

# Business law assignment



**ASSIGN  
BUSTER**

A business consists of trade of any profession or vocation. Business law looks at the formation of the business and the contracts plus legislations within it. The body of a business has rules and regulations that business law enforces enabling it to govern the transactions between business entities. In relation to that is commercial law. Marketing, Bankruptcy, contracts and trade in general are all under commercial law. In this assignment I will be assessing that and looking into case studies.

I will be advising and quoting some of the acts to support my advice and explaining different arms within Business Law. Case 1 1 . In order to provide strong advise for Julia as to if she has accepted the washing machine we have to look into the formation of the contract, specifically the acceptance aspect. We would look into the terms implied by statutes into contracts for the sale of goods I. E. The washing machine, then the passing of the risk, finally the remedies that fit the case. Two acts relate to this case and that is the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 and 1995.

Julia orders a new washing machine which is delivered to her house. Under the Sale f Goods act 1979 the seller transferring the property (washing machine) to Julia (the buyer) for a money consideration (order) is a contract. Ownership is another word for property, the only case where there is not ownership is when the goods or services are hired. The Sale of Good Act 1979 as amended by the Sale and Supply of Goods Act 1994 had implied terms which were compliance with description; satisfactory quality; fitness for purpose and conformity between sample and bulk.

In regards to Cilia's case looking into the fitness for purpose and satisfactory quality would be ideal to stir up the best advice. However s. 3 (1) which states where there is a contract by description, there is an implied term that the goods will correspond with the description. Baring in mind Julia ordered the washing machine and unpackaged it but not use it, before her trip, it was still not tested to see if the description corresponded. Julia is able to repudiate the contract based on that act even if the washing machine worked, fit for purpose, but didn't look like what she ordered.

See case *Arcos v. Rona's (E. A. ) ; Son* [1933] AC 470 where the inches of the barrels received did not meet the ones ordered even though it was fit for purpose. However cause the facts of the case does not state where and how Julia orders the washing machine, this implied term cannot be relied on. See case *Frost v Lawlessly Dirty* 1905. In this case there was a breach as the milk contained typhoid germs even though the supplier had taken all reasonable hygiene precautions. This case relates to goods being reasonably fit.

The question of whether the washing machine was of satisfactory quality before sending it out to Julia. If proven not to be, the supplier may be held liable. S. 14 (3) states : Where the seller sells goods in the By Californian seller any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not it is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or Judgment of the seller.

Julia buying a washing machine is only fit for one purpose and that is taking care of the laundry therefore the seller knows the particular purpose for which the machine is bought ND the machine should have been reasonably fit for that purpose. With this made clear see case Lambert v. Lewis [1982] AC 225 Acceptance is an essential feature off contract. In most cases the acceptance is communicated to the offer however either way there must be acceptance for there to be a contract completed. The question is has Julia accepted this washing machine? S. 4 (1) states where goods that s/he has not previously examined are delivered to a buyer, s/he is not deemed to have accepted them unless and until s/he has had a reasonable opportunity of examining them to see whether they conform to the contract. This section makes it clear that Julia has not accepted however it also states the buyer is deemed to have accepted the goods when retains the goods, after the lapse of a reasonable time, without intimating to the seller that s/he has rejected them. Julia has accepted and my advised remedy is damages for breach of warranty.

A warranty is an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. See S. G. A. 1979 s. 61 (1) See case In Bench Graphics International Ltd v. Bassoon UK Ltd where the court held the plaintiff who had supplied defective vinyl film liable under the Sale of Goods Act 1979 (iii) and the Consumer Protection act 1987. 2. The Consumer Protection Act 1987 and Sales of Goods Act 1979 apply in Oliver’s case.

Oliver has suffered an allergic reaction from his new pillow. The Consumer Protection Act 1987 states where any damage is caused wholly or partly by a defect in a product the following are liable, the producer of the product; any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

This gives us a clear picture of who is liable and that is the producer of the pillow. This is not the individual or business that Oliver purchased the pillow from but could be the manufacturers, processors, importers and anyone in the chain. Oliver can find the retailer liable if they cannot identify their own suppliers until then the retailers are only secondary. Under the Consumer Protection Act 1987 Oliver can claim as the product contained a defect (s. 2). There is a burden of proof on Oliver (as the claimant) to expose that made the product unsafe and this will be known as the defect.

