Rights for Distance and Off-Premises Contracts

p. 225 The cooling-off period, whereby a consumer may change their mind and revoke an acceptance, and hence a legally binding contract, extends from the current provision of seven calendar days for contracts concluded off-premises; and seven working days in relation to distance sales, to a period of 14 calendar days in respect of both types of contract. The cooling-off period exists for consumers to cancel a contract without having to provide the trader with any explanation or justification. Where the consumer exercises the right to revoke acceptance, they have a 14-day period to return any items contracted for (where applicable) and the trader must refund within 14 days of the cancellation of the service contract or receipt of goods (or evidence of the consumer having the goods) monies paid. Traders are protected during this period by being able to withhold any refunds until the goods are returned, or suitable evidence of this is provided. Provision is also made for traders to reduce any amount of money refunded where goods returned show evidence of handling beyond that necessary to ascertain whether the goods are as expected.

Finally, in the event of the consumer cancelling the contract, any ancillary contract (which relates to a type of contract to which a consumer would be unlikely to enter without the existence of the main contract) such as a credit agreement or any warranty which is provided as part of the sale is automatically cancelled. Two conditions are required to be met for a contract to be considered ancillary. The first is that an ancillary contract must be related to the main contract and secondly, it must be provided by either the trader to the main contract or by a third party with whom the trader has such an agreement. Where the consumer purchases, for example, a warranty independently although related to the purchase of the good or service from the trader, this will not satisfy the definition of an ancillary contract which will automatically be cancelled following the cancelling of the main contract.

Traders using the distance or off-premises method of selling will be required to provide a model cancellation form where the consumer has a right to cancel the contract. However, the consumer will be under no obligation to use this form: its existence is for the ease and benefit of the consumer.

9.4.6 Contract Excluded for the Cancellation Rights

The following online and off-premises contracts do not attract cancellation rights, however, as this is a statutory right for the protection of consumers, the consumer *may not* waive their rights to cancellation—they are allowed, however, not to exercise the right:

- customised/build-to-order goods (although this is unlikely to apply to computers which are made from standard component parts);
- goods which by their nature will perish/deteriorate rapidly;
- contracts established at public auctions (including ebay auctions);
- purchases of periodicals (newspapers and so on but not where a subscription has been entered into);
- contracts entered into by the consumer to effect emergency household repairs;
- sealed software/audio visual products which have been unsealed;
- goods which by the nature of being mixed with other products after delivery cannot be retrospectively separated;
- certain investment products which are subject to market variations/price fluctuations;
- goods sealed for hygiene or health protection reasons which have been unsealed;
- contracts of service where the service has been performed;
- contracts for the rental of accommodation, vehicles, or services related to leisure activities where the contract provides for specific dates/periods in which performance will occur (e.g. the hire of a wedding venue).

p. 226 9.4.7 Delivery Times and the Passage of Risk

With the exception of a specific agreement between the trader and the consumer, delivery of goods should be made without undue delay, which in practical terms will be assumed to be within a 30-day period.

Risk in the goods will pass from the trader to the consumer when the goods are delivered. However, consumers should be aware that if they choose a courier personally, or privately arrange for a courier delivery of the goods, risk passes to the consumer when the item is delivered to the courier.

9.4.8 Additional Payments and Post-Contract Helplines

Prior to the Regulations it was sometimes common practice for traders to use pre-ticked boxes to tie consumers to additional payments. Here, consumers had to 'un-tick' the relevant box or would find an additional payment being added to the cost of the goods or service that was being ordered. Consumers must now give their express consent before a trader may take additional payments and consumers will not be liable for costs of which they have not been informed, prior to the contract being formed.

A further problem faced by consumers was the use of telephone helplines in relation to an item they had bought and were having technical difficulties or issues with. These telephone helplines often charged premium rates and hence dissuaded some consumers from their use. The Regulations require that where traders offer a telephone helpline for consumers for this purpose, the cost of the call should be no greater than set at the basic rate.

