Distance Learning Module Planner

Commercial Law: Sale of Goods

Course Code: MP–LD2027
Module Leader: Stuart Williams

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How to Use Your Module Planner

The Module Planner is vital to your studies. It divides the work in each area into Units, and shows you the minimum number of hours you should spend on each Unit, at the top right hand corner of the first page of each Study Unit, in order to understand the law involved. You should plan on devoting a minimum of 150 hours to each module you study.

The section headed ‘Essential Reading’ contained in the Reading List and each Study Unit refers you to the materials with which you are provided: the Textbook, 150 Leading Cases and Statute Book. The materials listed in the Essential Reading are sufficient to enable you to complete the course very effectively.

The section headed ‘General Reading’ lists other books which, if you wish, you can read to give you other approaches to the law. These books are not provided but you should be able to purchase them from Hammicks Legal Bookshop, whose address, telephone number and website details are provided in the General Reading section of the Reading List. They are not essential for you to be successful on the course, but they may help to give you a different viewpoint of the law involved in this module.

The Module Planner guides you through the course. Work through it logically, and in order, and make sure you understand one Unit before you move on to the next. At the end of each Unit you will find a set of Self-Study Questions. Test yourself on these and make sure you understand them before you move onto the next Unit.

At the end of the Study Units you will find the Learning Project. A compulsory question will be set in the examination in Section A of your paper on all or parts of the material covered by the Learning Project, and this will count for 50 per cent of your overall grade, so it is essential that you ensure you study and understand all aspects covered by it. The Study Units which relate to the Learning Project have been indicated to guide you through this material while you study.

The Module Planner is your guide to the topic of English law that it covers. Have it with you as you study and you will make the most of this opportunity to obtain the best law degree of which you are capable.
With this Module Planner you should have the following materials:

*Commercial Law Textbook*

*Commercial Law 150 Leading Cases*

*Commercial Law Statute Book*

*Commercial Law Revision WorkBook*

If you do not receive this set of materials, please contact:
Distance Learning Department
Holborn College
Woolwich Road
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London
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Tel: +44 (0) 208 317 6000
Fax: +44 (0) 208 317 6003
E-mail: dl@holborncollege.ac.uk

Commercial Law: Sale of Goods
**Topics Covered by Module**

This module covers the following topics within English law.
- Introduction to Commercial Contracts; Subject Matter of the Contract
- Passing of Property and Risk
- Terms (1): Statutory Implied Terms – Description, Quality and Fitness
- Terms (2): Exclusion Clauses and Unfair Contract Terms
- Title to Goods and Transfer of Title
- Performance of the Contract
- Remedies for Breach of Contract

**Skills to be Developed and Examined**

To be successful in the end of module examination you need to show that you understand and can apply the area(s) of law you have been studying. You must be able to demonstrate this to the examiners by writing answers which communicate the points you wish to make accurately and in good English. This is a key part of demonstrating that you have understood the points of law, the cases and the Acts of Parliament that you have studied.

Before you start to write your answer, identify the issues that are relevant to the question. These must be clearly stated in your short introductory paragraph(s). When referring to case law and statute law, you then need to explain the relevant legal principles in the context of the issues you identified in your introductory paragraph(s). Finally, you need to write a concluding paragraph which brings your points together. Do not write everything you know about an area, or write answers that take the form of a series of notes. Your answer should be structured in the way described above and be written in good English.

For further guidance on how you will be graded please consult your Award Guide which contains an explanation of the criteria used to grade your work.

It is important that you practice answering questions and in particular take the opportunity to submit a sample question for marking and feedback. This question is contained in the Practice Question section of the Module Planner.
Examinations

This module is assessed by one, two hour, unseen written examination. Examinations take place in September, January, and May of each year. The examination is in two parts: Part A is a compulsory question and counts for 50 per cent of the total grade, Part B has four questions of which you will be required to answer two only. Each of the questions in Part B is worth 25 per cent of the total grade.

The compulsory question in Part A is based on those topics which make up the Learning Project. You will find details of the Learning Project and the topic area covered by it at the end of the Study Units in this Module Planner. You should read this section carefully to identify those areas of the module covered by the Learning Project.

You will, therefore, know in advance of the examination that there will be a substantial question on the topics covered by the Learning Project. When you write the examination you should make sure that you devote 50 per cent of the time to the question in Part A. Your answer to this question should normally be about twice as long as your answer to the two questions in Part B.

The purpose of the Learning Project is to allow you to study a significant part of the syllabus in depth in the sure knowledge that you will be examined on it. In this way, hard-working students who have studied their materials thoroughly will be able to write an in-depth answer and have full credit for the work they have done reflected in the grade awarded.

There is no assessed coursework for this module. The total grade for the module is based upon the unseen written examination. Although you should make sure that you cover the whole syllabus, it is particularly important that you study those syllabus topics which are covered by the Learning Project thoroughly so that you can write a complete answer to the compulsory question in Part A and take advantage of the fact that this question is worth 50 per cent of the grade.

The examination is a two-hour examination with an additional 15 minutes reading time. It is an unseen examination. You will, however, be able to take into the examination an unmarked copy of your 150 Leading Cases, Statute Book and Law Update (this means that you should not write on these materials; you are only allowed to underline or highlight part of the text). As stated above, you will also know what topics will be covered by the compulsory question in Part A of the examination, provided you have studied the details of the Learning Project at page 44 of this Planner.
A Brief Guide to Study Skills

As a distance learning student you will undoubtedly have other demands on your time. It is, therefore, important that you use your time effectively. The following tips are intended to help you do so.

**Time Management**

- Be realistic.
- Work out what time you have available for study; take out time for sleeping, eating, recreation, etc.
- Try to plan ahead – do not leave everything to the last minute.
- Prioritise – do not do the easiest task first, but the one that really needs to be done first.
- Set objectives which are reasonable, and make sure that they are somewhere you see them.
- Break large tasks into manageable sub-tasks and set target dates against each sub-task.
- Keep a wall planner chart.
- Try doing the most difficult things when you feel at your best.
- Remember the unexpected always happens, so be flexible – don’t get angry when plans have to change.

**Effective Reading**

**Reading**

- Read with purpose (what questions have to be answered?).
- Read selectively – scan and skim – only read in detail what you need to.
- Mentally recite what you have just read.
- Make notes at appropriate points – bullet points, do not rewrite the whole book.

**Review**

- Did I answer the questions I wanted to?
- Do I understand and remember what I read?
Studying

Where?

- Choose somewhere that is conducive to study. You need: a large table or desk; a suitable chair; a bookcase; adequate, suitable lighting; adequate ventilation; reasonable temperature – too cold,
- you can’t concentrate – too warm, you will go to sleep.
- Banish distractions – magazines, radio, telephone, TV.
- Decide where you study best, and try to keep to it.

When?

- When you are alert.
- Not when you are too tired.
- When it is the best time of day for you – some people work better at night, others early in the morning.

How?

- Try studying for 50 minutes, break for 10 minutes, etc.
- Have all you need available – pens, pencils, dictionary, PC, etc.
- Avoid too much physical relaxation or you will go to sleep!
- Actively study – make notes, etc. It is difficult to just read for too long; it makes you sleepy and you lose concentration.
- Remember to have breaks and do have time for relaxation.
- Set yourself targets, and give yourself rewards!

Practice Questions

At the end of each unit you will find Sample Questions, and at the end of the Planner is a Practice Question and Suggested Answer. strongly advised to submit at least one answer to either a Sample Question or the Practice Question for marking. Unless you do so you will not gain any insight into your strengths and weaknesses.
Introduction to Study Units

The Study Units deal with the individual topics covered by the module. The module is broken down into Study Units to enable you to look at each area of law in digestible parts. You must work through each Study Unit in order, ensuring that you understand the material covered by each Unit before progressing on to the next one.

Each Study Unit is broken down into four major sections.

- Reading List

This indicates what reading you must do (Essential Reading) in order to cover all of the material set in the Unit. All material listed in the Essential Reading is provided as part of your study materials. You can, if you wish, further your knowledge and understanding by completing the General Reading in each Unit. These materials are not essential for you to complete the course, but you may find them useful in your study. Such materials are not supplied, and you are responsible for obtaining copies of the titles listed in the General Reading. Details are given in the Reading List of suppliers.

- Case Law and Statutes

This section directs you to those cases and statutes that you will need to read and understand in order to complete the Unit. All materials listed here can be found in your Textbook or 150 Leading Cases.

- Self-Study Questions

These are questions designed to set the parameters of the Study Unit and to test your application of the basic principles.

- Sample Questions

These may be essay or problem questions, often taken from past examination papers. You should attempt your own answers to all of these questions.
Reading List

These are the titles that you will use throughout the course. They are referred to in the reading section of each Study Unit, to guide you in your learning.

Essential Reading

All materials listed here must be read in order for you to understand the module. These books are supplied as part of your study materials.

1. Commercial Law Textbook

1. Commercial Law 150 Leading Cases

1. Commercial Law Statute Book

General Reading

These materials are not supplied, and are not essential to pass the module. You may, however, wish to refer to them to deepen your understanding of the topics covered by the course. You are responsible for obtaining your own copies of these titles. If you choose to do so, you should be able to purchase them by contacting Hammicks Legal Bookshops at 192 Fleet Street, London EC4A 2NJ; tel: +44 (0)20-7405-5711 or you can order online at www.hammickslegal.co.uk.

The Sale of Goods
   Atiyah (10th edition 2000) Longman

Commercial Law
   Bradgate (3rd edition 2000) Butterworths

In addition, in each Study Unit you will find a list of cases which should be consulted. Summaries of these can be found in the 150 Leading Cases; cases marked with an * are referred to in the Textbook. If you have access to the Internet you may wish to take advantage of the legal materials available via this source. See your Award Guide for details.

