

Business law – case study assignment

[Business](#), [Management](#)



Is it a consumer or non-consumer contract? Here, we need to consider the definitions of consumer both under Trade Practices Act (TAP) and Goods Act part (GA-IV). As the total price of the goods is \$20, 500, it is under the TAP ass(1) (a)(i) prescribed limit. Having satisfied this, we need to consider sub(1) There is no evidence showing that John had acquired the goods for the purpose of re-supply or transform them.

It might be a consumer contract under TAP. \$20, 500 exceeds the threshold amount under GA-IV ass(1) (a). John then needs to satisfy ass(1) (b). His materials were of a kind that is ordinarily acquired for personal consumption. Moreover, ass(1) (c) and (d) did not apply. Therefore, it might also be a consumer contract within ass of the GA. A consumer contract subjects either to TAP or GA-IV means that Goods Act Part I do not apply. A seller must be a corporation to be under the TAP. As Frank Hardware is a sole trader, it therefore is not subjected to the TAP.

It then must fall under GA-IV. GA- IV applies to all consumer contracts for the sale of goods that take place in the course of business, irrespective of whether the seller is a corporation, a partnership or a sole trader. 1. 3 What are the Implied terms that are breached? (i) GA-IV s(90) Fitness for particular purposes John had a contract with Frank for the supply of materials and the sale took place in the course of a business. John made known the purpose for which the goods were required and had relied on his skill and judgment in choosing the appropriate terms.

It was also reasonable for John to rely on Frank. Therefore, there is an implied condition that the materials supplied be fit for that particular

purpose. However, the materials were not of the purpose for which it was supplied. This implied term had been breached. (it) GA-IV s(89) Merchantable quality As the materials were sold in the course of a business, there is an implied condition that the materials be fit for their normal purpose(s) having regarded the price. When the materials were delivered, the pine is not limed and the Oregon beams have unsightly knots.

John was not aware of the defect before the sale and if John had inspected the materials before sale it would not have revealed the defect. This is because John did not know that he actually had to lime the pine himself and the knots on the beams might not be easily seen. Therefore, there is evidence that this 1. 4 What is the effect of exclusion clause? As the materials bought by John is a kind normally acquired for personal consumption, Frank cannot rely on the exclusion clause to exclude his liability. This is evidenced by GA-IV ass(1). 1. 5 What are the remedies available?

Generally, an advertisement amounts to an invitation to treat. This is held in *Partridge V Christened* [1968] 2 All ERE 421, where Sue will be inviting John to make an offer. However, there is an exception. An advertisement can also be an offer. This can be illustrated in *Cargill V Carbolic Smoke Ball Co* [1893] 1 CB 256 in which Sue might probably argue that it was an offer. This being the case, Sue is the offer will stressed that the offer was assumed to be accepted by John upon saying " I think that'll be okay ". An offer, once accepted, cannot be revoked.

Therefore there will be a binding contract. Assuming that it is an offer, it can either be a counter offer or a mere request for more information. 2. 2 Counter Offer or Mere Request for More Information? An offer will be rejected if there is a counter offer. A counter offer tampers with the original condition of the offer, it rejects the original offer and can no longer be accepted at later date. Looking at the words used in John's reply " I hadn't expect it to be so high ", it is possible that this was either an acceptance with a request for more information, or a counter-offer.

If the court found the facts here sufficiently similar to those in *Stevenson Jacques V McLean* (1880) 5 JOB 346, it could hold that the words were a mere request for information. This being the case, the offer remains open and can be accepted. Another alternative is that the court might hold that John's reply amounts to a counter offer as it seems to add new terms to the offer. This would be similar to *Hyde V Wrench* (1840) 3 BEA 334, in which the counter offer involved a reduction in price. As in that case, the counter offer made by John had the effect of destroying the Orlando offer mace Day sue. U Is teen Tree to accept or reject tens counter offer. Sue, y quoting the price of \$1 500, clearly shows that she had accepted the counter offer and made a new offer. It is now up to John, the offered, to accept or reject the offer. 2. 3 Acceptance or Rejection? Sue could rely on the fact that the mode of communication is instantaneous, I. E. A telephone conversation. She will argue that John's response over the phone is assumed to be an acceptance to the new offer. This forms a contract in which she can argue that it had been breached.