9.4.9 Online Payment Buttons

To avoid any confusion to the consumer, online retailers are required to identify clearly, through the use of appropriately labelled buttons, where a step in the online purchase process will result in an obligation to the consumer to pay for the goods.

9.4.10 Providing Information

It is important that traders are aware that the information to be provided to the consumer must be made on a durable medium. 'Provided' for the purposes of the Regulations includes the sending of a letter, a DVD, email, text message, and placing information in a consumer's personal account (e.g. when applying to a personal account used by a telephone service company for online billing). A 'durable medium' may include the letter, DVD, email, text message, and personal account as highlighted above, but be careful not to include information in links to websites which may change. The Regulations require the trader to provide the information; there is no duty imposed on the trader to ensure that the consumer has read/accessed it. The nature of a durable medium means that the information is addressed personally to the consumer; is accessible by them in an unchangeable format; but does not need to be unique to them as it can incorporate, for example, standard terms and conditions of sale.

9.4.11 Examples of the Application of the Regulations

Similar examples to those provided in the following sections exist in the guidance as outlined earlier from the Government's implementation document and may vary slightly depending on the method of contracting.

p. 227 9.4.11.1 On-premises sales

Let us assume that an individual runs a coffee shop on a local high street. In order to comply with these new Regulations, the steps to be taken or to ensure are satisfied include:

1. Ensure the goods or services provided by your business are not in the exempt or partly exempt category.
2. Identify that the information that should be provided to the consumer purchasing items is available. Where the information required is obvious, then the nature of the information has already satisfied this requirement—for example the address of the business may not necessarily have to be expressly provided if it is obvious from the location of the shop from where you trade. Note further that where the purchases made in the shop are classified as day-to-day transactions and hence are completed

immediately, which would include the sales of coffee at a coffee shop, these transactions are exempt from the information requirements for these Regulations. This does not stop the application of other consumer protection legislation such as the Consumer Protection from Unfair Trading Regulations which require information relating to the nature and price of products.

3. Ensure your process of delivery of any items ordered, where applicable and unless agreed specifically to be alternative with the consumer, is provided without undue delay and certainly within 30 days.
4. If you provide a dedicated phone line for post-contract queries (unlikely in relation to a coffee shop but it is included here for completeness) at least one number should be provided for this purpose at a charge not exceeding the basic rate.

9.4.11.2 Distance sales

Distance selling has been regulated through statute since 2000 by the Consumer Protection (Distance Selling) Regulations and these Regulations continue to be applicable. What is important about the 2013 Regulations is the protection in relation to downloaded digital content. To ensure compliance with the 2013 Regulations it would be advisable (where you are the trader) to go through the following checks:

1. Identify that the goods or services being provided are not within the full or partial exemption of the Regulations.
2. Ensure that the information required is available; where the right to cancel in the contract exists, ensure a model cancellation form is provided (such as by the use of a hyperlink) and that the relevant information relating to consumer rights when selling by distance is provided in an understandable form.
3. Ensure that all the costs which will be incurred by the consumer, and this is especially important where potential costs that may occur in the future are relevant, are clearly identified and their calculation is provided prior to the consumer clicking on the purchase button or making their agreement when through a telephone-based distance sale. A further important point to highlight to the consumer is in regards to returning goods as the nature of distance sales will require the consumer to pay for the delivery (unless you as the trader are willing to absorb that cost—if so make sure the consumer is aware of this). Where possible, provide an indication as to the likely cost to the consumer of returning the item.
4. During any online sales, clearly identify and highlight the button which will oblige the consumer to pay for the goods. There is no prescription on the nature or wording of this button but it must be clear to the consumer that that button will conclude the contract. Consider using expressions such as 'pay now', 'obligation to pay', 'final payment', and so on. Further, the total price to be paid by the consumer should be clearly identified before they click the purchase button or agree to the contract if by telephone sale.
5. Review your website to ensure any additional payment checkboxes are not pre-ticked for the consumer, hence requiring the consumer to untick the box to avoid the charge. The consumer must be in a position whereby they have to make an active and outright choice to tick the box to incur any additional charge or payment.