For those students who have never studied the law, certain terminology used may be difficult to understand at first. As you progress through the course, you will learn a range of new words and phrases that are frequently used in the study of law. If you encounter any difficulties with the terminology used, however, you will find it useful to refer to a legal dictionary, which will explain the meaning of legal words and phrases in plain English. Mozley and Whitley’s Law Dictionary (12th edition 2001) by Butterworths is very helpful, and can be purchased through Hammicks Legal Bookshops.
Study Unit 1  Suggested minimum study hours: 15

Topic
Introduction to Commercial Contracts; Subject Matter of the Contract

Introduction
The Sale of Goods Act 1979 is a codifying statute. In this Unit we look at the types of contract covered by the Act and distinguish sale from other, similar, contracts which do not fall within the 1979 Act’s definition of a sale. We also see that the Act presupposes the existence of a contract, the creation of which is governed by common law principles.

Objectives
a To ascertain the parameters of the subject.
b To examine some fundamental definitions of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods to Consumers Regulations 2002).
c To learn the classification of goods.
d To appreciate that the law of sale of goods in reality is applied contract law, as illustrated when considering the subject matter of a commercial contract.

Essential Reading
These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading
These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

PRELIMINARY CONCEPTS
i Sale
Esso Petroleum Ltd v Commissioners of Customs and Excise [1976] 1 WLR 1; [1976] 1 All ER 117
Helby v Matthews [1895] AC 471
Reardon Smith Line v Hansen-Tangen [1976] 1 WLR 989; [1976] 3 All ER 570
Robinson v Graves [1935] 1 KB 579
Supply of Goods and Services Act 1982: s1
Supply of Goods (Implied Terms) Act 1973

ii Goods
Howell v Coupland (1876) 1 QBD 258
Kursell v Timber Operators & Contractors Ltd [1927] 1 KB 298
Wormell v RHM Agricultural (East) Ltd [1987] 1 WLR 1091; [1987] 3 All ER 75
FORMATION OF A CONTRACT OF SALE

i Offer, acceptance, contractual intention, consideration. Ordinary principles of contract law apply.

ii Formalities
SGA 1979: s4

iii Capacity
SGA 1979: s3
Note: Minors' Contracts Act 1987

iv Auction sales
SGA 1979: s57

THE PRICE

Foley v Classique Coaches Ltd [1934] 2 KB 1
Hillas & Co v Arcos Ltd (1932) 147 LT 503
May & Butcher v R [1934] 2 KB 17
SGA 1979: ss8 and 9

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.
Self-Study Questions

1 What is a contract of sale of goods?
   2 What is the difference between a sale and an agreement to sell? What is the significance of the distinction? 3 When will the Sale of Goods Act 1979 not apply to a contract for the transfer of goods from one person to another? 4 What is the difference between a contract for the sale of goods and a hire-purchase agreement?
   5 What are:
   a goods;
   b specific goods;
   c existing and future goods?
6 What is ‘property’?

Sample Question

To which, if any, of the following transactions would the Sale of Goods Act 1979 apply? a Rusty agrees to buy Dougal’s garden shed which rests on a concrete base in Dougal’s garden. b Smith & Co is owed £100 by Thriftless. Smith sells this debt to the Grabbit Debt Collecting Agency. c Star pays Shine £100 for a car which Shine may win in a raffle. d Rally buys foglights for his car from a garage, which also fits them. e Mogul Petrol offer free glasses to any driver buying more than four gallons of petrol at any one time. f Reader exchanges a book token for a book. (Wolverhampton LLB by Distance Learning Question.)
Study Unit 2  Suggested minimum study hours: 15

Topic
Passing of Property and Risk

Introduction
As a general rule, the person who has property in the goods also bears the risk of the goods being accidentally lost, damaged or destroyed. In this Unit we look at the rules governing the passing of property. In this context, note particularly the importance of the distinction between specific and unascertained goods.

Objectives

a To appreciate the importance of ss16 and 17 Sale of Goods Act.
b To examine the ‘deemed intention’ rules of s18 Sale of Goods Act.
c To ascertain the relationship between the passing of property and the passing of risk.

Essential Reading

These titles have been supplied as part of your study materials.

Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading

These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.

The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statute

PASSING OF PROPERTY

i The fundamental rules
Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 2
All ER 552; [1976] 1 WLR 676
1 Anchor Line, Re [1937] Ch 1
1 Elafi, The [1982] 1 All ER 208
Stapylton, Fletcher Ltd, Re; Ellis, Son and Vidler Ltd, Re [1994] 1
WLR 1181 (Ch D)
SGA 1979: ss16 and 17

ii Deemed intention
1 Aldridge v Johnson (1857) 7 E & B 885
Nanka-Bruce v Commonwealth Trust Ltd [1926] AC 77
Pignataro v Gilroy [1919] 1 KB 459
Underwood Ltd v Burgh Castle Brick and Cement Syndicate [1922] 1 KB 343
iii Sale or return contracts

- Kirkham v Attenborough [1897] 1 QB 201
- Poole v Smith’s Car Sales (Balham) Ltd [1962] 1 WLR 744
- * Weiner v Gill [1906] 2 KB 574
- Weiner v Harris [1910] 1 KB 285
- SGA 1979: s18 r4

PASSING OF RISK

- Demby Hamilton & Co Ltd v Barden [1949] 1 All ER 435
- Healey v Howlett & Sons [1917] 1 KB 337
  1 Horn v Minister of Food [1948] 2 All ER 1036
- Mash & Murrell Ltd v Joseph I Emmanuel [1962] 1 WLR 16
- Sterns Ltd v Vickers Ltd [1923] 1 KB 78
  - SGA 1979: ss20, 32–33 (as amended by s4 of the Sale and Supply of Goods to Consumers Regulations 2002)

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.

Self-Study Questions

1. When are the rules in s18 applied?
2. What is an unconditional contract within s18 r1?
3. What is the meaning of ‘deliverable state’?
4. Does r2 apply where the seller has to repair the goods?
5. What does r5(2) say about delivery to a carrier?
Sample Questions

1 Ali agreed to buy Ben’s car provided Ben made certain modifications to the car’s engine. Ben agreed and Ali gave Ben a deposit of 10 per cent of the price.

Ben made the modifications but, before he could inform Ali, the car was destroyed in a fire at Ben’s garage.

Ben, who was uninsured, is demanding that Ali pay the agreed price for the car. Ali refuses to do this. He is demanding the return of his deposit and is threatening to sue Ben for non-delivery of the vehicle.

Advise the parties.

(Wolverhampton LLB by Distance Learning, June 2001, Question 4.)

2 Tim, a computer manufacturer, had 500 computers in stock. Realising that his business was in financial difficulties, Tim sold 200 computers to Arun, 200 to Ben and 600 to Carl. None of the buyers were aware that Tim’s stock was limited and all paid Tim cash in advance of delivery.

Before any of the computers had been delivered, Tim’s business became insolvent and a receiver was appointed. Arun, Ben and Carl are all claiming the computers they had bought from the receiver.

Explaining the rules relating to the passing of property in unascertained goods, advise the receiver.

(Wolverhampton LLB by Distance Learning, September 2001, Question 3.)
Study Unit 3  Suggested minimum study hours: 15

Topic

Terms (1): Statutory Implied Terms – Description, Quality and Fitness

Please see the additional notes at the end of Study Unit 4

This Unit covers material contained in the Learning Project.

Introduction

Certain terms are automatically implied into those contracts covered by the Sale of Goods Act 1979. In this Unit we examine four of those implied conditions relating to description, satisfactory quality, fitness for purpose and sample.

Objectives

a To examine the concept of ‘description’ under s13.
b To discuss what is meant by satisfactory quality under s14(2) as amended by s3 of the Sale and Supply of Goods to Consumers Regulations 2002.
c To analyse the requirements for liability under s14(3).
d To ascertain the relationship between express and implied terms relating to the condition of the goods.

Essential Reading

These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading

These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

LIABILITY OF SELLER


a Conformity with description
SGA 1979: s13

i Meaning of ‘description’
Ashington Piggeries Ltd v Christopher Hill Ltd [1971] 2 WLR 1051;
[1971] 1 All ER 847
Harlingdon & Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd [1990] 3 WLR 13
iii Whether sale 'by' description
Beale v Taylor [1967] 1 WLR 1193; [1967] 3 All ER 253
Varley v Whipp [1900] 1 QB 513

iv Whether sale 'on' description
* Reardon Smith Line v Hansen-Tangen [1976] 1 WLR 989

v Whether sale 'with description'
Moore & Co v Hallam & Co, Re [1921] 2 KB 519
* Reardon Smith Line v Hansen-Tangen (above)

b Satisfactory quality

Case law on Merchantable Quality (the predecessor to satisfactory quality)
Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 All ER 135; [1987] 1 WLR 1
Bartlett v Sydney Marcus Ltd [1965] 1 WLR 1013
Beecham & Co Pty Ltd v Francis Howard & Co Pty Ltd [1921] VLR 428
Bernstein v Pamson Motors (Golders Green) Ltd [1987] 2 All ER 220
Brown (BS) & Son Ltd v Craikes Ltd [1970] 1 All ER 823; [1970] 1 WLR 752
* Business Applications Specialists v Nationwide Credit Corporation
[1988] RTR 332
* Cehave NV v Bremer Handelsgesellschaft, The Hansa Nord [1975] 3 All ER 739
Crowther v Shannon Motor Co [1975] 1 WLR 30
* Gedding v Marsh [1920] 1 KB 668
Jackson v Rotax Motor and Cycle Co [1910] 2 KB 937
Kendall (Henry) & Sons v William Lillico & Sons Ltd [1969] 2 AC 31
* Mash & Murrell Ltd v Joseph I Emmanuel [1962] 1 WLR 16
Rogers v Parish (Scarborough) Ltd [1987] QB 933; [1987] 2 WLR 353
Shine v General Guarantee Corp Ltd [1988] 1 All ER 911

(Note: consider whether these cases would be decided the same way under the new test of 'satisfactory quality': SGA 1979: s14, as substituted by s1 SSGA 1994.)

