

# Principles of Commercial Law: Foundations and Application

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## ABSTRACT

Legal frameworks regulating business transactions and commercial operations are built on concepts of commercial law. The main ideas underlying commercial law are summarised in this abstract, which also emphasises their importance in promoting ethical and effective business practises. The conclusion emphasises the significance of sustaining these principles to encourage economic progress and provide a fair playing field for all market players. The summary also lists the essential terms related with commercial law.

## KEYWORDS

Business Transactions, Commercial Law, Efficient Operations, Economic Growth, Legal Frameworks, Market Participants.

## I. INTRODUCTION

### Sale of Goods

Many instances involving the sale of products are determined by using standard contract law criteria. For example, the principles governing whether or not a contract exists offer and acceptance, consideration, and so on are essentially the same for all contracts. There is, however, a set of laws that are exclusive to sales of products or that apply by analogy to transactions such as hire purchase or hire. One issue is determining which problems are resolved by contract law and which by sales law. This question is difficult to answer, so dont worry about it for the time being. Keep in mind that the issue exists as you proceed. Another issue is that, although contract law is made up of principles that must be gleaned from cases, the law of sale of products is contained in a single legislative code. The Sale of Goods Act was approved by Parliament in 1893. This Act was intended to codify common law on the sale of commodities, that is, to describe the consequences of court rulings in a concise legislative form [1], [2].

### Domestic and International Sales

The majority of the examples addressed in this section will be domestic sales, that is, transactions where the customer, seller, and items are all present in England and Wales. Clearly, there are numerous overseas sales that have nothing to do with English law. Many foreign transactions, however, are regulated by English law, either because English law is most directly related to the transaction or because the parties have selected English law as the controlling law. In reality, it is usual for parties to specifically pick English law in order for the transaction to be regulated by English law or for disputes to be resolved or arbitrated in England. As a result, many transactions in the grain or sugar trade will be subject to English law due to the parties decision, even though neither the seller nor the buyer, nor the products, ever come close to England [3], [4].

In general, if an overseas sale transaction is subject to English law, the rules of the Sale of Goods Act apply. In reality, however, a solution that makes excellent financial sense for local sales may make considerably less good commercial sense for international sales, and vice versa. So, although the Act states that risk transfers with property prima facie, a criterion that is often followed in domestic sales, it is exceedingly common in overseas transactions

for risk and property to pass at separate times. Furthermore, most foreign transactions include the use of paperwork, notably bills of lading, and often involve payment by letter of credit, which is almost unheard of in domestic sales.

### **Commercial and Consumer Sales**

The Sale of Goods Act of 1893 was largely based on Chalmers meticulous examination of nineteenth-century sales cases. These instances are nearly completely about business transactions, notably small-scale commodities trades. This corpus of case law has few consumer transactions, with the exception of horse sales. True, certain elements of the 1893 Act apply only when the seller is selling in the course of a business, but these provisions make no distinction between whether the buyer is purchasing as a business or as a consumer. For the most part, this remains true, albeit the current consumer movement has resulted in a number of legislative safeguards aimed to protect consumers either in situations when it is considered that businesspeople can defend themselves or that they need less protection. These innovations are especially significant in terms of faulty products and exemption clauses.

### **Non-Contractual Supply**

A gift is the most apparent example of a situation in which there is no commitment. Promises to make future donations are not binding in English law unless they are issued under seal for example, covenants in favor of charities, but a gift, once completed, will be effective to transfer ownership from donor to donee providing the right form is employed. In general, successful donations of commodities need physical transfer. In certain situations, a donee may be able to sue the producers. So, if I gift my wife a hairdryer for her birthday and it burns her hair because it was improperly connected, she will not be able to sue me unless I was aware of the fault. In most circumstances, the retail store that distributes the items would be in violation of their contract with me, but I would not have incurred a loss, while my wife has no relationship with them. She could, however, sue the maker if she could demonstrate that the hairdryer was carelessly made.

### **Sale of Goods/Sale of Land**

A contract of sale of goods is defined in Section 2 of the Sale of Goods Act 1979 as a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a monetary consideration known as the price. As a result, this is simply a transaction in which one party promises to transfer ownership of items and the other party pays the price in cash. This consequently eliminates instances in which there is no monetary value and situations in which what is sold is not products but land or what is often referred to as intangible property, that is, property interests that cannot be physically owned such as shares, patents, copyrights, and so on [5], [6]. It is one of the distinguishing aspects of English law that contracts for the sale of land and contracts for the sale of things are subject to quite distinct regimes.

