

Business Law

Introduction

The report has a clear study of various provision of the act and other related law of Sale of Goods Act, Consumer Credit Act, Anti-competitive Act and Intellectual property Act. The buyer has some rights and remedies available after sale and seller is restricted after sale. The buyer and seller both are bound by the laws of contract. The agreement of credit is regulated by Consumer Credit Act and agency along with the types of agent is explained in the report. The credit and loan may be restricted or unrestricted as per the provision of the act. The dominant position in the market is restricted by anti-competitive law and unfair trade practices which is unfair for other competitors in the market. The intellectual property rights are the exclusive right for the intellect of the individual. The different type of intellectual property rights are explained in the report.

Task 1:

1.1:

The contract is made up of terms that are to be applied among the parties for the performance of the terms so agreed to between the parties. These terms may either be included in the contract or not. The ones mentioned are express terms and the ones not mentioned are implied terms. Such terms although not present under the contract are applicable because the terms are present in the previous dealings, customs or common law rules.

In the provided case study, it is given that Ben had been a victim to the breach of the contract. To deal with this issue the legislation of Sale of Goods Act, 1979 should be referred. This enactment discussed the valid provisions of the implied terms for the purpose of tangible goods. The following provisions discuss the implied terms applicable under the sale agreement:

- Section 11: This section determines the conditions and warranties so applicable to the contract.
- Section 12: This section discusses the term on title. This implies that the seller has the title of the goods unless the agreement and if not then the agreement is said to have been breached. The product should have a title that is free from any trouble and have a peaceful possession.
- Section 13: This section provides that the goods when sold should be exactly as described by the parties at the time of making the sale. The seller should match the products to the description. This implies that if the buyer has purchased the good without matching and they are unmatched then the contract would be said to be breached. (Bland et al., 2011)
- Section 14: This section discusses that the goods so provided shall be of reasonable quality and that the same should match the quality promised at the time of sale. The quality would be considered for every act that is fit for purpose.
- Section 15: This section discusses the term where the sample is provided then the product should be match to the sample.

Under the legislation of Supply of Goods and Services Act, 1982, Section 3 provides for the description of the goods to the actual goods sold. It also provides that the goods should match

the sample. Section 4 provides for the assurance of the quality of the goods under the regular acceptable standards. The quality of the goods would be judged from the price of the goods. Furthermore, it is determined that the goods should be transferred in a regular manner under the business rules as per Section 13.

According to Unfair Contract Terms Act, 1977, it is determined that when a breach of implied term takes place the same would not be limited to any agreement term. The same is applied to the implied term of description, quality or title under Section 6. (Common Frame of Reference and Existing EC Contract Law, 2009)

In the provided case study, the car so sold by the dealer is said to have a wrongful description at the time of sale as the car had more previous owners and was used other than the purposes as mentioned. The implied term to match the description has been breached and thereby the contract is said to be invalid and Ben may claim for the said breach.

1.2:

The transfer of the goods is considered to be the transfer of goods from one place to another that may be felt and touched in physical form. This would help in determining the owner of the goods and the same is provided for under the Sale of Goods Act, 1979. The exchange of the goods generally takes place between the seller and the purchaser. The rights so concerned by the owner should be considered by Ben as follows:

- The legislation provides for such rights under section 16-20. Such terms are in concern of transfer of ownership and risk at the time of transfer of the property.
- Section 16 determines that the ascertainment helps in determining the ownership and the same is not undertaken unless the ascertainment happens.
- Section 17 determines that the sometimes the ownership may be retained while the ascertainment is still passed if the same is intended. (Steiner and Woods, 2009)
- Section 18 determines that if the contract so created is unconditional then the goods possession passes when the contract is created. When the goods are to be put in a deliverable state the same passes when such is done. If the goods are to be weighed or measured then the same shall pass when such is done. The goods sold on approval basis shall pass when the approval is obtained. If the goods are unconditionally appropriated and unascertained then the same may pass to the buyer.

- Section 20 provides that the ownership and risk are related. As the risk gets transferred the ownership would get transferred. (Bland et al., 2011)

Ben could make a claim for the damaged car that was provided to him under the agreement as the ownership had transferred but the car was not in a deliverable state thereby making it a liability on part of the seller for the loss so suffered from the car. The car when sold did not match the description and the seller did not put it in a deliverable state.