6. Deliver goods within 30 days at a maximum, but without undue delay generally, unless an agreement to the contrary has been reached between you and the consumer.
7. Provide, before or with the delivery of the goods and/or services, the relevant information to be issued to consumers in a durable medium.
8. Where you are selling a service to the consumer and the consumer wishes for the service to commence within the 14-day cancellation period, it is incumbent upon you to gain their explicit consent and to advise them that in the advent of them later cancelling the contract within the 14-day period, they will have to pay for any services delivered during this period. This is part of the general information requirements and the Regulations impose burden of proof on the trader when establishing information has been provided. As such it is important to maintain records and have these available for inspection as and when required.
9. Consumers have the right to cancel the contract for whatever reason within 14 days of the contract being agreed and this need only be communicated to the trader; there is no requirement for the consumer to provide this in writing. Remember, the sample form that you provide to the consumer is optional for them to use, it is not a requirement or precursor to ending the contract.
10. Check your relationships with any third parties and where any specific agreement is in place for ancillary contracts as part of the services or goods you provide, ensure communication is provided to these third parties and, where appropriate, ensure refunds are provided upon cancellation by the consumer. Again, it is your responsibility to ensure the cancellation and refund is communicated with the third party, not the consumer's.
11. Where the consumer invokes the cancellation provision, the refund of all monies must be received within 14 days of either the cancellation of the services or where the goods have been returned by you. Where the consumer provides proof of the return prior to you receiving the goods, the 14-day period should apply to you on receiving the proof. The money to be refunded includes any payment of outbound delivery costs. This figure is to be returned to the consumer rather than necessarily the full cost of delivery where the consumer has chosen a more expensive option rather than the cheapest standard delivery provided. You also have the right to deduct money from a refund where the goods show evidence of unreasonable use—this relates to wear and tear rather than the removal of packaging to inspect goods.
12. If you provide a telephone line for post-contract queries, this number should be provided to consumers and the charge for the calls must be no more than the basic rate.

p. 229 **9.4.11.3 Downloaded digital content**

The same requirements as related to information, confirmation, and issuing of confirmation of a contract on a durable medium and provided within a reasonable time, and the provision for telephone helplines apply to downloading digital content as they do for distance sales (9.4.11.2). However, consumers should be informed where the trader (if they wish to invoke this provision) will not allow consumers to cancel a contract once the download has started. Obtain the consumer's consent regarding this exclusion where it applies and maintain this information in case of any queries.

9.4.11.4 Off-premises sales

The 2013 Regulations replace the previous legislation protecting consumers (the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008). The requirements for such contracts follow points 1, 2, and 5–12 identified earlier in relation to distance selling contracts. Additional requirements in extension/comparison to those are:

1. As a trader, you should ensure all costs, including those potentially effective in the future, are explained and consented to in advance of the contract being agreed. Where this is not possible due to variables, you should clearly demonstrate how the final cost figure and its calculation has been reached. With any returns, you must explain to the consumer their responsibility for any costs of returning delivered items if you do not intend to accept these costs yourself.
2. Where goods are given to the customer and their nature means these cannot be returned through the post (e.g. large furniture), you as the trader are responsible for the costs of their collection and this cost must not be placed on the consumer.
3. As with point 7 earlier in relation to distance selling contracts, information must be provided to the consumer, but where this occurs off-premises you must provide a signed copy of the contract, or evidence of its confirmation, and this must be provided on paper (or another durable medium if the consumer agrees), not later than the delivery of the goods or by when the service is provided.
4. Finally, where a consumer has called the trader out to their home to effect an emergency repair, the consumer does not have a right to cancel—although the right to cancel continues in relation to any non-urgent services, or goods contracted for whilst you were on their premises, other than the replacement parts you used for the emergency repairs.

