

CHAPTER 9: THE SALE OF GOODS AND SUPPLY OF SERVICES

QUESTION 1

Explain the terms which are implied into contracts for the sale of goods by ss 13, 14(2), 14(3), and 15 of the Sale of Goods Act 1979.

Answer:

- Section 13: If the goods are sold by description, the goods will match their description. A sale by description' is a sale where there is reliance on a description.
- Section 14 (2): If sold in course of business, the goods will be of satisfactory quality. The goods must meet the standard that a reasonable person would consider satisfactory, taking into account all relevant circumstances including price and description.
- When deciding if goods are satisfactory, the court can take into account public statements, particularly advertising or labelling, about the specific characteristics of the product, by the producer or his representatives.
- The seller will not be liable if the buyer has either had the defect pointed out to him or he has examined the goods and should have noticed it.
- Section 14(3): If sold in course of a business, the goods will be reasonably fit for their specified purpose. The buyer must expressly or by implication make the purpose known to the seller and rely on their skill and judgement.
- Where a consumer buys goods for their normal purpose it will be implied that he had made this known to the seller and that he relied on the seller's skill and judgment.
- Section 15: If sold by sample, the goods will match the sample, and be free from any defect of quality not apparent on a reasonable examination of the sample.

QUESTION 2

'Ownership of goods passes when the parties intend it to pass', but when does ownership pass in a business to business sale of goods contract if no intention of the parties is evident?

Answer:

- In consumer contracts risk only passes on delivery of goods to consumer. In non-consumer contracts risk passes (unless otherwise agreed) when ownership passes.
- Passing of ownership depends upon whether the goods are 'specific' or 'unascertained'. Where no intention is evident in a contract for the sale of specified goods then the first four rules set down in s18 are used. If the goods are 'unascertained' and no intention is evident Rule 5 is used.
- Rule 1: in an unconditional contract for the sale of specific goods in a deliverable state the property passes to the buyer when the contract is made.
- Rule 2: In a contract for the sale of specific goods where the seller has agreed to do something to the goods to put them in a deliverable state, the property does not pass until the thing is done and the buyer is notified.

- Rule 3: Where the seller is to weigh, measure or test the goods to find the price, property does not pass until this is completed and the buyer has been notified.
- Rule 4: Goods are delivered on approval, sale or return or other similar terms ownership passes when the buyer signifies approval or takes some action which assumes ownership or keeps the goods longer than the time limited stated in the contract or if no time limited is stated, keeps the goods for more than a reasonable time.
- Rule 5: Ownership of unascertained goods passes when the goods matching the contract description are in a deliverable state and are unconditionally appropriated to the contract.

QUESTION 3

Cathy, the owner of a small business, is going on a skiing holiday. Before leaving she orders a grey carpet for the office from carpets2U Ltd's sample book. The back of the sample has a sticker on it which describes the carpet as 100 per cent wool. Cathy also treats herself to an expensive set of new skis from Alpine Ltd. The first time Cathy uses the skis they snap into pieces. On her return from holiday, Cathy discovers the office carpet that has been laid is pink and 100 per cent polypropylene. Advise Cathy if any of the terms which are implied into contracts under the Sale of Goods Act 1979 or the Consumer Rights Act 2015 may have been breached in the contract for the sale of the carpet and the contract for the sale of the skis.

Answer:

- Where goods are sold in course of a business to another business terms are implied into the contract by the Sale of Goods 1979. Where goods are sold by a trader to a consumer terms are governed by the Consumer Rights Act 2015.
- The carpet: This is a contract between one business and another business and therefore the Sale of Goods Act 1979 applies. Section 13 description - where there is reliance on description of the goods, the seller is also responsible even if he did not attach the description to the goods, e.g. if it was put there by the manufacturer. *Beale v Taylor* (1967) and the seller is liable even though the carpet is not defective. The carpet was sold as 100% wool and it did not match its description.
- Section 15 sale by sample - where there is an implied condition that the bulk will correspond with the sample in quality, the buyer will have the opportunity of comparing the bulk with the sample, *Godley v Perry* (1960). The carpet did not match the sample.
- The skis: This is a contract between a trader, Alpine Ltd and a consumer, Cathy. A term included in the contract under section 9 is that the goods will be of satisfactory quality. Satisfactory quality: standard a reasonable person would consider satisfactory, considering the price, the description and other relevant circumstances which may include, fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety, and durability.
- Section 10 the goods must be reasonably fit for their purpose. When consumers buy goods which they put to their usual purpose it will be implied that they had made known that purpose, and that they relied on the sellers skill and judgment to supply goods which are fit

for that purpose. These were skis and it would be implied that they were suitable for the sport.

QUESTION 4

Ali, a student, buys an electric bike from Race Ltd. The bike is described as having a battery with enough power to run for 50 miles. Ali uses the bike every day for 5 months but notices that the battery is no longer retaining the charge and runs out after 5 miles. Ali also pays to download a film but when he watches the film he discovers that the last 30 minutes are missing. Advise Ali.

Answer:

- The Consumer Rights Act 2015 applies to contracts where a trader supplies goods, digital content or services to a consumer. The supply of goods includes the sale of goods.
- The Bike: Section 11 provides that where the contract is to supply goods by description and the consumer relied on the description given, the goods must match their description. The description given is that the battery will last for 50 miles. It is unclear if the battery matched its description originally but if it did, Ali may use s9.
- Section 9 the goods will be of satisfactory quality. Satisfactory quality: standard a reasonable person would consider satisfactory, considering the price, the description and other relevant circumstances which may include, fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety, and durability.
- Remedies: The right to repair or replacement (s 23). The trader must repair or replace the goods within a reasonable time and without significant inconvenience to the consumer and bear any necessary costs incurred in doing so.
- If repair or replacement is not available or is unsuccessful after at least one attempt, or is not provided within a reasonable time the consumer can claim a price reduction or reject the goods. It will be up to Race Lt to show that the battery was not defective.
- The film: The CRA covers the supply of digital content which includes downloads. Section 34 provides that the digital content must be of satisfactory quality. Where there is breach the consumer can request repair or replacement s 43.