See case *Cent V Wirier MOB* 2008 where the claimant had suffered an accident on a pedestrian carriageway and the Judge had found it to have been dangerous (unsafe meaning a defect). However held on appeal the Judge's been there as it is not a footpath but a carriageway. From my own assessment of the Consumer Protection Act 1987 the safety of Oliver was met as the content of the pillow does not cause self harm but usually does the job of bringing about a sound sleep.

Moreover the contents are stated as “ deep filled duck-down” therefore there is a statutory defense that the defect did not exist at the relevant time. As an individual with his rare allergy would have received more remedies or had more rights if he had told the sales person that he is allergic to feathers. A defect is measured by safety and is “ not such as persons generally are entitled to expect” under the act. The manufacturer could argue the development risk defense as there is no history of such allergy there was no way the manufacturer or business could presume such defect would occur.

See Case Buzzard v Mothered (I-J) Ltd [2000] All ER (D) 2436 where the manufacturer argued the same thing as into not being able to predict an accident or incident. On the other hand there are cases where failing to provide evidence that the product was defective has made the claim failed. See case Richardson v LARD Products [2000]. Under this act damages can be claimed for (b) intended by the person suffering the loss or damage mainly for his/her own private SE, occupation or consumption. In spite of that a defective product comprised within it cannot receive any claim for damages.

The Consumer Protection Act 1987, Part II enforces all traders to meet the general safety requirement and with that being stated a pillow filled with feathers is of the norm. However, maybe a safety requirement was to display a warning to those allergic to feathers, even though the content is stated. Despite that Oliver can claim under this act as it entitles him to bring action for damages against a trader if the damages suffered were a result of an infringement of safety regulations. The court would look into if deep filled duck down pillows are reasonably safe.

I would advise Oliver to consider claiming under the Sale of Goods Act 1979 to receive the effective remedy of a warranty which would enable him to return the product and make an exchange but not repudiate the contract. 3. In order to provide tenacious advice to both Melanie and Austin to their statutory rights and remedies we would look into a number of things that apply, Sale and Supply of Goods Act 1994 and 1995, , Consumer Protection Act parape 1 and Part II and Trade description Act 1968. Melanie has made a contract with a shop as she has purchased a lawn mower.

There are implied terms in the Sale and Supply of Goods Act 1994 that needs to be touched on for this case such as satisfactory quality and fitness for purpose. In the case the machine was 8 years old but described as nearly new, this is known as false trade description. This was the focal point of the case and the act that deals with it is the Trade description Act 1968 which I will use to elaborate how the court would deal with the case. Satisfactory quality is the lawn mower meeting the standard satisfactory quality that Melanie (as the reasonable arson) would regard as satisfactory.

She has to take into regards the price however the lawn mower should be under this act fitness for all purposes, freedom from minor defects, safe and durable. In relation to satisfactory quality is the implied term fitness for purpose. This is s. 14 (3) where it enforces the goods being sold must be fit held a responsibility to ensure if the washing machine was fit for purpose before selling it to Melanie. In the Consumer Protection Act 1987 it states in (s. 7) " liability to a person who has suffered loss or damage caused wholly or partly by a defect in a reduce shall not be limited or excluded by any contract term".

This represents the situation to an extent as the product caused damage but not to the initial buyer however there was a defect. This defect in my judgment was unreasonably safe and the reasonable safety precautions were not carried out as if so, such incidents would not occur. Trade description Act 1968 birthed three offences however only one suit this case which is s. L . False trade descriptions. False Trade description provides a business or trade where a seller was exercise a false trade description to any of its goods.

The list is : a) quantity size or gauge; \* (b) method of manufacture or production; \* (c) composition; \* (d) fitness for purpose, strength, performance, behavior or accuracy; \* (e) any other physical characteristics; \* (f) testing by any person and the results thereof; \* (g) approval by any person or conformity with an approved type; \* (h) place or date of manufacture, production etc; \* (l) person by whom manufactured or processed; and \* O) other history, including previous ownership or use. Also any goods with false trade description applied to any of its goods that is put into trade or offered is an offence.

The shop that sold the lawn mower committed an offence however all the other businesses (Alaska Stores Ltd) are all liable because its one chain. These are strict liability offences. Melanie being told the second hand lawn mower was nearly new was misleading and s. 3. Provides " a false trade description is one that is false to a material degree and includes descriptions which, though not false, are misleading". The shop or Alaska Stores Ltd, in their defense, can claim the goods with reasonable diligence could not have ascertained their false description. As s. Provides " A person exposing goods



for supply or having goods in its possession for supply shall be deemed to offer to supply them', and includes a mere invitation to treat". The shop owner and Alaska Stores Ltd may also state in their defense that they relied on information about the lawn mower when purchased from the manufacturer as s. 24 (1) provides " where the defendant establishes that the offence was because of a mistake or reliance on an act or default of another person. " However taking all reasonable precautions and all due diligence is significant to this case.