1.3:

While referring to the remedies available to Ben, he may study the following remedies for sellers and buyers each under the Sale of Goods Act, 1979:

Sellers Remedies:

- Section 41 to 43 provides for the right in terms of lien of the goods sold.
- Section 44 to 46 provides that if the buyer becomes insolvent while the goods are in transit, the seller may cancel the contract and disengage the transit.
- Section 47 to 48 determines that the seller may resale the products if the previous sale doesn't follow through. (Steiner and Woods, 2009)
- Section 49 to 50 determines that the seller may claim for the personal remedies.
- Section 50(3) determines that the seller may sell the goods to recover the damages.

Buyer's Remedies:

- Section 12-15 determines the rights that the buyer has to reject the goods for a reason deemed reasonable under the laws.
- Section 35 A determines that the buyer may reject if the goods so provided do not match the description so made and the implied terms applicable under the law.
- Section 51 determines that in the case of non-delivery of the goods, the buyer may claim for the damages.
- Section 52 determines that the buyer may claim for a specific performance.
- Section 53 determines that the buyer may claim for warranty if not performed.
- Section 54 determines that the loss may be recovered for a non-performance of the delivery.

1.4:

The liability provided under the tort for the provision of sub-standard quality of products was established under the case of *Donoghue v Stevenson*. It was provided that the liability for the product is the responsibility for the manufacturer or the provider whoever is responsible for the condition of the product. The manufacturer's liability was established stating that if the product is provided in sub-standard condition as it left the warehouse the same would be the responsibility of the manufacturer. The responsibility would extend to anyone who has consumed the product and not just the one buying it. The breach shall be the direct cause of the loss so suffered by the consumer. (Common Frame of Reference and Existing EC Contract Law, 2009)

The defences available under the Tort would be that of the contributory negligence wherein the breach of the duty is undertaken by both the parties and the damages are not all caused by one party single handed. Another defence would be that of *volenti non fit injuria* wherein the parties so getting damaged have voluntarily undertaken the damage by waiving off the duty of care.

Under the Consumer Protection Act, 1987, the manufacturer is considered liable when the goods are defective and the same is under the strict liability. CPA Part 1 provides for the liability for a person in relation to the goods while Part 2 provides that the liability may have a criminal extent. Section 1 thereby provides that the manufactured goods are those that are provided from the industrial processes or agricultural products. If a good is to be considered unfit for use then the same to be unsafe and be claimed if the product costs for more than 275 pounds.

Ben in the present case, has been given a car of substandard quality and the consumer legislation provides that if the consumer is not satisfied with the product then the consumer may claim for the goods so provided by rejection, refund or returning the product. The car so provided to Ben was of unfit quality, not match the description and was the fault of the seller and not anyone else. The seller required to provide the goods as described to the buyer at the time of the sale. Since the same was not done, Ben may be able to claim for the product by returning the car and claiming for the breach of contract as well as the loss so suffered from the malfunction of the car due to its faulty condition.

Task 2:

2.1:

When the consumers purchase a loan for a return at a certain rate such agreements are known to be as the consumer credit agreements. These agreements are generally spread out over a period of time and require the returns in instalments. Such an arrangement demands returns with an interest. This is regulated by the Consumer Credit Act, 1974 and now amended as Consumer Credit Act, 2006.

For the purposes of the case study provided it may be determined that the types of arrangements that could be created are the following:

- **Hire Purchase:** When the consumer undertakes the property that is not yet paid for, it is known to be an agreement for hire purchase. For this type of arrangement, the amount to be paid is spread across a timeline and the transfer for the goods is completed when the property is returned to the original owner. Under such arrangements, the property cannot be furthered to a third party. (Finlay, 2010)
- **Credit Sale:** When the credit sale agreement is initiated the possession of the property is transferred to the party buying it and the same can be transferred to a third party. However, when the loan cannot be paid back the creditor may take hold of the property and also claim for the damages suffered from the non-payment of the debt.
- **Credit Card:** A credit card is considered to be a part of the credit transaction wherein the buyer already has an account and a long term relationship with the financial institution and the same is sufficient to use the card to make a credit transaction. The ownership is transferred when the sale is made. A credit card has a limit on spending and may be returned with the interest rate agreed to between the parties.