9.5 The Unfair Contract Terms Act 1977

Note: in respect of B2C contracts the Act's provisions are replaced by the CRA 2015. UCTA is amended so that it covers B2B contracts only.

As its name implies, the function of the Unfair Contract Terms Act (UCTA) 1977 is to ensure that certain terms that may be unfair (under this Act, i.e. exclusion clauses) are removed or held invalid by the courts. However, it is also important to note that UCTA 1977 also regulates the use of non-contractual notices attempting to restrict liability for negligence. Certain exclusion clauses will automatically be considered void under the Act (such as excluding liability for death or personal injury due to negligence) and those remaining have to satisfy the test of 'reasonableness'. UCTA 1977 is primarily concerned with business liability (s. 1(3)) in contract and tort, and hence the liability for breach of obligations or duties occurring in the course of business.

9.5.1 Liability in Contract

UCTA 1977 provides protection when exclusion clauses are included in standard form contracts. These were typically used by businesses and the consumer was in a weak position in attempting to decline their use—it was often a ‘take it or leave it’ scenario.

- *Exclusion of rights under the sale of goods legislation:* Section 6 of UCTA 1977 is very important to SOGA 1979. The implications of s. 6 of UCTA 1977 is that s. 12 of SOGA 1979, and the Sale of Goods (Implied Terms) Act (SGITA) 1973, s. 8 cannot be excluded from any contract. Sections 13, 14, and 15 of SOGA 1979, and ss. 9, 10, and 11 of SGITA 1973 cannot be excluded from contracts where the buyer acts as a consumer with a seller in the course of business, but they may be excluded in non-consumer (course of business) contracts, as far as they satisfy the tests of reasonableness.

The following provisions of the CRA 2015 may not be excluded from a consumer contract, nor may the trader restrict a liability relating to them. Such a term of a contract which purports to do so is not binding on the consumer:

- Section 9 (goods to be of satisfactory quality);
- Section 10 (goods to be fit for particular purpose);
- Section 11 (goods to be as described);
- Section 12 (other pre-contract information included in contract);
- Section 13 (goods to match a sample);
- Section 14 (goods to match a model seen or examined);
- Section 15 (installation as part of conformity of goods with contract);
- Section 16 (goods not conforming to contract if digital content does not conform);
- Section 17 (trader to have right to supply the goods etc.);
- Section 28 (delivery of goods);
- Section 29 (passing of risk).

A term of a contract to supply goods is not binding on the consumer to the extent that it would:

1. exclude or restrict a right or remedy in respect of a liability under the provisions listed above;
2. make such a right or remedy or its enforcement subject to a restrictive or onerous condition;
3. allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy; or
4. exclude or restrict rules of evidence or procedure.

9.5.2 Liability in Negligence

UCTA 1977 specifically voids attempts through contractual terms or through notice to exclude liability for death or personal injury caused through negligence. Negligence in torts law imposes a duty to take reasonable care not to injure others or damage property. ↩ However, under this Act, the term 'negligence' is given a broader interpretation to incorporate negligent performance of a contract and the concept of negligence in breaching a statutory duty (see **Chapters 11 and 13**). Negligence causing loss or damage to property may only be excluded or restricted where it satisfies the test of reasonableness. Simply because a person has agreed to, or was aware of, a term or notice that purports to exclude or restrict the other party's liability in negligence will not, of itself, be indicative of a voluntary acceptance of risk.

9.5.3 Liability under Misrepresentation

Section 8 of UCTA replaced s. 3 of the Misrepresentation Act 1967 and prohibits any term in a contract that purports to restrict or exclude a liability for a misrepresentation made before the contract was agreed; or attempts to restrict or exclude a remedy the other party would have in the event of such a misrepresentation, unless the party seeking to rely on the clause can demonstrate its reasonableness under s. 1(1) of UCTA 1977. Note that this protection applies to both consumers and non-consumers.

9.5.4 Reasonableness of the Exclusion Clause

UCTA 1977 contains provision for how the reasonableness or otherwise of an exclusion clause will be determined. This has caused considerable problems when the case law is examined.