(Note also the additional protection to the consumer given by s3 of the Sale and Supply of Goods to Consumers Regulations 2002 which inserts new subss(2D) to (2F) into s14(2).)

c Fitness for purpose

i Communication of purpose
Ashington Piggeries Ltd v Christopher Hill Ltd (above)
Crowther v Shannon Motor Co [1975] 1 WLR 30
Grant v Australian Knitting Mills Ltd [1936] AC 85
* Manchester Liners v Rea [1922] 2 AC 74
Priest v Last [1903] 2 KB 148
* Saphena Computing Ltd v Allied Collection Agencies Ltd [1995] FSR 616 (CA)
Slater and Others v Finning Ltd [1996] 3 WLR 190; [1997] AC 473 (HL)

ii Reliance on seller's skill and judgment
Cammell Laird & Co Ltd v Manganese Bronze & Brass Co Ltd [1934] AC 402
Kendall (Henry) & Sons v William Lillico & Sons Ltd (above)
* Teheran-Europe v S T Belton Tractors Ltd [1968] 2 QB 545

iii Compliance with s14(3)
* Wormell v RHM Agricultural (East) Ltd [1987] 1 WLR 1091 SGA 1979: s14(3)

iv Conformity with sample
* Drummond (James) & Sons v E H Van Ingen & Co (1887) 12 App Cas 284
Ruben (E & S) Ltd v Faire Bros Ltd [1949] 1 KB 254

SGA: s15

v Consumer guarantees
Sale and Supply of Goods to Consumers Regulations 2002: s15
d Implied terms under Supply of Goods and Services Act 1982

Wilson v Best Travel [1993] 1 All ER 353
Wong Mee Wan v Kwan Kin Travel Services Ltd and Others [1995] 4 All ER 745 (PC)

SGSA 1982: ss2–5 (as amended by s7 of the Sale and Supply of Goods to Consumers Regulations 2002)

e Express contractual terms

i Classification

* Barber v NSW Bank plc [1996] 1 All ER 906
Bunge Corp v Tradax SA [1981] 1 WLR 711; [1981] 2 All ER 513
* Cehave NV v Bremer Handelsgesellschaft, The Hansa Nord (above)
Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha [1962] QB 26; [1962] 2 WLR 474
* Reardon Smith Line v Hansen-Tangen (above)

SGA 1979: ss11(3) and 61(1) ‘warranty’

ii Implied terms and express terms

1 The Hansa Nord (above)

2

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.
Self-Study Questions

1 What does the term ‘description’ cover; can there be a sale by description where the buyer has seen and inspected the goods?
2 What is meant by ‘satisfactory quality’ in s14(2) as amended by the 2002 Regulations?
3 In what circumstances will both ss13 and 14(2) be breached?
4 When does s14(3) apply?
5 At what time must goods be of satisfactory quality and fit for their purpose?
6 How does s14 affect the caveat emptor rule?
7 Can an action under s14(2) ever be brought where the buyer has inspected the goods?

Sample Questions

1 ‘The mere fact that there is a description attached to goods does not necessarily mean that the buyer has an action under s13 Sale of Goods Act even though this description is inaccurate. This does not, however, mean that the buyer is left without a remedy.’ Discuss.

(Wolverhampton LLB by Distance Learning, January 2001, Question 2.)

2 Tom went to Utah Garage to buy a used car. Before buying, Tom looked underneath the car and at the bodywork, where he noticed a few patches of rust. Utah gave Tom a small discount on the price because of this rust. Tom bought the car for cash. Two months after the purchase, Tom discovered that the rusting was much more extensive than had been apparent from his examination. He also discovered that there were holes in the car’s underbody which he had not noticed when he looked underneath the vehicle before buying it.
Advise Tom of his rights.

(Wolverhampton LLB by Distance Learning, May 2001, Question 2.)
Study Unit 4  Suggested minimum study hours: 15

Topic

Terms (2): Exclusion Clauses and Unfair Contract Terms

Please see the additional notes at the end of this unit

This Unit covers material contained in the Learning Project.

Introduction

Sellers sometimes attempt to exclude their liability for breach of the implied conditions in the Sale of Goods Act. In this Unit we examine the ways in which the courts deal with these exclusion clauses. The 1977 Act and the 1999 Regulations also deal with clauses which in other ways attempt to restrict the buyer’s rights. In this Unit we also look at the scope and impact of the Consumer Protection Act which imposes strict product liability.

Objectives

a To revise the law relating to exemption clauses.
b To consider the Consumer Protection Act 1987.

Essential Reading

These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading

These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

1 Incorporation

* AEG (UK) Ltd v Logic Resource Ltd (1996) 3 LMCLQ 334 (CA)
Chapelton v Barry Urban District Council [1940] 1 KB 532
Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1988] 1 All ER 348; [1988] 2 WLR 615
Kendall (Henry) & Sons v William Lillico & Sons Ltd [1969] 2 AC 31
L'Estrange v Graucob (F) Ltd [1934] 2 KB 394
Thornton v Shoe Lane Parking Ltd [1971] 2 WLR 585

2 Construction

Ailsa Craig Fishing Co Ltd v Malvern Shipping Co Ltd [1983] 1 WLR 964
* Stewart Gill Ltd v Horatio Myer & Co Ltd [1992] 2 All ER 257 (CA); [1992] 2 WLR 721 (CA)
* Wallis Son & Wells v Pratt & Haynes [1911] AC 394

3 Validity

George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803
* Green (RW) Ltd v Cade Bros Farm [1978] 1 Lloyd’s Rep 602
LIABILITY OF MANUFACTURER/IMPORTER

Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 WLR 1
Warwickshire County Council v Johnson [1993] 2 WLR 1
Consumer Protection Act 1987


Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.

Self-Study Questions

1 What is a ‘consumer’ for the purposes of the Unfair Contract Terms Act 1977? What is the significance of a contract being categorised as a consumer dealing? How does s14 of the Sale and Supply of Goods to Consumers Regulations 2002 affect the definition of ‘dealing as a consumer’?

2 What is the relationship between the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999?

3 Does the doctrine of fundamental breach apply to sale of goods contracts?

4 What is the importance of the Consumer Protection Act 1987?

5 Is it possible for a seller or manufacturer to exclude or limit liability under Part I of the CPA 1987?
Sample Questions

1 ‘Between them, the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999 give the individual consumer almost complete protection from the seller’s attempts to escape liability under the Sale of Goods Act 1979.’ Discuss.

(Wolverhampton LLB by Distance Learning, May 2001, Question 4.)

2 Diehard bought a three-year-old funeral car for £650 from Morbid, a funeral director. Morbid persuaded Diehard to sign a contract which stated, inter alia: ‘The purchaser is deemed to have examined the vehicle prior to this agreement and satisfied himself as to its condition.’ After four weeks’ use the car broke down and needed repairs costing £350.

Consider Diehard’s legal position if:
   a Diehard is a funeral director who loses hundreds of pounds’ worth of business when the car breaks down. He signed the contract without having read it;
   b Diehard is a private motorist who uses the car as a family saloon. He read the contract before signing it but now claims he does not understand it.

(Wolverhampton LLB by Distance Learning Question.)
ADDITIONAL RIGHTS OF THE BUYER INTRODUCED BY EUORPEAN DIRECTIVES

SGA s.48A-F (incorporating into the SGA the Sale of Consumer Goods and Associated Guarantees Directive 99/44/EC)

There is a requirements that the goods must be…”…in conformity with the contract of sale”.

1. Differences 13-15 SGA and s.48 A-F

For s.48 A-F

- B must deal as a consumer.
  Must be a ‘natural person who…is acting for purposes which are not related to his trade, business or profession’.

cf s.13- 15 SGA – B can be acting in any capacity
cf s.12 UCTA – concept of dealing as a consumer in UCTA is broader since

- S is defined as
  ‘any natural or legal person who…sells consumer goods in the course of his trade, business or profession.’

i.e. private sale are outside the scope s.48 A-F.
cf. s.13 SGA

Significance of the sale having to be ‘in the course of his business’
Cf. Stevenson v Rogers

2. The requirement that goods must “be in conformity with the contract” is similar to the requirements of ss. 13-15 SGA.

3. Consumer Remedies

Consumer may:-

(a) either: require the S to repair the goods free of charge.

(b) or: require the S to replace the goods free of charge.

UNLESS, in either case

- this is impossible, or
- this would be disproportionately expensive for the S.

Repair or replacement must be completed within a reasonable time and without significant inconvenience to the consumer.

(c) or: rescind the contract – unless lack of conformity is ‘minor’.

(d) or: obtain a price reduction

If B requires repair or replacement, the right to rescind is suspended until S has had a reasonable opportunity to repair or replace.
When may the consumer demand rescission or price reduction?

**ONLY if:**

Consumer is not entitled to repair or replacement

**OR**

S has not completed repair or replacement within a reasonable time

**OR**

S has not completed repair or replacement without significant inconvenience to consumer.