- Credit Unions: Credit Unions are regarded to be groups that collect the credit amount from its members and the same amount is undertaken by the member in need. The same is returned with an interest rate and regulated by the Credit Union Act, 1979.
- Conditional Sale: The consumer so purchasing the product is said to be buying the product when the contract is extended. The ownership is only transferred at the end of the contract and then the product may be transferred to a third party.
- Bank Loan: A loan is considered to be a contract between bank and the person getting a loan that the loan may be provided for a specific purpose and for a specific amount of interest. The loan term is fixed term and considered delivered when the entire amount is returned with an interest. (Slater and Nelson, 2013)

2.2:

Under the Consumer Credit Act, it may be determined that the notice of default may be made by the creditor under the hire-purchase agreement. The termination may also be initiated by the debtor before the agreement is created. If the agreement is called off by the creditor the notice so served by the creditor shall be for 14 days. The notice of termination should include the details of termination, the parties and its purpose. If the notice does not contain such information it would be regarded as invalid. Also, in case the debtor has already provided thirty-three percent debt to the creditor then the products concerned under the arrangement cannot be repossessed.

If Ben had paid for the car entirely, then no credit arrangement stands between the parties. The arrangement so created by them for the transaction of the car the contract so created may be terminated by providing the notice of default for breaching the contract wherein the possession had already been transferred. (Steiner and Woods, 2009)

As determined the debtor may claim for an extension on the payment plan under Section 129. The same may be done to terminate the contract before the maturity of the contract. The default notice is then served by the debtor. If the debtor is not successful in paying off the amount then the difference between half the amount and the amount already paid shall be made.

2.3:

An agency is considered to be that relationship between the principal and agent wherein the principal asks the agent to act on his behalf for the purpose he is hired. The relationship between the parties may be inclined from a contract or not at the option of the parties. To

create a contract the agent may not have a capacity but the principal and the third party shall have the same. (Finlay, 2010)

There are following types of agency that exist under the law:

- **Factors:** Factors are known to have a specialised knowledge wherein they are considered to have the power to make an offer and purchase goods as an agent.
- **Brokers:** Brokers are known to be agents in order to enter into a contract for the purchase of the property and get a part of the transaction. The brokers have no ownership involved.
- **Del Crede Agents:** Such agents are contacted to undertake international exchange as and when required by the principal.
- **Estate Agents:** Agents like these are responsible to keep track of a property as the principal is interested from the potential buyers. Such expertise is used to either promote or restrict the promotion and charge the amount for the services provided.
- **Bankers:** Bankers are regarded as the agents of the members of the bank in order to pay the amount drawn by the members. The client's instructions are to be followed and the members are valued for a certain price. (Slater and Nelson, 2013)
- **Auctioneers:** When a property of imminent value due to its importance to the society is to be sold, an auction is placed to get the highest possible value by the bidding process. The auctioneers conduct such a role from an expertise and valuing the process at a certain rate.

2.4:

When an agency is created, the party delegating the work is regarded as a principal and the person doing the work is known to be an agent. Such a relationship may sometimes be necessary under the law. If the agency is neither through will nor through law then the same may be undertaken as an estoppel allowing the agent to use the apparent authority whereby the principal may not be able to deny the relationship. Sometimes ratification may also be allowed to create such a relationship. The apparent authority is assumed by the third party whereby the actual authority is assumed by the principal. (Steiner and Woods, 2009)

The agent when performing the role shall ensure that he is fiduciary and conduct the duties honestly. The duties so assigned to the agent shall be such that full duty of care is undertaken and the act is undertaken skilfully. If the agent misuses the position or knowledge for the

personal benefit then he would be penalised. Agent may be regarded as an employee whereby he expects remuneration for the job so performed. The agent has the right to recover the expenses so spent in maintaining the property during the possession of the same on behalf of the principal. The termination of the agency lies on the revocation of the principal or discontinuance by the agent. Another way of termination is the breach of the contract if present.

Task 3:

3.1:

Monopoly is considered to be a situation wherein the market share for a particular company exceeds 25% for a given market. Monopoly means hold of one unit over the other units. It is known to be anti-competitive and causes other companies from entering the market or earning revenue free handily. Monopoly is considered to be practices when agreements by the competitive companies is created for price-fixing, hoarding or limitation of the production.