SAM Business Systems v Hedley and Co. (2002)

Facts:

Here a software supplier was entitled to rely on an exclusion clause that enabled it to supply an inadequate product, and the term was considered 'reasonable'. (Note that this case was between two businesses. The courts assume businesses should be in a better position to protect themselves than consumers dealing with a business).

Authority for:

The obligation on demonstrating that the clause is reasonable rests with the party relying on the clause, and it will have to show that in all the circumstances the clause was reasonable and was brought to the other party's attention, or it should have been in their 'reasonable contemplation'.

Schedule 2 outlines the tests that the courts will use in determining the reasonableness of an exclusion clause:

- (a) **the strength of the bargaining positions of the parties relative to each other (the most important statutory consideration).**

Where the parties are of equal bargaining strength, the courts are more likely to accept exclusion clauses than if the contract was between a consumer and a business. ↩

Watford Electronic Ltd v Sanderson CFL Ltd (2001)

Facts:

The claimant had entered into a contract with the respondent for the supply of a computer system. When the system failed, the claimant sought damages and the respondent attempted to rely on a limitation clause.

Authority for:

An otherwise unreasonable exclusion/limitation clause will be allowed unless the term is so unreasonable that the court must move to restrict it. In this case, involving the supply of computer equipment, an exclusion clause limited liability to £104,596, and this was considered reasonable even though the actual losses sustained were £5.5 million.

- (b) **whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term;**
- (c) **whether the customer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);**
- (d) **where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable; and**
- (e) **whether the goods were manufactured, processed or adapted to the special order of the customer.**

The practical use by the courts of a consideration of the reasonableness of an exclusion clause has been addressed in the academic literature.

George Mitchell v Finney Lock Seeds (1983)

Facts:

Seeds were sold between businesses, but an exclusion clause restricted any claim for loss to the cost of the seeds, not the potential harvest (which naturally would have been substantially greater).

Authority for:

The House of Lords rejected the clause as unreasonable. When the farmers placed the seeds in the ground it was not possible to identify the quality or type of the seed, and the seller could have obtained insurance at a cheap price.

p. 233 Perhaps one of the most problematic areas when considering exclusion clauses is in assessing what amounts to 'unreasonableness'. Despite the guidance provided through the statute as noted earlier, the courts still maintain discretion as evidenced in the case law ↩ presented. This discretion can lead to unusual results, and, as stated in *George Mitchell*, appeal courts will not interfere with the decision in the original case unless the judge had made their decision based on an 'erroneous principle or was plainly and obviously wrong'.

Beyond the guidance provided in UCTA 1977 with regard to what amounts to reasonableness when attempting to exclude a potential liability, the House of Lords offered further assistance in the following case.

Smith v Eric S Bush (1990)

Facts:

The claimant purchased a house on the basis of the defendant's negligent valuation report. The report had been produced and issued incorporating an exclusion clause disclaiming any liability for negligence. The surveyor of the property had not identified serious defects in the property, but soon after the purchase had been completed, the chimney collapsed, causing significant damage. When the claimant sued the defendant for the damage, the exclusion clause was relied upon but the House of Lords held it to be unreasonable under s. 2(2) of UCTA 1977. It would be unfair and unreasonable to place potential risk of loss on a buyer for the negligence and incompetence of a surveyor providing a valuation.

Authority for:

The Lords identified factors that would be used in determining the reasonableness of an exclusion clause:

1. whether the parties were of equal bargaining power;

2. in situations involving advice, whether it was practicable (in costs and time) to obtain alternative advice;
3. the level of complexity and difficulty in the task which was subject to the exclusion of liability;
4. which of the parties was better able to bear any losses and should insurance have been sought.

Conclusion

The chapter has discussed the regulation of contract terms through legislation. These provisions offer certainty and protection to the parties against, among other things, the use of unfair terms. The next chapter discusses how contracts are discharged and the availability of remedies in the event of a breach.