The shop owner owes a duty of care to its customers, therefore safety checks ND demo's should be involved in or before the sale. See case Harbinger London Borough v. Prior Shoes Ltd [1976] where regardless of Harbinger London Borough (which is classed as another person) doing wrong, it was still the manager's duty to see the precautions through. The court held since the offence under s. L was committed by the mere fact of the goods being ' exposed for sale'; the instructions to the manager should have been to remove the offending label before the goods were displayed.

This would be in Melanie's favor as regardless of their being more than There is also potential guilt on not only Alaska Stores Ltd but the Mowers Ltd if proven they have committed the offence as additional or alternative defendants. Section 23 provides: Where the commission by a person of an offence under this Act is due to the act or default of some other person that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person. Mowers Ltd is at the top of the chain and the question is " did they sell it n under false trade

description act 1968 to Alaska Ltd? ” Remedies for Melanie would be specific performance where ascertained goods must perform as stated in the contract. However I believe the tort of negligence applies here and for Melanie to receive the best remedies for her and Austin this would be the best path to argue the case. Negligence is when failing to take reasonable care to avoid foreseeable injury to others.

The shop did not take reasonable care as the safety checks were incomplete therefore the foreseeable injury to her and others were not avoided. All elements of negligence are present and Melanie has suffered loss and damages. Lord Atkinson revolutionized negligence when Judging the *Donahue v Stevenson* case birthing the neighboring principle. Austin cannot sue the shop as he did not buy the lawn mower however he can sue the manufacturer Mowers Ltd for negligence because that was where the product was constructed.

If the claim is won he would receive the remedy of compensation which I believe is the best remedy for his physical injury and damage to his clothes.

1 . Maria approaching the Hussein as a representative (sales staff makes her an agent, with a principle which is The Roof Protection Company Ltd. Maria as an agent has the power to enter into a binding contract with a third party to sell goods which she attempts. She must ensure not to enter into a conflict of interest see case *Armstrong v Jackson* 1917 and Maria must obey instructions carefully. That is her duty as an agent to the principle.

Other duties are of care and skill where Maria is obliged to display the same care and degree of skill which a reasonable man would exercise and is

appropriate to the profession. Another duty Maria is obliged to display is not to make a secret profit or bribe. There must also be a duty to account which Maria is openly showing any money received is connected with her role as an agent. Maria has the duty of full and frank disclosure where all offers received or selling goods on behalf of the principle she has to obtain the best possible price see case *Keeper v Wheeler* 1927.

The property or power is entrusted, in other words fiduciary, and with this type of relationship to the principle Maria owes the duty of good faith.

Maria's rights involve being reimbursed for expenses and not to be terminated during the agency contract. Maria has a right to indemnity which is classically compensation for damage or loss sustained unless there is an unauthorized act, losses resulting from the fault of the agent and losses in respect of illegal acts or wagering contracts.

Maria has the right to remuneration which is to recompense or reward for work however this depends on the contract and may be express or implied. A lien is a right an agent has which is to retain possession of goods goods have been paid. 2. Regulated agreements are the agreements within the Consumer Credit Act 1974 such as consumer credit agreement, consumer hire agreement and credit token agreements. Maria had set up under this act a consumer credit agreement and in the case facts it states the Hussein had acquired the funds to discharge the credit agreement. 3.

A running account is credit offered by a seller that a buyer which is approved can continually obtain goods or services up to an agreed limit. A fixed sum credit account is where the debtor is enabled to receive credit under the

facility of a consumer credit agreement The Consumer credit agreement regulates the restricted-use credit agreement. First there is the formation of the agreement that can finance a transaction between the bettor and the creditor. Secondly a transaction financed between a debtor and a person other than a creditor, thirdly to refinance whichever existing indebtedness of the debtor's.

Unrestricted use credit agreement is where creditor's have no control on the extension of credit for the debtors use. Debtor - creditor - supplier agreement is the attachment connecting the creditor and the supplier of goods/services given to the debtor. An example of this situation is goods purchased on credit from a retailer who finances the credit. A debtor - creditor agreement could be described as a bank loan as this is the agreement where the finance is supplied to the debtor from the creditor (see s 11 of b).

