Consumer protection essay

Dealing with this case will require looking at each grievance individually and applying the law as best as possible to each part.

Firstly it must be established who the rights are for. It can be said the Avril purchased the camera with a view to giving it to Alan. Until recently that second category of person (the person receiving the gift), would have had a difficult time recovering compensation because they would have had no rights under the contract of sale and they would have had to prove that the manufacturer was negligent before they could get any compensation. This has now changed due to the passing of the Consumer Protection Act of 1987, which makes manufacturers strictly liable for defects in their products. In Donoghue v Stevenson [1932] AC 562, a bottle of ginger beer was bought for another person. This bottle was found to contain a decomposed snail, which in turn made the person very ill.

Lord Aktin stated that a manufacturer of product owes a duty to the ultimate consumer to take reasonable care in the preparation of the product to avoid causing foreseeable harm, therefore the House of Lords held that the manufacturer of the beer was liable for the injuries caused to someone who drank the beer even though they had not purchased the beer. This was also a major milestone in the evolution of the law of negligence. It may not necessarily be only the manufacturer that has a case to answer for as regards to Alan receiving injury to his hand. It may be asked whether the chemist had known about any faults in the camera before it was sold and if so, did they believe that the defects would cause injury. It may be difficult to proves this but it could follow the path of an Australian case Langridge v Levy (1837) where a father had bargained with the defendant to purchase a

gun of him, for the use of himself and sons; and the defendant then, by falsely and fraudulently warranting the gun to have been made by a certain manufacturer, and to be a good, safe and secure gun, then sold the gun to Mr Langridge for the use of himself and his sons, whereas in truth and in fact the defendant was guilty of breach of duty, and of wilful deceit, negligence, and improper conduct, in this, that the gun was not made by the named manufacturer, nor was a good safe and secure gun, but, on the contrary of, was made by a very inferior maker to the named manufacturer, and was a bad, unsafe, ill-manufactured and dangerous gun, and wholly unsound and of very inferior materials.

From what has been said, it would appear the mechanism behind the lens door had been far too heavy, and if Avril and Alan had noticed this, then why was this not picked up the chemist or the manufacturer? However they may use in their defence that Alan contributed to his injury through negligence but possibly not being careful with the camera when he was changing the film. This is known as contributory negligence. It would have to be checked by an independent body whether this was true or not as if proven then if would of course be a valid defence. They may say that enough steps were taken to insure the safety of the customer and cannot legislate for how the camera is treated by customers. In Bolton v Stone [1951] AC 850 the plaintiff was standing on the highway outside her home and was struck by a cricket ball from the nearby cricket ground. She sued the cricket club and its members.

The ground itself had been built in 1864, well before the houses. Balls were rarely hit out of the ground and onto the highway, perhaps only six times in

the previous thirty years and there was not record of any previous accident. The ball had travelled over one hundred yards before reaching the plaintiff. The top of the fence surrounding the ground was seven feet about the highway and seventeen feet above the pitch. The House of Lords held that the defendant was not liable since they had taken reasonable care. Due to this, if it can be proved that the camera was well enough built to make what happened a rare occurance then it may be a substantial defence.

Questions must be asked whether the camera was of ‘ satisfactory quality’ as mentioned in the Sale Of Goods Act of 1979 where Section 14 of the Act states ‘ goods must be of a merchantable quality’. This means that the materials used must be reasonably fit for the purpose for which they are commonly supplied. The emphasis is on the function of the goods. Are they suitable for their usual purpose? Do they work properly and satisfy the requirements which goods of that type are normally expected to satisfy? Are they safe to use or are they dangerous In short, if the goods are faulty, defective, unsafe or dangerous and will not operate under normal conditions, the supplier has broken this implied condition. Section 14(3) of the act implies ‘ if the buyer makes known to the seller a particular purpose for the goods, the goods must be fit for that purpose unless the buyer did not rely on the sellers skill and judgement’.

This is related to Priest v Last [1903] 2KB 148 where a hot water bottle was bought. The court held that the bottle had to be fit for its obvious purpose of warming a bed. Since the bottle burst, it was not fit its for normal purpose. The fitness for purpose factor is important where the buyer has special or unusual requirements. This unlikely to apply in this case since the product is

only a camera and unlikely to be used for any other purpose than to take photographs. This could only apply if something other than a film was being into the camera of the wrong type of batteries were being used but that is not the case.