Summary of main points

Sale of Goods Act (SOGA)

p. 234

- There must be a 'sale' involving the transfer of title to the goods.
- Goods are defined as including all personal chattels (essentially goods that would typically be used in personal/domestic situations).
- Sections 12–15 are very important and ensure the seller has legal ownership of the good; the good corresponds to its description; the good is of a satisfactory quality and is fit for its intended purpose; and, in sales involving samples, that the bulk corresponds to the sample.
- Breach of SOGA will entitle the buyer to reject the goods (within a reasonable time), have the goods repaired/replaced, and claim damages depending on the nature of the breach.
- The seller has rights under the Act if the buyer refuses to pay for the goods or if they refuse to accept them.

The Supply of Goods and Services Act

- The legislation governs the supply of services, and of faulty goods and materials provided with the service.
- The supplier must demonstrate reasonable care and skill in providing the service and provide the service within a reasonable time.
- The Act includes the hire of goods (which was not included in SOGA).

Sale and Supply of Goods to Consumers Regulations

- Goods that are provided with a guarantee enable a consumer to obtain a remedy established in this document. This could include a repair or replacement and is particularly useful when, for example, the seller of the good has ceased trading and no claim is therefore available under SOGA.
- Claims are often available as a guarantee is provided by the manufacturer of the good.

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

- Consumers must, in certain circumstances, be given information regarding the terms of the contract and important practical issues (e.g. delivery times and the passage of risk).
- It provides cooling-off periods for consumers to cancel orders when buying at a distance or off-premises.
- Helpline charges are subject to much greater controls, as are any additional payments forwarded by the retailer.

Unfair Contract Terms Act (UCTA)

- This Act specifically governs the use of exclusion clauses in contracts.
- It prohibits the exclusion of liability for death or personal injury due to the other party's negligence.
- Any other exclusion clause is subject to test under the Act's assessment of 'reasonableness'.

Unfair contract terms and the Consumer Rights Act

- A term or notice will be held as unfair if, contrary to the requirement of good faith, it causes significant imbalance in the parties' rights and obligations under the contract, and this is to the detriment of the consumer.
- Terms must be transparent. This requirement is satisfied where it is expressed in plain and intelligible language and (in the case of a written term) is legible.
- Terms must be prominent. This will be satisfied where it is brought to the consumer's attention in such a way that an average consumer would be aware of the term.

Summary questions

Essay questions

1. 'Consumers have always been in a poor bargaining position with traders and those running businesses. Parliament was right to equal the balance of power through its intervention with various protective statutes.'

Critically discuss the above statement with reference to the legislation passed and how it protects consumers.

2. Given that many of the cases involving the statutory protections in the sale of goods are disputes between businesses, how fair has the application of the reasonableness test been in UCTA?

Problem questions

1. Jessica and her family were shopping for various goods and have experienced the following:

Jessica's son Buzz broke his mother's bone china vase. He visited a DIY shop and explained to the store assistant what had happened and how he needed to fix the vase before his mother returned home. The assistant sold Buzz a special clay adhesive which he said would fix the vase, but it fails to do the job.

Jessica's son Buzz bought a catapult from the corner shop to use to hit tin cans off the wall of his garden. He used the catapult, hit three tin cans and the next time he used it the elastic broke striking his eye. Buzz subsequently lost the sight in that eye due to the trauma.

Jessica bought a new washing machine from the local high street electrical retail outlet. It stopped working the first time Jessica used it to wash the blood out of the shirt worn by Buzz following the accident with the catapult.

Jessica purchased a new pair of training shoes for use at the gym. She selected the pair described as having 'gel-filled soles' and being suitable for running on a treadmill. When Jessica used the trainers they begin to fall apart during the first session at the gym and she discovered the soles are not 'gel-filled' as advertised.