The two legislations that regulate the anti-competitive environment are Competition Act, 1980, Fair Trading Act, 1973 and Competition Act 1998. These legislations work in accordance to the European Commission and allows the businesses to run in a manner that is fair and restricts monopolies. The Monopolies and Mergers Act, restricts the formation of monopolies and ensure a healthy business environment. A cartel is also considered by anti-competitive and is restricted under the Enterprise Act, 2002. If companies are found to be part of the Cartel the company may be fined heavily while imposing penalty and jail time on its directors. (Ezrachi, 2016)

3.2:

According to the UK legislations, the customers interests were to be safeguarded by the Office of Fair Trading. The main responsibility of this office was to provide a smooth and health environment for the customers to enjoy the products at a fair value whereby the competition is free. The purpose of OFT had been dissolved and united with another office having the same powers and concerns. The Competition Commission was responsible to regulate the mergers and acquisitions of the companies under the UK in accordance to the

European Commission rules. Previously, OFT used to refer the matters to the Competition Commission and the recommendations were to be applied strictly by the OFT. (Hoffman, 2016)

3.3:

A position in a given market is said to be of having an unfair advantage over other businesses when the company is said to have fifty percent or more market share at a given time. Such a position I said to be a dominant position and leads to abuse of power for having a leading demand in the company's products. The unfair advantage is the application of the exchange terms or access to the rich.

According to the Treaty of European Union, the interest of such types is to be safeguarded by the members to the Treaty. This unfair advantage over the dominant share of the market disrupts the flow of competition and affects the maximum earning potential of the given market. Thereby, it has been restricted under the UK and European laws. (Jain, 2013)

Under the case of investigation for the hotel online booking, it was found that the alleged breach of resale price maintenance was found to be created under arrangements for the InterContinental Hotels Group plc and Hotel Inter-Continental London Limited along with Booking.com and Expedia in regard to the room-only hotel accommodation bookings. The parties then offered a statement of commitment under Section 31A of the Act. The commitments were then accepted and the investigation was closed. As an effect Booking.com had amended its parity provisions in the agreement for hotels across Europe and Expedia has waived off the parity provisions to have even effect on the price, availability and booking across Europe. (Mehta, 2012)

3.4:

The EU makes certain boundaries for a healthy competition and certain acts are generally restricted such as monopolies or unfair contracts among the competitors but certain contracts are allowed despite being anti-competitive. Thereby, following are the exemptions allowed by Article 101:

- Under Clause 3 it is provided that the practices that provide positive development to the consumers and the market as a whole would be valid and exempted under the rules.



- If the contract concerns fixing the market share to 10% then it would be unfair but agreements of little share would be exempted.
- Certain block exemptions may also provide to the companies that are specific to a list of agreements.
- The block exemption rules are applicable to the suppliers with a minimum share of 30% and is permitted according to the safety of the consumer and the competitive environment.
- Agreements that deal in positive effect of circulation of a consumer commodities may also be exempted. (Hoffman, 2016)

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Task 3



Introduction

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- ▶ Monopoly is considered to be a situation wherein the market share for a particular company exceeds 25% for a given market.
- ▶ Monopoly means hold of one unit over the other units. It is known to be anti-competitive and causes other companies from entering the market or earning revenue free handily.
- ▶ Monopoly is considered to be practices when agreements by the competitive companies is created for price-fixing, hoarding or limitation of the production.



- ▶ These legislations work in accordance to the European Commission and allows the businesses to run in a manner that is fair and restricts monopolies.
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- ▶ According to the UK legislations, the customers interests were to be safeguarded by the Office of Fair Trading.
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- ▶ A position in a given market is said to be of having an unfair advantage over other businesses when the company is said to have fifty percent or more market share at a given time.
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Hotel Online Booking Case

- ▶ Under the case of investigation for the hotel online booking, it was found that the alleged breach of resale price maintenance was found to be created under arrangements for the InterContinental Hotels Group plc and Hotel Inter-Continental London Limited along with Booking.com and Expedia in regard to the room-only hotel accommodation bookings.
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- ▶ The EU makes certain boundaries for a healthy competition and certain acts are generally restricted such as monopolies or unfair contracts among the competitors but certain contracts are allowed despite being anti-competitive. Thereby, following are the exemptions allowed by Article 101:
- ▶ Under Clause 3 it is provided that the practices that provide positive development to the consumers and the market as a whole would be valid and exempted under the rules.
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- ▶ Certain block exemptions may also provide to the companies that are specific to a list of agreements.
- ▶ The block exemption rules are applicable to the suppliers with a minimum share of 30% and is permitted according to the safety of the consumer and the competitive environment.
- ▶ Agreements that deal in positive effect of circulation of a consumer commodities may also be exempted. (Hoffman, 2016)

Conclusion

The healthy competition in the market is necessary and such competition is regulated by anti competitive laws of the country. Unfair trade practices are restricted such as monopoly which is spoiling the market economy and growth of the industry. The two legislations that regulate the anti-competitive environment are Competition Act, 1980, Fair Trading Act, 1973 and Competition Act 1998.