For example, although sellers of products are subject to substantial implied responsibility as to the quality of their items, sellers of land are only accountable for their specific assurances as to quality. Generally, determining whether the contract is for the sale of land or the sale of products is straightforward, but there are some thorny issues in regard to producing crops or minerals under the property. A contract for crops or minerals constitutes a contract for the sale of goods if they are to be separated from the land either before the sale or beneath the contract of sale, according to section 611 of the Sale of Goods Act 1979. A contract for the sale of a farm, on the other hand, would ordinarily be considered as a contract for the sale of land even if crops were being grown, but see *English Hop Growers v Dering* 1928.

### **Exchange**

The requirement in Section 2 of the 1979 Act that a sale have a monetary value implies that an exchange of a cow for a horse is not a sale. For the most part, this makes no practical difference since courts will likely apply standards comparable to the Sale of Goods Act by analogy. Contracts for the sale of items for £10 or more had to be in writing between 1677 and 1954. Because this rule was never applied to exchanges, many earlier instances emerged in this context. Simple exchange or barter does not seem to be particularly widespread in domestic commerce, but it is becoming more popular in foreign trade since one of the parties is short of hard cash. Part exchange, on the other hand, is highly widespread, notably in the automotive industry. This begs the issue of how to classify an agreement to trade a new automobile for an old one plus £2,000. In practice, this is often resolved by the manner the parties write the contract. They will often price each automobile such that the logical interpretation is that there are two transactions with an agreement to pay the rest in cash. This was how the transaction was treated in *Aldridge v*

Johnson 1857, where one party was to transfer 32 bullocks worth £192 and the other was to transfer 100 quarters of barley for £215. Return is often described in terms of each side transferring products, but the same principles seem to apply when things are transmitted in return for services.

## **II. DISCUSSION**

### **Contracts for Work and Materials**

Many contracts, which are unquestionably sales contracts, incorporate a component of service. So, if I go to a tailor and purchase a suit off the rack, the tailor may agree to elevate one of my shoulders since one of my is higher than the other. The deal would remain a sale contract. In contrast, if I take my automobile to the garage for a service, the garage may install some new components, but this would not generally be considered a sale. In each of these circumstances, the parties might separate the transaction into two contracts, one of which would be a contract of sale and the other a contract of services, although this is seldom done. It is obvious that many contracts contain the supply of commodities as part of a package that also includes the provision of services. Some are classified as sales contracts, while others are classified as contracts for labor and supplies. In certain circumstances, the property transfer aspect is so prominent that the contract is plainly one of sale in others, the work part is so significant that the contract is clearly one of work and materials. This strategy seems to work in the situations of off-the-rack suit sale and automobile servicing work and materials, but what happens when there is a significant portion of both property transfer and labor.

Unfortunately, the courts used different criteria in the two major instances. A contract by a dentist to create and install dentures for a patient was ruled to constitute a contract of sale in *Lee v Gryphon* 1861 on the grounds that at the end of the day there was an identifiable object which was to be transferred from the dentist to the patient. In *Robinson v Graves* 1935, it was stated that a contract to paint a portrait was one for labor and materials because the substance of the contract is the artist's skill and experience in producing a picture. When a contract is classified as one for work and materials, the supplier's obligations regarding the quality of the goods will be nearly identical to those of the seller, because the terms implied under the Supply of Goods and Services Act 1982 are the same as those implied under the Sale of Goods Act 1979. It is worth noting, however, that the supplier's commitment to the quality of the work will often vary significantly from that to the quality of the supplies. This may be shown easily by bringing an automobile to a garage for maintenance.

### **Construction Contracts**

A contract with a builder to construct a home is similar in many ways to a contract with a tailor to manufacture a suit. Property in the raw materials will transfer in both circumstances, but the skills used in transforming the raw elements into the completed product seem to make up the majority of the transaction. However, there is one significant distinction. A contract to purchase a ready-made suit is obviously a contract for the sale of things, but a contract to buy a home that has already been constructed is a contract for the sale of land. As a result, the seller of a home does not assume the implicit duties about the quality of the product that the seller of products does.

Although English law handles sales of off-the-shelf suits and homes quite differently, it treats contracts to create suits and construct houses very similarly since it will infer provisions as to the quality of the materials and craftsmanship into a contract to build a house. In *Young and Marten Ltd v McManus Childs Ltd* 1969, a construction contract obliged the builders to use Somerset 13 tiles on the roof. They secured a supply of these tiles which were only created by one manufacturer and repaired them competently. Unfortunately, the batch of tiles was defective and allowed rain to enter. The House of Lords ruled that the builders had violated their implicit duty regarding fitness for purpose.