4. **Comparison SGA / Regulations**

<table>
<thead>
<tr>
<th>SGA</th>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) B who receives non-conforming goods has an <em>absolute</em> right to reject them and demand refund</td>
<td>(i) Rejection is a remedy of last resort</td>
</tr>
<tr>
<td>(ii) If condition is broken in a consumer dealing, contract can be repudiated even if breach is minor</td>
<td>(ii) Rejection is never available if the breach is minor</td>
</tr>
<tr>
<td>(iii) B has no right to demand repair or replacement</td>
<td>(iii) Primary remedy is repair and replacement – subject to test of ‘disproportionality’ - in effect, it is available at S’s option</td>
</tr>
<tr>
<td>(iv) S has no right to insist on ‘curing’ defect</td>
<td>(iv) Effectively, give S the right to cure</td>
</tr>
<tr>
<td>(v) B’s right are clear</td>
<td>(v) B’s rights are unclear – use of vague words</td>
</tr>
<tr>
<td>(vi) Right to reject is lost if B has accepted the goods</td>
<td>(vi) Remedies available for up to 2 years from date of delivery of goods – longer than SGA and gives consumer more rights</td>
</tr>
<tr>
<td>(vii) B has no to claim price reduction</td>
<td>(vii) Price reduction can be demanded by B</td>
</tr>
</tbody>
</table>
GUARANTEES

Under the Regulations, guarantees are binding on the person providing them.

The giving of a guarantee is optional, but if one is given it must
- state that consumer’s rights under national law are unaffected
- set out in ‘plain intelligible language’ the scope and the main terms of the guarantee.

5. EFFECTS OF NEW S.48

Millars of Falkirk v Turpie (1976) SLT 66
Bernstein v Pamsons Motors (Golders Green) [1987] 2 ALL ER 220
Study Unit 5  Suggested minimum study hours: 15

Topic
Title to Goods and Transfer of Title

This Unit covers material contained in the Learning Project.

Introduction
The ultimate purpose of a contract for the sale of goods is to pass ownership of goods from the seller to the buyer. The general rule is that only a person with title can pass good title to another person. There are, however, exceptions to this rule. In this Unit we look at these exceptions and at the rights of the buyer in the event of failure by the seller to transfer title.

Objectives
a To discuss the policy behind the ‘nemo dat’ rule.
b To examine the exceptions to the rule.
c To consider the liability of a transferor lacking in title.

Essential Reading
These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading
These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

NEMO DAT QUOD NON HABET

i The basic rule
SGA 1979: s21(1) ‘Subject to ... than the seller had.’

ii Estoppel
Central Newbury Car Auctions Ltd v Unity Finance Ltd [1957] 1 QB 371
Eastern Distributors Ltd v Goldring [1957] 2 QB 600
* Farquharson Bros v King & Co Ltd [1902] AC 325
Henderson & Co v Williams [1895] 1 QB 521
Mercentile Credit Co Ltd v Hamblin [1965] 2 QB 242
Moorgate Mercantile Co Ltd v Twitchings [1977] AC 890
Shaw v Metropolitan Police Commissioner [1987] 1 WLR 1332
SGA 1979: s21(1)

iii Mercantile agency
* Astley Industrial Trust Ltd v Miller [1968] 2 All ER 36
Oppenheimer v Attenborough & Son [1908] 1 KB 221
Pearson v Rose & Young Ltd [1951] 1 KB 275
Stadium Finance Ltd v Robbins [1962] 2 QB 664
SGA 1979: s21(2)
Factors Act 1889: ss1(1), 1(4) and 2

iv Seller with voidable title
Car and Universal Finance Co Ltd v Caldwell [1965] 1 QB 525
Lewis v Averay [1971] 3 WLR 603
* Newtons of Wembley Ltd v Williams [1965] 1 QB 560
SGA 1979: s23

v Seller in possession
Pacific Motor Auctions Pty Ltd v Motor Credits (Hire Finance) Ltd [1965] AC 867
Staffs Motor Guarantee Ltd v British Wagon Co Ltd [1934] 2 KB 305
Worcester Works Finance Ltd v Cooden Engineering Ltd [1972] 1 QB 210
SGA 1979: s24
Factors Act 1889: s8

vi Buyer in possession
Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 1 WLR 676; [1976] 2 All ER 552
Du Jardin v Beadman Bros Ltd [1952] 2 QB 712
* Forsythe International (UK) Ltd v Silver Shipping Co Ltd, The Saetta [1994] 1 All ER 851 (QBD)
* Four Point Garage Ltd v Carter [1985] 3 All ER 12
* Newtons of Wembley Ltd v Williams (above)
Shaw v Metropolitan Police Commissioner [1987] 1 WLR 1332
SGA 1979: ss17, 19 and 25
Factors Act 1889: s9

LIABILITY OF SELLER DEFICIENT IN TITLE

a Contractual liability
i Cause of action
* Barber v NSW Bank plc [1996] 1 All ER 906
Butterworth v Kingsway Motors Ltd [1954] 1 WLR 1286; [1954] 2 All ER 694
* Microbeads AG v Vinhurst Road Markings Ltd [1975] 1 All ER 529; [1975] 1 WLR 218
Niblett Ltd v Confectioners’ Materials Co Ltd [1921] 3 KB 387
Rowland v Divall [1923] 2 KB 500
* Warman v Southern Counties Car Finance Corporation Ltd [1949] 1 All ER 711; [1949] 2 KB 576
SGA 1979: s12
ii Exemption clauses
UCTA 1977: s6(1)

b Tortious liability
Torts (Interference With Goods) Act 1977: ss1, 2, 3 and 6

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.

Self-Study Questions

1 What does ‘nemo dat quod non habet’ mean and why are there exceptions to the rule?
2 What is necessary to found an estoppel in this context?
3 What is the importance of Worcester Works v Cooden?
4 Can title ever pass if goods are stolen?
5 Is Newtons of Wembley v Williams a good decision?
6 What is the relationship between ss23 and 25 SGA and s2(1) Factors Act?

Sample Questions
1 Discuss whether s25 Sale of Goods Act has made the application of s23 irrelevant.

(Wolverhampton LLB by Distance Learning, September 2001, Question 2.)

2 Arnold went to Brian’s garage and saw a car which he wanted to buy. The owner of the car, Oscar, had left the car with Brian for Brian to obtain offers, but with instructions that Brian was not to accept any offers without first consulting Oscar. By mistake, Oscar had left the car’s registration document in the vehicle and, using this document, Brian sold the car to Arnold. The car stayed in Brian’s garage until Arnold’s cheque was cleared but, before this happened, Oscar went to the garage and took the car and registration document away as he had agreed to sell the car to Claude. Claude was going to draw out the money to pay for the car from his building society savings and, again forgetting to remove the registration document, Oscar allowed Claude to use the car to go into town to withdraw the money. Claude, however, calling himself Oscar, sold the car to Daniel who acted innocently. The sale took place in a public house. Both Arnold and Oscar are claiming the car from Daniel. Discuss their claims.

(Wolverhampton LLB by Distance Learning Question.)
Topic

Performance of the Contract

Introduction

The Sale of Goods Act gives rules as to the performance of the contract. It also covers cases where the goods perish before the contract is made. This Unit examines these various rules.

Objectives

a To consider the duties of the parties with regard to the performance of the contract.
b To examine the concept of delivery. Payment and delivery as concurrent terms.
c To consider the rules relating to delivery of the wrong quantity of goods.
d To examine the seller’s valid excuses in law for failing to deliver.

Essential Reading

These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading

These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

BUYERS’ DUTIES: DUTY TO PAY

* Vaswani v Italian Motors [1996] 1 WLR 270 (PC)
DElIVERY: ITS NATURE, PLACE AND TIME
Bunge Corp v Tradax SA [1981] 2 All ER 513
* Laurie & Morewood v John Dudin & Sons Ltd [1926] 1 KB 223
Rickards (Charles) Ltd v Oppenheim [1950] 1 KB 616
* Wimble & Sons v Rosenberg & Sons [1913] 3 KB 743
SGA 1979: ss28, 29(1), (2) and (4), and 61(1)
SGA 1979: ss32(1) and (2) and (4) as inserted by the Sale and Supply of Goods to Consumers Regulations 2002
SGA 1979: s10(2)

DELIVERY OF THE WRONG QUANTITY OF GOODS

* Regent OHG Aisenstadt v Francesco of Jermyn Street Ltd [1981] 3 All ER 327
* Shipton, Anderson & Co Ltd and Harrison Bros & Co Ltd, Re [1915] 3 KB 676
SGA 1979: ss30 and 31(1)
SELLER’S Excuses FOR NON-DELIVERY

i Initial impossibility
* Asfar v Blundell [1896] 1 QB 123
* Barrow, Lane and Ballard Ltd v Phillip Phillips & Co Ltd [1929] 1 KB 574
McRae v Commonwealth Disposals Commission (1951) 84 CLR 377
SGA 1979: s6

ii Risk
* Head v Tattersall (1871) LR 7 Exch 7
Stuns Ltd v Vickers Ltd [1923] 1 KB 78

iii Frustration
Couturier v Hastie (1856) 5 HL Cas 673; (1856) 9 Ex 102
SGA 1979: s7
Law Reform (Frustrated Contracts) Act 1943

iv Growing crops: a special case
* Howell v Coupland (1876) 1 QBD 258
* Sainsbury v Street [1972] 1 WLR 834

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.

Self-Study Questions

1 What are the common law rules applying to misdelivery?
2 What are the rules relating to delivery of the wrong quantity?
3 When is s31(2) applicable? What is its effect?
4 When will the seller be liable for deterioration of or damage to goods during transit?
5 What is the relationship between ss6 and 7?
Sample Questions

1 Shard contracts to sell to Beaker specific utility items of pottery, as previously seen by Beaker. Unknown to either party, there has already been a fire at Shard’s premises. The heat of the fire, combined with chemical elements from other burning substances, has melted the glaze on the pottery and re-fused it in unique and beautiful colours and patterns. The pottery is now unusable for practical purposes, but is of far higher value for ornamental use. Shard now claims that the contract is void; Beaker insists that Shard perform it. Discuss.