Jessica's husband Woody decided to purchase a barbeque cooker for the garden. He selected a gas barbeque from the DIY shop which was priced at £25. Woody used the barbeque during much of the summer, but when he used it for a party in the last week of August it failed to produce sufficient heat to thoroughly cook the pork chops he was preparing for his family and friends. As a consequence of this, the guests who ate the pork chops sustained food poisoning as the parasites inside the food had not been destroyed during the cooking process.

Advise the parties as to their rights and liabilities.

2. Larry wishes to purchase a van for his domestic use of transporting equipment for his hobby of surfing. He visits Vans and only Vans Ltd (a company specializing in selling used vehicles) and views a white van with a notice in the window reading:

'1990 Ford Escort Van. 100,000 miles; 1.8 litre engine; one previous owner and good little runner.'

Larry discusses the van with the salesman who informs Larry that the vehicle is in very good condition, however, it has a defective clutch (but it will drive with no problems for at least two months). The company will fix the clutch before purchase or Larry can take the van in its present condition and can have a £70 discount if he wishes to have the clutch fixed himself. Larry thinks he can get the clutch fixed for a cheaper price and therefore purchases the van minus the £70 discount.

p. 236 ↩ In his first week of ownership the clutch fails and Larry has to have the van towed to his local garage where he is informed of the following facts:

- The van is in fact stolen and does not belong to Vans and only Vans Ltd.
- Larry checks the logbook, which identifies that there have been five previous owners of the vehicle.
- Previous MOT certificates demonstrate that the van has travelled over 250,000 miles.
- The van has a 1.4 litre engine.
- The clutch will cost £300 to fix.

Advise Larry of the legal consequences of these issues.

You can find guidance on how to answer these questions **here** <https://oup-arc.com/access/content/marson6e-student-resources/marson6e-chapter-9-indicative-answers-to-end-of-chapter-questions?options=name>.

Further reading

Books and articles

Adams, J. and Brownsword, R. (1988) 'The Unfair Contract Terms Act: A Decade of Discretion' *Law Quarterly Review*, Vol. 104, p. 94.

Brown, L. and Chandler, A. (1993) 'Unreasonableness and the Unfair Contract Terms Act' *Law Quarterly Review*, Vol. 109, p. 41.

Macdonald, E. (2004) 'Unifying Unfair Terms Legislation' *Modern Law Review*, Vol. 67, No. 1, p. 69.

Websites, Twitter links, and YouTube channels

<https://www.youtube.com/user/thefcatv> <https://www.youtube.com/user/thefcatv>

The Financial Conduct Authority, the body that regulates the financial services industry in the UK. The website details its remit, and powers, and provides general advice.

<https://www.gov.uk/government/organisations/competition-and-markets-authority> <https://www.gov.uk/government/organisations/competition-and-markets-authority>

@CMAgovUK

The Competition and Markets Authority promotes competition for the betterment of consumers and, along with the Financial Conduct Authority, undertook many of the responsibilities of the Office of Fair Trading, which was closed on 1 April 2014.

<http://www.legislation.gov.uk/ukpga/1979/54> [<http://www.legislation.gov.uk/ukpga/1979/54>](http://www.legislation.gov.uk/ukpga/1979/54)

The Sale of Goods Act 1979.

<http://www.legislation.gov.uk/ukpga/1977/50> [<http://www.legislation.gov.uk/ukpga/1977/50>](http://www.legislation.gov.uk/ukpga/1977/50)

The Unfair Contract Terms Act 1977.

<http://www.legislation.gov.uk/uksi/1999/2083/schedule/2/made> [<http://www.legislation.gov.uk/uksi/1999/2083/schedule/2/made>](http://www.legislation.gov.uk/uksi/1999/2083/schedule/2/made)

The Unfair Terms in Consumer Contracts Regulations 1999.

<http://www.legislation.gov.uk/ukpga/2015/15/contents> [<http://www.legislation.gov.uk/ukpga/2015/15/contents>](http://www.legislation.gov.uk/ukpga/2015/15/contents)

The Consumer Rights Act 2015.

Online Resources

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