The manager of the chemist pointed to the small print of the camera when the complaint was made. There may a case to answer for in this instance since the Unfair Contract Terms Act of 1977 which provides a comprehensive set of rules which regulate both the use of exclusion clauses in contracts and the use of non-contractual notices. The exclusion clause may be contained in an unsigned document such as a ticket or a notice. In such a case, reasonable and sufficient notice of the existence of the exclusion clause should be given.

For this requirement to be satisfied: (i) The clause must be contained in a contractual document, i. e. one which the reasonable person would assume to contain contractual terms, and not in a document which merely acknowledges payment such as a receipt. This is highlighted by the case of Chapelton v Barry UDC (1940 1KB 532) where the plainiff hired a deckchair from the defendant for use in the beach. He paid an attendant and was given a ticket in return.

He was injured when the chair collapsed as he sat down on it. There was an exclusion clause printed on the back of the ticket which the plaintiff had not read. The Court of Appeal held that the ticket was merely a receipt and not the sort of contractual document which a reasonable person might have expected to contain contractual terms. The exclusion clause was ineffective

and the defendants were liable. Therefore in the case of Alan it could be said that the exclusion clause was equally printed on the back of a receipt and therefore not a contractual document expected to contain contractual terms.

Also the exclusion notice was drawn to the attention of Alan after the camera was bought and was only highlighted when a complaint therefore contravening the second part of the Acts policy on unsigned documents: ii) The existence of the exclusion clause must be brought to the notice of the other party before or at the time the contract is entered into. This is shown by the case of Olley v Marlborough Court [1949] 1 KB 532 where the plaintiff had booked into a hotel but only when they got to their room did they see a notice saying that the hotel would not be responsible for property. Then she had a fur coat stolen. The Court of Appeal held that the defendant was not entitled to rely on the exclusion clause since it was a not a term of the contract as the contract was concluded at the reception desk and the plaintiff had no notice of the clause.

This would certainly seem to be the case with Alan as he appeared to have no prior warning of the exclusion clause. As regards to the ruined photographs, procedure for this are outlined Unfair Terms In Consumer Contract Regulations of 1994. In regulation 4 dealing with ‘ unfair terms which have not been individually negotiated’ it states that a standard form contract will be held unfair where ‘ contrary to the requirement of good faith the term causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer’. Two examples taken from this are broken by the chemist, namely: ‘ terms which make an agreement binding on the consumer when it is not binding on the seller or

supplier; terms obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his’. The chemist would not have accepted any fault on his part if Alan had damaged the photographs and similarly Alan can lay the blame the chemist for the damage which the chemist is refusing to accept.

Also Alan paid money in the understanding that the chemist would produce the photographs without any faults. The chemist failed to meet this and so broke the contract. In Sumpter v Hedges 1898 1 673, where the plaintiff builder had agreed to erect some houses for a lump sum. The builder had carried out a portion of the work but due to financial difficulties was unable to complete the work. He launched an action to recover payment for the work he had done.

The Court of Appeal confirmed he was not entitled to payment since he had not fulfilled his part of the contract. According to this, the very least Alan can expect from the photographs is a refund since the chemist did not complete his part of the contract and Alan, by making a payment did fulfil his side. The chemist having accepted payment agreed to the contract. Conclusion It is perfectly reasonable for Alan to take this case to court as even though he did not purchase the camera, he is still viewed in the eyes of the law as the ultimate consumer. He was injured in the process of using the camera even though he was maintaining it for its usual purpose at the time rather than using it for its purpose.

It may be more sensible to bring a case against the chemist since it is they initially who are failing to give satisfaction by not offering some kind of

compensation for the injury or replacing the camera. The chemist has not addressed the injury to Alan as the exclusion clause (legal or not) on mentions liability for loss or damage rather than injury caused by damage. It may not be a good idea to introduce the complaint about the photographs as it may dilute the case from what is the main objective and that is getting compensation for the injury cause but the camera. It may be an idea to only use it as a back-up to show how Alan-the customer has been treated by a seller.