(Wolverhampton LLB by Distance Learning Question.)

2 a Would it make any difference to your answer to the above question if the pottery was to have been packaged by Shard ready for movement, and the fire had occurred after the making of the contract but before the packaging was complete?

b Suppose that Shard had agreed to sell Beaker 100 jugs out of the next firing of a particular kiln. In the event, the firing is faulty and only 50 jugs are produced. Discuss the parties’ positions.

(Wolverhampton LLB by Distance Learning Question.)
Study Unit 7  Suggested minimum study hours: 15

Topic

Remedies for Breach of Contract

This Unit covers material contained in the Learning Project.

Introduction

In this Unit we examine the remedies available to both the buyer and seller. In this context, it is important to note the implications of acceptance and of instalment contracts. Note also the ways a seller may be protected by putting a retention of title clause into the contract of sale, and how an unpaid seller has both personal and real remedies against the buyer.

Objectives

a To examine the remedies available to a buyer.
b To examine the remedies available to a seller.
c To distinguish between personal remedies and proprietary remedies.

Essential Reading

These titles have been supplied as part of your study materials.
Commercial Law Textbook – Relevant Chapter(s)
Commercial Law 150 Leading Cases – (See listed cases)

General Reading

These titles have not been supplied and are not essential reading, but you may wish to refer to them to further your understanding.
The Sale of Goods, Atiyah – Relevant Chapter(s)
Commercial Law, Bradgate – Relevant Chapter(s)

Case law and statutes

Remedies of buyer

THE RIGHT TO REJECT

Boston Deep Sea Fishing and Ice Co v Ansell (1888) 39 Ch D 339
* Panchaud Frères SA v Etablissements General Grain Co [1970] 1 Lloyd’s Rep 53

LOSS OF THE RIGHT TO REJECT

i Reasonable opportunity for inspection
* Hardy & Co v Hillerns and Fowler [1923] 2 KB 490
* Maniffature Tessile Laviera Wooltex v Ashley [1979] 2 Lloyd’s Rep 28
SGA 1979: ss34 and 35

ii Acceptance
Bernstein v Pamson Motors (Golders Green) Ltd [1987] 2 All ER 220
* Johnson v Agnew [1980] AC 367
Kwei Tek Chao v British Traders & Shippers Ltd [1954] 2 QB 459
SGA 1979: ss35 and 35A, as inserted by s2 SSGA 1994
iii Instalment contracts

* Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd [1934] 1 KB 148

THE RIGHT TO DEMAND REPAIR OR REPLACEMENT OF THE GOODS OR REDUCTION OF PURCHASE PRICE OR RESCISSION

SGA 1979: Pt 5A and s48A–F as inserted by s5 of the Sale and Supply of Goods to Consumers Regulations 2002

DAMAGES

  Coastal (Bermuda) Petroleum Ltd v VTT Vulcan Petroleum SA (No 2),
  The Marine Star [1994] 2 Lloyd’s Rep 629 (QBD)
* Hall (R & H) Ltd and W H Pim & Co’s Arbitration, Re [1928] All ER Rep 763
* Lambert v Lewis [1982] AC 225
* Tai Hing Cotton Mill v Kamsing Knitting [1979] AC 91
  Vitol SA v Norelf Ltd [1995] 3 WLR 549; [1996] 3 All ER 193 (HL)
* Wertheim v Chicoutimi Pulp Co Ltd [1911] AC 301
  * Williams v Agius [1914] AC 510
  SGA 1979: ss51, 53 and 54

Also see ordinary contractual principles with respect to mitigation, remoteness etc.
Commercial Law: Sale of Goods

OTHER REMEDIES

Wait, Re [1927] 1 Ch 606
SGA 1979: s52

GENERAL

SGA 1979: ss27–54
Remedies of seller

PROPRIETARY REMEDIES

i Lien
Mount v Jay & Jay Co Ltd [1960] 1 QB 159
SGA 1979: ss39, 41, 42, 43, 47 and 61(4)

ii Right of stoppage in transit
* Bethell & Co Ltd v Clark & Co Ltd (1888) 20 QBD 615
  Booth Steamship Co Ltd v Cargo Fleet Iron Company Ltd [1916] 2 KB 570
SGA 1979: ss44, 45, 46 and 47

iii Right of resale
Ward (RV) Ltd v Bignall [1967] 1 QB 534
SGA 1979: s48
Note: the relationship between ss48 and 24.

iv Retention of title
Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 1 WLR 676; [1976] 2 All ER 552
Armour v Thyssen Edelstahlwerke AG [1990] 3 WLR 810; [1990] 3 All ER 481 (HL)
Bond Worth Ltd, Re [1980] Ch 228
Borden (UK) Ltd v Scottish Timber Products Ltd [1981] Ch 25
Clough Mill Ltd v Martin [1985] 1 WLR 111
Pfeiffer (E) Weinkellerei-Weineinkauf GmbH & Co v Arbuthnot Factors
PERSONAL REMEDIES

i Action for the price
* Stein, Forbes & Co Ltd v County Tailoring Co Ltd (1916) 86 LJKB 448
* Workman Clark & Co Ltd v Lloyd Brazileno [1908] 1 KB 968
SGA 1979: s49

ii Damages for non-acceptance
Charter v Sullivan [1957] 2 QB 117; [1957] 2 WLR 528
* Lazenby Garages Ltd v Wright [1976] 1 WLR 459
Shearson Lehman Hutton Inc v Maclaine Watson & Co Ltd (No 2) [1990] 1 Lloyd’s Rep 441
Thompson (WL) Ltd v R Robinson (Gunmakers) Ltd [1955] 2 WLR 185
SGA 1979: s50

GENERAL
SGA 1979: ss27–54

Cases marked with an * can be found in your Textbook; all other cases can be found in your 150 Leading Cases.

Self-Study Questions

1 When may a buyer recover loss of profit when the seller fails to deliver?
2 What are the limits on the buyer’s right to demand repair or replacement of faulty goods and on the buyer’s right to claim a reduction of the purchase price or rescission of the contract?
3 What is an unpaid seller? What are such a person’s rights?
4 If an unpaid seller resells, will the new buyer receive good title?
5 What is the difference between a right of resale and a power of resale?
6 Why would a seller want a reservation of title clause?

Sample Questions

1 ‘The ultimate real remedy an unpaid seller may exercise in relation to the goods is the right of resale.’

Describe the real remedies of the unpaid seller and discuss the circumstances in which the right of resale will arise, explaining the effects of the resale on the original contract of sale.

(Wolverhampton LLB by Distance Learning, May 1999, Question 3.)

2 ‘A retention of title clause (sometimes known as a Romalpa clause) is much more limited in its application that it had originally been believed.’

Discuss.

(Wolverhampton LLB by Distance Learning, May 2001, Question 3.)
Learning Project  Suggested minimum study hours: 50

In common with all the modules that form part of the LLB by Distance Learning programme this module involves a Learning Project. Undergraduate students at the University of Wolverhampton are required to demonstrate that they are capable of independent research before they can be recommended for the award of a degree. For distance learning students this is assessed by reference to the Learning Project you undertake in respect of each module. It requires you to pay specific attention to a list of defined reading. Commonly covering a range of cases and statutes you are required to demonstrate your mastery of the area(s) of law concerned by undertaking a compulsory question as part of the end of module examination. This will commonly take the form of an extended legal problem and require you to demonstrate not only that you understand the areas of law concerned but are able to apply them clearly and without error. It could also take the form of an essay question requiring you to demonstrate an ability to comment on linked areas of law. Particular attention will be paid to the accuracy with which you cite the law and the arguments of those responsible for its development. You will also be expected to demonstrate that you understand, and have not been confused by, the ambiguities and contradictions that exist in the undergraduate study of the law. This question, which will change with each examination paper, will account for 50 per cent of the overall grade and require you to devote one hour of the two-hour examination period to it. Please note that for each examination you are allowed 15 minutes' reading time on top of the two hours you have to write your answers. You may also take into the examination the relevant 150 Leading Cases and Statute Book. Please note that these may not contain any additional notes or markings.
Learning Project for Sale of Goods: Breach of Contract; Buyer’s Remedies; Transfer of Title

Essential Reading

*Commercial Law Textbook* (Relevant Chapter(s)) Griffiths (3rd edition 2003) Old Bailey Press

*Commercial Law 150 Leading Cases* (Relevant Chapter(s)) Fletcher (2002) Old Bailey Press

Guidance notes

This Learning Project is covered by Units 3, 4, 5 and 7 in your Module Planner. In carrying out your reading and research you should have special regard to the following key points.