In this scenario the debtor - creditor - supplier agreement is the CA 1974). Description of the transaction or contract. Maria was part of the connection as the supplier and the seeking to provide the credit service to the Hussein. The finance company providing this credit service are called linked loans or connected lender loans. The Hussein are able to take action against both the trader and finance company as the roofing has defects and the finance company helped set up the payment plan. This is known as equal liability. 4.

Default notice is a term under Consumer Credit Act 1974 relating to a debtor's (Hussein) breach of agreement. The default notice must be served on the Hussein S. 87 of the CA 1974. The Hussein has to be prescribed with a

form if the creditor, Maria, wishes to terminate the agreement to recover possession or enforce security. Under S. 88 the notice must be specific about the nature of the alleged breach which in this case would be the roofing defects and the uncooperative staff within the company. To remedy this scenario and situation there is a sum payable as breach. The Hussein can make the finance company liable for the shoddy work of the workmen under the law that covers the liability of creditor for breaches for by the supplier section 75. Here is a list of articles that may apply: (1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor”

This section covers the liability linked between the Maria and the creditor. This section enforces that if there is a claim towards the supplier for shoddy work, the creditor/ finance company is jointly held liable for a breach of contract. (1) If the debtor under a linked credit agreement has a claim against the supplier in respect of a breach of contract the debtor may pursue that claim against the creditor where any of the conditions in subsection (2) are met. 2) The conditions in subsection (1) are? that the supplier cannot be traced, that the debtor has contacted the supplier but the supplier has not responded, (c) hat the supplier is insolvent, or This section elaborates Hussein making a claim against the supplier in respect of a breach of contract he may claim against the finance company. As subsection (2) has conditions that are met such as the supplier cannot be traced and that the

debtor has contacted the supplier but the supplier has not responded which is in the case of Maria who has not responded. . The Hussein can cancel this agreement under Consumer Credit Act 1974 which gives them the right as debtors to terminate certain credit agreements. Regulated hire purchase and conditional sale agreements have entitled rights that can be exercise. To the Hussein advantage termination obliges any obligations already accrued are enforceable. The Hussein have the right to bring the contract to an end without having to pay any future installments.

However the circumstance for this is when the debtor is having financial difficulties. When terminating under the CA 1974 s. 100 provides the debtor, Hussein, to return the goods when the creditor calls to collect them. Plus the debtor must pay to the creditor such sum (if any) as brings the total paid by the debtor up to half the total price agreed. However, this provision goes not apply where the agreement makes no such provision or provides that a smaller sum is payable or a court orders that a smaller sum is payable.

This might be a bit of a disadvantage to the Hussein as if they terminate the contract they might talk allows in the Hussein presence prior to a completed contract gives the right to cancel to be available to the Hussein. Task 2 1 .

The role of commission is a body that directs to perform a duty, the members of which are known as commissioners, thus a commission of the peace was appointed by the Crown, consisting of persons who were to act as Justices of peace in certain strict. The competition commission is an independent public body which looks into the competition's health amongst consumers and the economy. . Control is a key factor in Monopolies, as within monopolies an enterprise exercises the control of market supply of a <https://assignbuster.com/business-law-assignment-essay-samples-37/>

product or service. There is also exclusive use of something or possession. Monopolies also have the exclusive right granted to a company by the state to purchase or manufacture some commodity or carry on trade in a specified country. The act of merging where there is a combination of two or more companies either by the creation of a new organization by absorption by one of the others.

If there is an alliance of parties or interest to further common aims a cartel would define this, usually production and distribution would monopolize. 3. Agreements are made so that there's healthy competition between companies in the I-J for the interest of companies, customers and the economy. Undertakings are made so that the merging parties can address its concerns or the market and if there's any insufficient importance. 4.

Undertakings of associations is anybody which represents the interest of its members is eligible for the qualification as an association of undertakings.

The public law status of an association is irrelevant for the purposes of CE competition law; In practice, it covers not only trade associations but also a myriad of bodies with statutory, disciplinary, regulatory and executive duties: \* General Council of the Dutch Bar (Hooters); \* Belgian Architects Professional Order; \* Customs' agents associations (Commission vs.. Italy); \* Agricultural cooperative (Milk Mark). 5. If firms has made direct or indirect contact with intention to influence the conduct of market or disclose intended future behavior to competitors this is known as a encountered practice. . The M states mean the monopolies where the government is the sole provider or public monopoly is the sole provider of a particular goods or services plus competition is prohibited by law. If it affects trade between

M/states it is affecting the trade between the public/government monopolies.

7. Under Article 8 (1) an agreement may be restrictive of competition either by its object or by its effect. If by the very nature the trade has potential of restricting competition this is known as restriction of competition by object.