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Task 4:

4.1:

Intellectual property rights are rights over one's intellect that is unique and one of its kind.

Following are the different types of such intellectual properties:

- Patents: Intellectual property that is an invention and provides advancement to a particular industry is regarded as an intellectual property that is to be patented by the inventor. Such a patent holds exclusive rights over the use of the said invention and the same may be licensed or leased based on the choice of the inventor.
- Trademarks: A business while functioning determines its mark that is helpful in market recognition and ease of dealing. Such a mark is referred to as a trademark

containing a unique figure/drawing/slogan/colour combination. This creates customer base and create a better identity in a given market. (Secker, 2010)

- Copyrights: The creations of an artist such as photo, art, literature and such other intellectual forms are created by a unique intellect that cannot be replicated as it is. Therefore, as soon as such a work is created it is copyrighted. For it to become copyright as soon as it is created it should be unique.
- Designs: When a certain design is presented containing specific features for the commercial use such a figure is referred to as a protected design. A design should be able to attract the eye and have certain contours that cannot be used for any other purpose but the commercial as it was intended by the creator.

4.2:

As discussed above it may be determined that patent is created by a person and is something that has never been done before. Thereby, the rights for the patent are only held by the inventor. For the same purpose the use and sale of product may be chosen by the patentee. For an invention to be protected it is important that the same is one of its kind, benefits the industry and is a novelty. The right of authorisation for the patent is only held by the inventor.

The patent shall be obtained within eighteen months of the creations of the invention. The use of the same the invention if found to be done by a person other than the patentee, without authorisation, would be considered illegal and breach of law. In such a case the patentee may file for an injunction and claim damages. (Sreenivasulu, 2008)

Under the case of Dyson v Hoover, Dyson had patented the method on the loss of suction in a vacuum cleaner. The innovation of thereby registered as the Dual Cyclone in the year 1993. The similar invention in 2002 namely Root Cyclone thereby established that the same technology had been used but without authorisation of the patentee. It was held that such a use is a breach of law and penalised the defendant with 4 million pounds.

4.3:

When new works are created for the knowledge of a particular form of communication or art then such works are considered to be copyrighted. These include musical compositions, literary works, play, manuscripts and such other types. It is governed by the Copyright, Designs and Patent Act, 1988.

If such a creation is used without the permission of the creator then such an act is considered to be illegal and punishable. It is considered as a criminal offence and may be fined till 5000 Pounds and/or imprisonment of 6 months. The penalty so charged may be extended at any sum deemed fit for the case but no imprisonment can extend 10 years. (Engdahl, 2010)

4.4:

The types of differences between the trademarks and the business names are as follows:

- The business name is considered to be the identification of the business and is used for stocks and letterheads whereas the trademark is considered to be present on the logos and slogan and is to be registered.
- If a business name is infringed then the remedy may be not provided under any legislation whereas the infringement of the trademarks is provided under the Trademarks Protection Act, 1994.
- The business name may be registered in the region it functions whereas a trademark is provided by the US office.
- The registration process is not present for business name whereas a trademark registration is considered lengthy. (Elkin-Koren and Salzberger, 2015)
- The business name may be used as long the business would require and allowed by the regional businesses whereas the trademark is to be registered for 10 years that may be renewed. (Bainbridge, 2012)

Conclusion

It is to be concluded that the sale of goods and services provides some responsibility to the seller and rights to the buyer. Such rights are expressed and some are implied terms of the contract. The description of the goods must match the actual goods provided to the buyer. The credit in the market is regulated by credit rating agency. The agents in the market are mediator between the principal owners and buyer. The agent can be special or general depends on the duties and responsibility delegated to him. The healthy competition in the

market is necessary and such competition is regulated by anti competitive laws of the country. Unfair trade practices are restricted such as monopoly which is spoiling the market economy and growth of the industry. The intellectual property rights are the rights provided by the government to the person for his intellect. The use of intellectual property rights without the permission of the owner is infringement.



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