- Distinguish between express and implied terms.
- Note the implied terms in the Supply of Goods and Services Act.
- What are words of description?
- When will s13 Sale of Goods Act apply?
- How did the judgment in *Ashington Piggeries* limit the scope of s13?
- When will the satisfactory quality condition not apply?
- How do advertisements and consumer guarantees affect the consumer’s rights?
- The requirements for a claim under s14(3).
- Exclusion clauses are only effective if they are incorporated and cover the breach that has occurred and are not rendered void by UCTA.
- Distinguish between consumer and non-consumer dealings in relation to UCTA.
- Liability of manufacturers/importers etc under Consumer Protection Act.
- The basis for the exceptions to the nemo data quod non habet rule.
- The relationship between the exceptions in s23 and s25.
- When will s12 apply?
- The relevance of acceptance to the buyer’s remedies for breach.
- The principles on which the buyer’s claim for damages are based.
Case law and statutes

EXCLUSION CLAUSES AND UNFAIR TERMS

i Incorporation
Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1988] 2 WLR 615; [1988] 1 All ER 348
L'Estrange v Graucob (F) Ltd [1934] 2 KB 394

ii Construction

iii Validity
George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803

iv Liability of other than seller
Warwickshire County Council v Johnson [1993] 2 WLR 1

IMPLIED CONDITIONS IN SALE OF GOODS ACT

S13

i Meaning of description
Ashington Piggeries Ltd v Christopher Hill Ltd [1971] 2 WLR 1051
* Cehave NV v Bremer Handelsgesellschaft, The Hansa Nord [1975] 3 All ER 739
* Reardon Smith Line v Hansen-Tangen [1976] 1 WLR 989

ii Was there reliance?
Harlingdon & Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd [1990] 3 WLR 13

iii Was sale ‘by’ description?
Beale v Taylor [1967] 1 WLR 1193
S14(2) & (3)

i Satisfactory quality (‘merchantable quality’ under the old law)
Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 WLR 1
Bartlett v Sydney Marcus Ltd [1965] 1 WLR 1013
Brown (BS) & Son Ltd v Craikes Ltd [1970] 1 WLR 752
* Business Applications Specialists v Nationwide Credit Corporation [1988] RTR 332
* Cehave NV v Bremer Handelsgesellschaft, The Hansa Nord (above)
Crowther v Shannon Motor Co [1975] 1 WLR 30
Kendall (Henry) & Sons v William Lillico & Sons Ltd [1969] 2 AC 31
* Lambert v Lewis [1982] AC 225
Rogers v Parish (Scarborough) Ltd [1987] 2 WLR 353
Shine v General Guarantee Corp Ltd [1988] 1 All ER 911

ii Fitness for purpose
a Communication of purpose
Ashington Piggeries Ltd v Christopher Hill Ltd (above)
Grant v Australian Knitting Mills Ltd [1936] AC 85
* Manchester Liners v Rea [1922] 2 AC 74
Priest v Last [1903] 2 KB 148
Slater and Others v Finning Ltd [1996] 3 WLR 190; [1997] AC 473

b Reliance
Cammell Laird & Co Ltd v Manganese Bronze & Brass Co Ltd [1934] AC 402
Kendall (Henry) & Sons v William Lillico & Sons Ltd (above)
* Teheran-Europe v S T Belton Tractors Ltd [1968] 2 QB 545

c Compliance
* Wormell v RHM Agricultural (East) Ltd [1987] 1 WLR 1091
S15
* Ruben (E & S) Ltd v Faire Bros Ltd [1949] 1 KB 254
IMPLIED TERMS IN SUPPLY OF GOODS AND SERVICES ACT 1982

* Reardon Smith Line v Hansen-Tangen (above)
Wilson v Best Travel [1993] 1 All ER 353
Wong Mee Wan v Kwan Kin Travel Services Ltd and Others [1995] 4 All ER 745 (PC)

EXPRESS TERMS

Bunge Corp v Tradax SA [1981] 2 All ER 513
Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha [1962] QB 26; [1962] 2 WLR 474
* The Hansa Nord (above)

NEMO DAT QUOD NON HABET EXCEPTIONS:

i Estoppel
Central Newbury Car Auctions Ltd v Unity Finance Ltd [1957] 1 QB 371
Eastern Distributors Ltd v Goldring [1957] 2 QB 600
* Farquharson Bros v King & Co Ltd [1902] AC 325
* Henderson & Co v Williams [1895] 1 QB 521
Mercantile Credit Co Ltd v Hamblin [1965] 2 QB 242
Moorgate Mercantile Co Ltd v Twitchings [1977] AC 890

ii Mercantile agency
Oppenheimer v Attenborough & Son [1908] 1 KB 221
Pearson v Rose & Young Ltd [1951] 1 KB 275
Stadium Finance Ltd v Robbins [1962] 2 QB 664

iii Voidable title
Car and Universal Finance Co Ltd v Caldwell [1965] 1 QB 525
Lewis v Averay [1971] 3 WLR 603
* Newtons of Wembley Ltd v Williams [1965] 1 QB 560

iv Seller in possession
Pacific Motor Auctions Pty Ltd v Motor Credits (Hire Finance) Ltd [1965] AC 867
Staffs Motor Guarantee Ltd v British Wagon Co Ltd [1934] 2 KB 305
Worcester Works Finance Ltd v Cooden Engineering Ltd [1972] 1 QB 210

v Buyer in possession
Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 1 WLR 676
Du Jardin v Beadman Bros Ltd [1952] 2 QB 712
* Newtons of Wembley Ltd v Williams (above)

LIABILITY OF SELLER WITH NO TITLE

Butterworth v Kingsway Motors Ltd [1954] 1 WLR 1286
* Microbeads AG v Vinhurst Road Markings Ltd [1975] 1 WLR 218
Niblett Ltd v Confectioners’ Materials Co Ltd [1921] 3 KB 387
Rowland v Divall [1923] 2 KB 500
* Warman v Southern Counties Car Finance Corporation Ltd [1949] 2 KB 576

REMEDIES OF BUYER

i Right to reject
Boston Deep Sea Fishing and Ice Co v Ansell (1888) 39 Ch D 339

ii Loss of right to reject
Sample Questions

1 Suresh, a self-employed accountant, bought a telephone answering machine for his business from Telecomms plc. The machine was advertised as being compatible with all telephones and as being capable of recording one hour of messages. The sales assistant at Telecomms also told Suresh that it was simple to use and ‘the latest in modern technology’. As Suresh paid cash for the machine he was given a 10 per cent discount.

In making his purchase, Suresh had to sign a standard form contract with Telecomms. One of the clauses in the contract read:

‘Telecomms will repair any faulty equipment free of charge for one year after purchase. The company accepts no other liability whatsoever for any loss or damage resulting from any defect in the equipment or for any representation or warranty given in relation to the equipment.’

Suresh occasionally worked from home, but when he tried to install the machine there he found that it was not compatible with his telephone. He therefore decided to use it in his office instead. It was compatible with the telephone there but turned out to be very complicated to use and would record only 20 minutes of messages, thus making it useless for Suresh’s business purposes. He also discovered that it was an old-fashioned model. Furthermore, several weeks after he had started to use the machine, it developed a fault and started erasing all the messages as soon as they had been received. This meant that Suresh lost a substantial amount of business. A friend of
Suresh’s, Anna, who was visiting the office, accidentally touched the adaptor supplied with the machine and received a severe electric shock and suffered substantial burns to her hand. Suresh demanded the return of his money from Telecomms and Anna also claimed compensation for her injury from Telecomms. Telecomms seek your advice saying that, on the basis of the clause in the contract, they are willing to repair any faults but are not willing to accept any other liability to Suresh. They also deny any liability to Anna as they did not manufacture the machine. Advise Telecomms.

(Wolverhampton LLB by Distance Learning, May 1999, Question 1.)

2 A month ago Singh, a wholesaler, ordered a consignment of cakes from Bakers plc. Singh specified that the cakes had to be ‘nut free’ as they were to be sold to people who were allergic to nuts. The cakes were delivered to Singh in individual boxes which did not have the ingredients printed on them. A sheet of paper enclosed with the consignment, however, did specify the ingredients and showed that the cakes contained nuts. Singh did not read this piece of paper but sold the cakes on to various shops describing them as ‘nut free’.

Last week, Singh received complaints from several of his customers informing him that purchasers of the cakes had had a severe allergic reaction when they ate them. The shops had had to pay compensation to these customers and were requiring Singh to indemnify them for these payments.

When Singh contacted Bakers plc demanding damages, Bakers refused, reminding Singh that the contract he had signed required Singh to check that goods purchased were in accordance with the order and that Bakers’ liability was limited to the price Singh had paid for the cakes. Bakers pointed out that the cakes’ ingredients were clearly printed on the piece of paper enclosed with the consignment and as Singh had not looked at the packaging he had to bear all the loss himself.

Advise Singh.

(Wolverhampton LLB by Distance Learning, September 2001, Question 1.)

Learning Project

Practice Question and Suggested Answer

The following test is designed for practice only and does NOT count as part of the assessment regime. A Suggested Solution is, however, offered in the following section. Students are advised not to consult this solution until they have completed the test. It is expected that you will return your answer to the College for marking and feedback. Unless you undertake such work you will not gain an insight into your academic strengths and weaknesses before you attempt the examination.

Before attempting your answer, please ensure that you understand the assessment criteria explained in the Award Guide, and the guidance contained in the section of the Module Planner headed ‘Skills to be Developed and Examined’.
Question

Oscar needed money urgently so he took his car to Sam’s garage and asked Sam to sell the vehicle for not less than £9,000. Sam, who often undertook transactions of this type for customers, agreed, suggesting that Oscar should leave the car’s registration book with Sam for safe keeping. Oscar therefore left the book in the car. That afternoon, a friend of Oscar’s told him that Sam’s garage was in financial difficulties so Oscar immediately telephoned Sam telling him that he was not to sell the car and that Oscar would collect it later. When Oscar arrived at Sam’s garage that evening, however, one of Sam’s assistants told him that, immediately after Oscar’s telephone call, Sam had sold the car to Tim for £7,000 cash. Tim had taken the car away and Sam had disappeared with the money. The assistant did not know Tim’s name and address and it took Oscar a week to find him. By this time, Tim had sold the car to Yusof. Yusof had paid for the car by cheque but the cheque had been dishonoured. Tim had immediately told the police but, by this time, Yusof had sold the car on to Asif. Asif was unaware of any fraud. A tracing through the various transactions, decide which of the people involved in the case has title to the car. 49 b Discuss the ways in which the Sale of Goods Act would assist those people who could not claim ownership.

(Wolverhampton LLB by Distance Learning, May 2001, Question 1.)