On the other hand if the competition is not tastes for there to be the effect of restricting competition, there must be, or potential to have a negative effect on prices, innovation, output or quality of services or the variety. 8. When there is the superiority to set prices above the competitive level and to sell products of a second-rate value or decrease its rate of innovation, this is a trade in a dominant position. This trade is independent acquiring the strength to act on its own accord of its competitors, customers, suppliers and ultimately the final consumer.

Here are some case examples \* The European Commission analyzes the roadman wholesale market in Malta addressing the issue whether two access providers are enough (Malcolm, Amelia Cable) 30 May 2011 \* The French Minister of Economics clears a merger in the markets of specialized TV channels with behavioral remedies (France T©I©visions-TFH) 30 June 2008 \* The Finnish Government launches a programmer to promote healthy competition 24 January 2013 Task 3 1 . Property created by musicians, authors, artists, and inventors are protected by the law of Intellectual property which is broken down to Copyright, Patents and trademark law.

As the work was artwork it is protected under the intellectual reporter law.

Under the Copyright, Designs and Patent Act 1988 a design means the appearance of the whole or a part of a product resulting from the features of,



in particular, the lines, contours, colors, shape, texture. The collage is a result of lines, contours, colors, shapes and texture therefore it is a design. A patent under the Patents Act 1949, 1957, 1977 is An exclusive right conferred on one who invents or discovers some process, machine etc to make use, sell, or assign it for a certain period of time which may be extended.

The collage could not be protected under this pub-area However under the Copyright, Designs and Patent Act 1988, a copyright consists of the author of certain types of material rights to control the use or commercial exploitation of the work that he or she has created. This includes rights to authorities or prohibit the copying, issuing of copies, renting or lending, performing, showing, playing, broadcasting or adaptation of the copyright material. The copyright law protects artistic work and this emphasizes that copyright is the sub area of law that the collage is protected under as a collage is a technique of composing a work of art. . The freelancing photographer can be sued for breach as commissioned work usually belongs to the author of the work unless there is an agreement. The historian would be referred to as the first owner of copyright' under the 1988 Copyright, Designs and Patents Act because he deliberately arranged or created this collage for his party. The freelancer could be sued for breach only if the owner brings proceedings in the courts against an infringement. The historian put together this collage for his party meaning it was his expression of thought therefore it was original.

See case In University of London Press v University Tutorial Press, where Peterson J stated that: The word original does not mean that the work must be the expression of original or inventive thought. Copyright Acts are not

concerned with the originality of ideas, but with the expression of thought, and, in the case of ‘ literary required relates to the expression of thought. But the Act does not require that the expression be in an original or novel form, but that the work must not be copied from another work – that it should originate from the author’. 8 Also see case Supreme

Court in *Groomer v MME Records (Ire) Ltd* where Barron J stated that originality does not require the work to be unique, merely that there should have been original thought. This emphasizes the owner of the work was the historian. With that being proven it is an offence to execute any of the following acts without seeking consent of the owner: \* Copy the work. \* Rent, lend or issue copies of the work to the public. \* Perform, broadcast or show the work in public. \* Adapt the work. \* The author of a work, or a director of a film may also have certain moral rights: The right to be identified as the author.

Right to object to derogatory treatment. According to my research on the law there are two types of infringements which are primary and secondary. Primary infringement would be the freelancer doing any of the restricted acts without obtaining the license of the historian the copyright owner. Secondary infringement would be the freelancer selling on the collage or distributing infringing copies and importing infringing copies into the ELK. The historian can sue for breach in this case under primary infringement as the freelancer did not obtain the license to take the pictures, copy the work which is a restricted act.

It would turn into a criminal offence once secondary infringement is involved or taken into action by the freelancer as copy infringement under Copyright, Designs and Patents Act 1988 states making copies for the purpose of selling or hiring them to others[ is a c[ is a criminal offence. There are others stated such as offering for sale or hire, publicly displaying or otherwise distributing infringing copies in the course of a business[, distributing a large enough number of copies to have a noticeable effect on the business of the copyright owner inter alai. However it has not gone so far for that to e taken into consideration.

The damages awarded if the claim is won are the historian would have the freelance’s copies seized under (s. 100) additionally there may be an injunction to further events. Conclusion In this assignment I advised but also to the opportunity to look into depth on the factors involving business law. Took time to highlight where there was a breach and the remedies that suited the damages in this case. I used other cases to back my argument and specific terms plus articles that were in relation. For example where any of the conditions in subsection (2) are met.