### **Hire Purchase**

In a hire purchase contract, the client agrees to lease the items for a certain amount of time typically two or three years with the opportunity to purchase them at the end for a minimal fee. The party's economic assumption is that the customer would exercise this option, and the rate charged for hire will be established on the basis of the cash price of the products plus a generous rate of interest, rather than the market rate for renting them. Nonetheless, the consumer does not genuinely commit to purchase the items, and the House of Lords determined in *Helby v Matthews* 1895 that the contract was not one of sale and that a sale by the hirer before all instalments were

completed did not transfer title to the sub buyer. The result of this ruling was that, although a hire buy contract had the same economic and commercial purposes as a credit sale, its legal consequence was fundamentally different.

Another peculiarity of hire buy is that, notably in the case of automobiles, the financing is provided by a finance business rather than the supplier: that is, a body whose only economic aim is to lend money rather than to deliver things. The items will be sold by the supplier to a financing business, which will subsequently enter into a contract with the buyer. The supplier will normally have a supply of draught contracts on hand so that all of the documentation may be completed in the supplier's office at the same time, but the customer's contract is with the loan company.

### **Meaning and types of goods**

The Sale of products Act separates products into three categories:

1. Current and future goods.
2. Particular and unknown commodities.
3. Sales and agreements to sell.

The words in brackets indicate Scottish legal language and may be disregarded for the time being. As a result, personal chattels refer to all types of property other than real property freehold rights in land and chattels real leasehold interests in land. Things in action are types of property that cannot be physically owned and can only be enjoyed by taking an action against them. This comprises stock, patents, copyrights, trademarks, rights under bills of exchange, and insurance policies. The absence of money implies that a contract to acquire foreign currency is not a sale of commodities. A crucial practical issue is whether computer software is a good. If it comes on a disc, it would seem that the disc is the product, but software providers often merely install the program and nothing tangible changes hands. Indeed, suppliers often prefer to preserve intellectual property rights rather than just issue a license. Sir Iain Glidewell said obiter in the Court of Appeal in *St Albans C and DC v International Computers Ltd 1996* that, if not products, software should be considered as goods for the purposes of the implicit terms as to quality. However, it is feasible to argue that the software provider is only offering a service and is simply obligated to use reasonable care.

The difference between specified and unascertained products is especially important in the transfer of property between seller and buyer. Uncertain commodities may be of at least three distinct types. One option is that the items will be made by the merchant. They will typically become apparent as a consequence of the manufacturing process, but if the seller is producing comparable items for two or more purchasers, then further actions may be required to clarify which commodities have been appropriated to which buyer. The second option is that the items are marketed under a general description, such as 500 tones Western White Wheat. In this situation, the seller might fulfil the contract by providing any 500 tons of Western White Wheat assuming it was of suitable quality, etc.. If the seller was a wheat dealer, he may have more than 500 tons of wheat but would not be obligated to use that wheat to meet the contract he could, and frequently did, opt to purchase more wheat on the market to fill the order. Where there is an active market, sellers and buyers may engage in a complicated sequence of sales and purchases based on their sense of how the market is going, leaving who receives what wheat to be sorted out later. Obviously, this is more probable when the sales are for future delivery than immediate distribution. In this case, the seller may make preparations to send a package of wheat to buyer A and another parcel to buyer B.

### **Fixing the Price by Third Party Valuation**

Section 9 of the Sale of Goods Act 1979 addresses price fixing by third-party appraisal. The provisions are rather simple. Price fixing by third-party valuation is legal, but only if the third party really does the appraisal. If one party obstructs the appraisal, that party is considered to be accountable in court. The vendor, presumably, would normally block the value by not making the products accessible. It is worth emphasizing that the effect of such seller hindrance is an action for damages rather than a contract to sell at a fair price, as is the case when the products are delivered and no appraisal occurs. In practice, this may not make much of a difference since the buyer has been denied the opportunity to acquire the items at the price the value would have set, which a court would almost definitely consider to be a fair price. A crucial concern is what, if anything, sellers or purchasers can do if they believe the value is too low or too high. Without a doubt, the valuation is not binding if it can be shown that the value acted fraudulently in cooperation with the opposing party. Aside from this case, it seems that the value is

binding between seller and buyer. The party that is dissatisfied with the valuation may sue the value if it can be shown that the appraisal was irresponsible.