Suggested Answer to Practice Question

NB: Do not consult this solution until you have completed the test.

Outline Answer

This question related to the exceptions to the nemo dat quod non habet rule. The general implications of this rule should have been discussed and explained.

a Sam a mercantile agent.
Define.
Discuss powers.

Sam’s sale to Tim valid.
Tim’s sale to Yusof.
Yusof had voidable title.
Explain.

Effects.
When was title avoided?
Asif’s title.
Relevant cases.

Sam is a mercantile agent. Define a mercantile agent and discuss the powers of such a person.

The relevance of the registration book being left with Sam with Oscar’s consent should have been explained. This meant that Sam would appear to be selling in the ordinary course of business when he sold the car to Tim. Tim took in good faith and paid cash and therefore Tim has title to the car. The fact that Sam was acting outside the authority given to him by Oscar is irrelevant to Tim’s title. Oscar’s only action would be against Sam.

Tim’s sale to Yusof should then have been discussed. Yusof had a 51 voidable title as the cheque he gave Tim for the car has been dishonoured. The meaning, effect and implications of voidable title under s23 should have been explained and analysed. The question of when title was avoided
should have been discussed and applied. The question says that when Tim discovered that Yusof’s cheque had been dishonoured he ‘immediately told the police but, by this time, Yusof had sold the car to Asif’. This suggests that Yusof had sold the car before the title had been avoided; therefore Asif would obtain good title to the vehicle. Relevant cases should have been cited throughout as should the relevant sections of the Sale of Goods Act. b Section 12 SGA.

Discuss.

Explain remedies available to purchasers who do not obtain title.

This question asked for a discussion of the ways in which the SGA helps those people who could not claim ownership. In other words it was asking the students to discuss the rights of people who bought goods from someone who had no right to sell them. This called for an analysis of s12 of the SGA. Section 12 should have been discussed and the remedies available to purchasers who did not obtain title (including the right to damages) should have been analysed.

Answer

Note: this answer is based on one written by a distance learning student covering the question set as part of an examination. This question requires a detailed discussion of the position of a person acting as an agent, and a discussion is also required of the Factors Act 1889, along with relevant case law. It is also necessary to consider when a purchaser will acquire title, since issues like risk and other relevant aspects will all be interrelated in such a situation. It will be important to discuss various aspects of unascertained and specific goods. However, the discussion of specific goods is of paramount importance since the car is identified and according to s61(1) of the Sale of Goods Act specific goods are those which are identified at the time of the contract. Also of great relevance is a discussion of when payment has been made by a cheque and the cheque has been dishonoured. This question will require a discussion of all these circumstances in a systematic order, taking into account every party that is mentioned in relation to relevant case law.

a Oscar needed money so he took his car to Sam’s garage and asked him to sell the vehicle for not less than £9,000. It is important at this point to discuss Sam’s position as an agent.

An agent is one who sells or accepts orders for his principal in the ordinary course of his business. He must be an independent agent dealing in contracts which are related to agency. It is not important that an agent should act for one person; as an agent, he can act for various parties at one time as long as he acts in accordance with the terms and conditions of the Factors Act 1889. The Factors Act 1889 was implemented basically to protect innocent purchasers, who took property in good faith. If an agent acts on behalf of the owners, then according to the Factors Act it will be seen that it will bind the owner and the owner will be a party to the agreement. In such a situation, if the purchaser is one who has acted in good faith then he will get the title to the goods. It was said in one decided case that an agent may have actual authority or ostensible authority. It is his ostensible authority which is of importance. This means that as the third party sees the agent acting as one, the agent has ostensible authority. Again one factor that needs discussion is the fact that an agent should and must act as an agent in regard to those goods which are subject to his authority, and this principle was stressed by Pearson v Rose and Young (1951). Further, this case said that the owner must consent to an agent having the goods for a purpose which in some way or other is connected with his business as a ‘mercantile agent’. Recently, in Bishopsgate Motor Finance Corporation Ltd v Transport Brakes Ltd (1949) it was said that the registration book was stated not to be a document of title, but is the best evidence of title. The courts now view with suspicion any dealing in a second hand car without a registration book. Possession of goods with reference to the Factors Act means possession of a car as well as the registration book. The Factors Act 1889 does not therefore operate to give good title to the dealer who bought from an agent, nor to the buyer in succession from him. There should be consent by the owner to
the agent and this does not have any relation to criminal law. It was said in Folkes v King (1923) that as long as the owner consents to the person having any property then it is of no relevance that the owner would not have consented had he known that the person was acting on the basis of fraud.

In relation to this case, Oscar handed over the car along with its registration book to Sam. It is shown that there was consent on the part of the owner; however, one of the major factors of discussion is that later Oscar, on learning of Sam’s financial difficulties, did call Sam and told him not to sell the car. This is where Oscar prohibited Sam from selling his car. However, Sam did sell the car to Tim for £7,000 cash.

It is very important at this point to discuss Tim’s position as to whether he did get good title, since Sam acted outside his authority and against Oscar’s wish. It is very important to discuss Pearson v Rose and Young (1951) which is a case on whether an innocent purchaser’s right is protected. It was said in this case that the question is whether the title of the innocent purchaser is protected by s2(1) of the Factors Act 1889. The car and the registration book must, for the purposes of this section, be in the possession of the mercantile agent in the ordinary course of his business. A sale of a car without the registration book would not be such a sale. In the present case it seems that Oscar did consent to Sam having the car as well as the registration book, but later, however, he told him not to sell the car. The agent, it seems to me, was never in possession of the registration book with the consent of Oscar after the telephone call. The agent did have ostensible authority but no actual authority.

However, there can be difficulty here again for Oscar since in the first place he did consent to Sam having both the car and the registration book, and it was stated in Folkes v King (1923) if the owner consents then it is not relevant that he would not have, if he had known that the other person was acting on the basis of fraud. It is said that parliament does not protect the true owner if he himself consented to a mercantile agent having possession of the goods. By leaving the agent with this authority, it seems that Sam was acting as the true owner himself. Three main points of consideration are the fact that the agent is guilty of larceny or fraud does not in itself prevent the operation of the Factors Act. Secondly, consent may have initially been obtained by fraud, but until avoided, it is consent which enables the Factors Act to operate. Thirdly, if the purchaser is one who obtains goods in good faith he will be said to have obtained good title. Now turning to the position of Tim, two considerations need discussion. Firstly, Tim had bought the car and it was apparent that as the agent had the registration book, an innocent purchaser could reasonably believe that the agent had consent, since the possession of a registration book is conclusive evidence generally that an agent has consent. In this respect, the Factors Act will protect him, as he has paid cash and there was no fraud on his part. However, since Oscar did later tell Sam not to sell the car it can be said that the agent had no authority to do so, and Tim did not obtain a good title. One factor of paramount importance is that it is the basis of the Factors Act to protect innocent purchasers, and Tim will likely be protected by it and thus he may be said to have good title.

Tim later sold the car to Yusof for a cheque and it has been dishonoured. It will be important to consider that no property in the goods has passed to Yusof since Tim has informed the police, and it was said in the case of Car & Universal Finance Co Ltd v Caldwell (1965) that a contract can be set aside by taking reasonable steps, and Tim did so. Thus it can be seen that Tim is an unpaid seller and according to s38(1) where there is payment by cheque there is a condition that the property will not pass in the goods until the cheque is valid. Asif has been sold the car by Yusof but it is said in the nemo dat rule that the buyer will not get good title in cases where the seller does not have the title to sell. After having considered the first part of the question, we shall turn to part (b) of the question, since it needs detailed analysis of various important points. b It will be seen from the Sale of Goods Act that people who cannot claim ownership will have various remedies. Section 12(1) says that the seller should pass good title to the buyer. Where a seller does not pass good title, the buyer can claim damages as was done in Niblett v Confectioners Materials (1921). A seller may, under the nemo dat exceptions,
have a power to sell goods but here there is uncertainty as to whether the buyer can claim damages. It was said in a decided case that in such a situation a buyer could claim damages. Furthermore three main cases say that where a buyer has had use of the property and later finds that he has not acquired good title, he may repudiate the contract as well as claim damages. This principle has been upheld by cases like Rowland v Divall (1923) and Kartflex Ltd v Poole (1933). Under the nemo dat exceptions a buyer will get good title provided he obtained the goods in good faith. Where there has been a representation or a negligent act of some kind by the owner to the third party, it will be seen that the innocent party will get good title. The case in which there was representation by the owner to the third party decided this, and the case for negligence is that of Pickard v Sears (1837). Also, where common law requires a pledgee may sell goods and the buyer will get good title. Even in cases of necessity the buyer will get good title. Similarly, a sale by a sheriff under statutory law as in Curtis v Maloney (1951) will pass good title.

Much will also depend on the nature of the property. If property is unascertained then s16 says that the buyer will not get ownership as in the cases of Hayman v McLintock (1907) and Laurie and Morewood v John Dudlin (1926). However, SGA 1995 has said that where there is unascertained property belonging to an identified bulk then property can pass by exhaustion as in Mount v Jay & Jay (1960), and in Re Wait (1927) unconditional appropriation was said not to pass property and ownership as in Healey v Howlett & Sons (1917). But cases like Aldridge v Johnson (1957) and other decided cases say that they can pass where certain conditions are fulfilled. In ascertained goods property will pass at the time of the contract in accordance with rule 1, 2, 3, 4, 4(a) and 4(b). Ownership is very important because it will indicate whether the risk lies with the buyer as in Bovington & Morris v Dale & Co Ltd (1902) or with the owner as in Head v Tattersall (1871).