### **The Effect of Frustration**

If a disappointing event occurs, it has the effect of immediately terminating the contract and relieving both parties of any further need to fulfil the contract. This is true even if the aggravating incident generally only prevents one side from performing. So, the seller's failure to deliver the products does not imply that the buyer is unable to pay the price rather, the seller's inability to deliver the goods relieves the buyer of the responsibility to pay the price. This criterion is simple to follow while neither side has done anything to execute the contract, yet the contract is often frustrated after certain acts of performance have occurred.

### **Misrepresentation**

Specifically, misrepresentation established responsibility only where it was fraudulent that is, when the person making the representation did not honestly believe it to be true. The House of Lords used the restrictive common law term in the landmark case of *Derry v Peek* 1889. To prove culpability in fraud, it had to be shown that the person making the statement knew it was false or did not care whether it was true or not.

The House of Lords judgement in *Hedley Byrne v Heller* 1964 in 1963 established that a negligent statement made by one person and relied on by another, leading that other to incur pecuniary loss, might give rise to responsibility. The exact limitations of the *Hedley Byrne* ruling are still being worked out by the courts, but it is obvious that the statement must be not only irresponsible, but also made under circumstances in which the defendant owed the claimant a duty of care. This includes determining whether the defendant should have anticipated that the claimant would depend on them, as well as whether the claimant did rely on the defendant and whether it was reasonable for them to do so under normal circumstances.

### **Criminal Liability**

Many of the recent developments in the law covered in this chapter have been driven by consumerism, that is, the growth of consumers as an organized group capable of lobbying for laws that protect their interests. One of the key issues with consumer protection is that changes in the substantive law of contract and tort do not assist much if the amounts at stake are little and the expense of hiring attorneys is high. One solution has been to set up separate processes for trying minor consumer issues in county courts without the presence of attorneys. Another significant advancement has been the creation of criminal law in the sphere of consumer protection. The main benefit for the customer is that it is free since the functioning of the criminal law is a service given by the state. The drawback is that one does not normally obtain financial compensation for one's own specific loss, albeit in certain situations, courts have been granted the authority to impose compensation orders for persons who have been hurt by illicit trade activity throughout the course of criminal proceedings. Nonetheless, at the preventative level, it is evident that the criminal law is critical [1], [7], [8].

### **Exemption and Limitation Clauses**

During the previous 150 years, English law has evolved, primarily via the development of the implied conditions outlined in Chapter 6, to place significant responsibilities on the seller, notably with regard to the quality of the products. Seller's natural reaction is to strive to qualify these commitments by introducing contract clauses that aim to eliminate, lessen, or restrict responsibility. Over the past 50 years, English law has developed to put extremely significant constraints on the seller's power to do so, even if the seller can convince the buyer to agree to a contract including such a provision or clauses. This chapter will focus on discussing the gadgets that have been designed for this purpose.

It is crucial to note, however, that the structure of such clauses is surprisingly varied. It would be a mistake to believe that the underlying policy problems for all sorts of clauses are the same. Most provisions aim to limit the consequences of the seller violating the contract. This may be accomplished in a number of ways:

1. The contract may state that none of the inferred provisions listed in Chapter 6 are implied.
2. The contract may provide that if the seller breaches the contract, his responsibility is restricted to a certain amount, say £100.

3. The contract may provide that if the seller breaches the contract, he must just replace or repair the products.
4. The contract may provide that the seller is not responsible for certain types of damage. Contracts, for example, often state that the seller is not responsible for consequential loss, so that if he fails to deliver the products, he is not accountable for the buyer's loss of profit as a result of not having the items.
5. The contract may provide that the buyer must file a complaint within, say, 14 days.
6. The contract may provide that if the buyer chooses to file a complaint, he must do so via arbitration.
7. The contract may provide that if the items are faulty, the buyer is not to be held liable.

### **III. CONCLUSION**

Business transactions and commercial activity are strictly governed by the rules of commercial law. These principles provide a foundation for equitable and effective operations, guaranteeing that all market players are bound by the same laws and norms. Economic systems may establish an atmosphere that is favourable to economic development and innovation by respecting the principles of commercial law, such as contractual freedom, good faith, and fair competition. Additionally, by defending the rights and interests of both companies and consumers, these values help to build market trust. Therefore, in order to sustain a strong and fair business environment, it is essential for legal systems and market actors to acknowledge and abide by the norms of commercial law. Parties must come to an understanding by assigning a value to particular commodities, services, or work performance in order to avoid legal complications in the future. A contract is made legally binding by consideration, shielding both parties from future disputes or lawsuits.

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