Thus ownership is an important point for discussion as it will tell us whether risk lies with the owner or with the seller. If risk remains with either party then they will have to bear the loss in accordance with the principles laid down by the SGA.
Marker's comment on Student Answer

This was an averagely good answer. In part (a) there was some repetition but most of the points were addressed. It makes the point about s23, albeit obliquely, but misapplies the law to the facts. This is possibly due to a mis-reading of the question and shows how important it is to read the question carefully before starting to write the answer. Also, the repetition shows the need to make a plan of the answer. If this is done there will be little risk of repetition. In (b) the answer started well and made some valid points but then drifted away from the question set. Again this illustrates the need to plan the answer carefully.

Overall this was a reasonable answer, but had more care been taken and a plan written, and followed, it could have been very good.
Revision

What to revise

Consider carefully what you have been told about the format of the examination. How many questions will you be required to answer in what length of time? Work out how long you are likely to have to write an answer to any one question.

Look at past exam papers. A sample can be accessed via the School of Legal Studies website www.wlv.ac.uk/sls. They may help you to identify the questions which are most likely to appear on your exam; and on which you can concentrate your revision. This is known as question spotting and, although this is not advisable, it may sometimes be necessary. If you have to do this, you should revise two additional topics just in case: the question on one of the topics on which you have concentrated most may be phrased in such a way that you are not certain how to answer it. It is, however, safer to deal with every topic in the module so that you are prepared for all questions.

By looking at past exam papers you may also be able to determine whether certain topics tend to be examined by way of problem scenarios or general discussion questions. Structure your revision to accommodate the different approaches those two different types of question require.

Look closely at the topics covered by the module. Those topics which have been given the greatest emphasis are a good bet to appear in the exam.

The question in the Learning Project is compulsory so make sure that your revision is thorough on the topic, or topics, it covers.

Planning your revision

The best method of revision is to revise continuously throughout your study of a module, but whether you revise continuously or prefer the last minute approach, try to relax on the day before an exam. To do well you need to be both physically and mentally fit.

Well before the exam period make yourself a revision calendar. Make sure that the revision period you plan is long enough to cover all of the modules you have studied, and gives you regular breaks away from your studies. You need to start your revision at least two weeks before the examination period. It is not wise to plan to revise for more than an hour at a time without a short break. You should build in some days in which you put revision aside altogether and do something which will take your mind off the upcoming exam period.

Don’t just divide the revision period equally between topics. Make a realistic appraisal of which topic(s) you are weakest in and plan to give them the most time. In deciding how much time to give each topic you should also take into account how much the exam counts towards your overall mark. In other words, plan your revision to do best on exams which will give you the most benefit in terms of your overall results.

Do not concentrate all your revision of any one topic in a solid block. You will find that your concentration will be better if you rotate your revision from topic to topic.

Plan your revision of any one topic in stages. The first stage is to acquire a knowledge of the topic. This involves re-reading your notes and whatever is necessary in your books. The second stage is to break that knowledge down into easily remembered key components. The third stage is to hone your ability to identify issues and relate them to those key components. This is best accomplished by writing answers to past exam questions.
How to revise

If you have any general problems with your studying, don’t just sit there hoping it will come right in the end; contact the Module Leader or the College.

There are a number of stages in the revision process. First you have to ensure that you have an adequate knowledge of the topics. This is a matter of re-reading notes and filling in gaps by reading relevant sections of your Textbook or other materials until you have reached the point where you understand the material being dealt with.

While you are reviewing your notes and other study materials, you should be identifying and marking key points which you can return to when you start to make your revision notes.

Remember: revision can only be effective if it is based on a previously acquired basic knowledge and understanding of the topics.

The second stage of revision is to create a set of revision notes.

These will be aimed at (1) setting out key points and (2) relating these to each other in such a way that they form a coherent picture of a particular topic (3) identifying key cases and/or statutory provisions which you need to know details of.

There are numerous ways of structuring revision notes. Which you choose will be a matter of personal preference. The basic aims, however, are to create a set of notes which you can review quickly many times; and one from which you can retain a vivid mental image so that you will be easily able to recall them in the examination.

Therefore your revision notes should be made up of key words and phrases. Each entry in the notes should represent a condensation of information about the topic at hand. Strike a balance between brevity and comprehensiveness. Some concepts may be too complicated to remember without a detailed note. Others readily lend themselves to summing up in a phrase of even a word or two. A rule of thumb is to confine all the revision notes on one topic to one page or less of A4 paper.

Using different colours for different topics, or writing the notes so that they create a distinctive pattern on the page, is a way of creating a vivid mental image of your notes. During the exam you may be able to recall the particular information you need by calling up a ‘picture’ of the information. A stepped outline or a spider diagram are two of the ways you can create a pattern which will help you to recall information by focussing on the image and the way it was written down. Spider diagrams are especially useful for creating an image of the way ideas or rules link together.

Your friends may think you have become very eccentric but it is a good idea to stroll about your room reciting out loud the contents of a page of revision notes. This, after all, is how actors learn their lines before a performance, and you are doing the same thing when you set out to learn your revision notes before an exam.

You may be tempted to shortcut the process of building up a set of your own revision notes by buying one of the many revision guides which are available. These can be extremely useful to give you a very condensed overview of a topic, but remember this: what makes for exam success is displaying to the examiner your own knowledge of the topic. The only way to create your own knowledge of the topic is to create your own set of revision notes using all those other sources

The third stage of revision is self-testing. Pick a question from a past exam – and this is where having made a considered choice about which topics to revise is essential – and write an answer to it under ‘exam conditions’: i.e. taking the length of time you would be given to do the question in
the exam. Then go back over your revision notes on that topic and see what you have left out, what you did wrong and what you put in that was not really relevant to the question asked.

You may want to return to your original notes from lectures and reading and have another look at that material. After half an hour or more break, pick another question on the same topic and write an answer to it. Go through the same review process again. Repeat the whole process once or twice more. The advantages of doing this will soon become apparent. You will identify weaknesses in your knowledge and/or understanding. You will see how some components of an answer to a question on a particular topic will re-appear over and over again no matter how the question is worded, and you will have written those bits down often enough that you will not have to spend time in the exam trying to work out how to phrase that part of your answer.

The benefit of self-testing is enormously enhanced if you do it as part of a group. Three or four of you working together will amongst you have a very comprehensive knowledge of any topic. What you are weak on, you can pick up from one of the others and vice versa. There is also the psychological boost which comes from working as part of a team. You will find that some of the things you thought it was important to write about completely eluded other members of the group. Also, you will not have seen some important point which they did. Discussing all of your answers together will help you to craft a complete answer to all of the aspects of the question. If you are not in contact with fellow distance learning students, ask members of your family or friends to test you. As well as helping you, this will give them a valuable insight into how much your studies mean to you and the hard work involved.

Taking the Examination

Hints for Answering Questions
The very first thing you must do is to read the whole question. If the question is a problem:

**DO**
Ask yourself:
• Why am I being asked to advise this person?
• What has gone wrong?
• What are the areas of law involved?

If the question is an essay:

**DO**
Ask yourself:
• What area of law does the essay cover?
• Which part of that area of law is the essay asking me to discuss?
• Which points do I have to focus on in answering the question?

**DO NOT, IN EITHER TYPE OF QUESTION**
• Start writing before you have read the whole question.
• Identify one area of law and write all you know about that area without putting it into the context of the question.

The next step is to write an outline plan of your answer. In this plan, you should identify the main points in the problem. If you do not want the plan to be taken into account in your answer, then cross it through and your examiner will ignore it. When you are writing your answer, follow your plan. This will help you avoid discussing areas of law which are not relevant to the question. It will also help you ensure that you cover all the points raised in the question and do so in a
logical, reasoned way. After you have read the question and written your outline plan you should re-read the question and then attempt the answer.

**WRITING THE ANSWER**

In writing your answer, start at the beginning and work through to the end. Make sure that you deal with each issue raised and that you apply the law to the relevant points. Reach a conclusion at the end. Do not start with your conclusion as you may find, part of the way through your answer, that you realise your original conclusion was wrong and you will have to start again.

Always give authorities for your answers. These authorities will be statutes and/or cases.

**DO**

- Address the issues from the start of your answer.
- Start at the beginning and work through to the end.
- Reach a conclusion at the end.
- Relate your answer to specific points in the question.
- Give authority for every point of law you make.
- Write clearly and in good English.
- Time your answers.

**DO NOT**

- Write all you know about the area before you start actually answering the question; you will only have to write it out again in dealing with the specific points in the question.
- Reach a conclusion at the beginning.
- Move away from the structure of your outline plan.
- Give unsupported statements of law.
- Spend so long answering one question that you do not have enough time to answer the rest.
- Write in note form (unless you have spent too much time on your previous answers and are left with insufficient time to write a full answer).
- Copy large amounts of material from the books you are allowed to take into the examination. Make sure that you put all quotations in quotation marks otherwise you may be thought to have been cheating.
Module Questionnaire

Commercial Law: Sale of Goods

The School of Legal Studies and Holborn College attach great importance to your views. We would, therefore, be grateful, if now that you have finished studying this module, you would answer the following questions and return them to the address give below. Your answers will be considered by the distance learning teaching team and used in updating teaching materials.

1 What two things did you find most useful about the materials you were provided with for this module?
________________________________________________________________
________________________________________________________________

2 What two things did you find least helpful about the materials you were provided with for this module?
________________________________________________________________
________________________________________________________________

3 Please identify any typographical errors you encountered in using this planner (please make reference to appropriate page numbers).
________________________________________________________________
________________________________________________________________

Return to:
External Programmes Administrator
School of Legal Studies
University of Wolverhampton
Arthur Storer Building
Molineux Street
Wolverhampton
WV1 1SB
United Kingdom
You may if you wish e-mail your answers to in4655@wlv.ac.uk