

Chapter 6: Product Liability Extra Questions

Question 1

Mira who was keen on camping holidays went to JT Autos to buy a car for travelling in her retirement. She did not see the notice behind the counter which read: "All our cars are guaranteed for three months, but thereafter we accept no responsibility for defects howsoever arising." Mira bought an estate car for £16,000 from JT Autos after the salesman told her it was perfect for towing her caravan on long journeys. On the back of the invoice there was a list of exemptions that Mira did not bother to read. These stated: "All consumer rights must be claimed within seven days otherwise we disclaim responsibility for any loss or damage. We are not responsible for any statements made by our employees unless authorised in writing by a director." Four months later, the car broke down while Mira was towing her caravan from London to the Lake District. A mechanic at the nearby garage told Mira that it is dangerous to use the car to tow a caravan and that it needs a new engine at a cost of £4,000. Mira suffered a bereavement so she was unable to claim compensation from JT Autos until eight days later. JT Autos has offered to repair or replace the car but she wants her money back. Mira is concerned that if she accepts a repair it will break down again. Moreover, a replacement is no use to her since the car is not suitable for towing her caravan.

Discuss Mira's rights and remedies against TJ Autos. Would it make any difference to your answer if the car had broken down twenty days after the sale?

Answer guidance

You will need to identify the status of the parties.

You will also need to identify the exemption clause and consider whether it can be struck down.

Consider whether the Consumer Rights Act would apply and, if so, how.

This problem question requires consideration the application of rights, remedies and exemption clauses under the common law and Consumer Rights Act (CRA) 2015.

Issues for consideration are:

- identification of a consumer sales contract s 5(1) CRA 2015;
- notice behind the counter and its validity under common law rules of incorporation and construction and the sections 62-69 CRA 2015;
- salesman's statement about the car being fit for a particular purpose under common law and s10 CRA;
- exemptions on the back of the invoice and their validity under common law and sections 62-69 CRA 2015;
- implied terms of satisfactory quality and fitness for purpose under s 9 CRA 2015;
- application of hierarchy of remedies under sections 22-23 CRA 2015;

- short term right to reject within 30 days under s 22 CRA 2015.

Question 2

Critically discuss the extent to which the small claims track in the county court enables consumers to enforce their rights.

Answer guidance

Look at the wording of ‘critically discuss’ - you need to take a critical approach and build your argument.

Answers should briefly describe the small claims procedure and discuss how far it provides consumers with an adequate redress mechanism. Main issues for consideration are advice and information, legal representation, cost, delay and accessibility. Good answers will analyse the recent reforms of the procedure.

- Look at the wording – this question is about the effectiveness of a redress mechanism in enabling consumers to enforce their rights.
- It requires you to explain the extent to which the procedure is effective.
- In other words how far is the small claims track effective? You need to take a critical approach and build your argument.
- Some issues for consideration are advice and assistance, accessibility, costs, financial limit, public hearing, effectiveness of judges, no legal costs rule, representation, fairness, delays, problems enforcing judgement, comparison with other redress mechanisms such as ombudsman schemes.
- Make your answer sharp and to the point.

Question 3

Asha went to Oldman’s Discount Warehouse, to buy a computer. She was short-sighted and did not notice a sign behind the counter which read “Notice for Customers – We are not responsible for any statements made by our employees unless authorised in writing by the manager. Oldman’s will not give refunds on faulty goods unless we have first been given the opportunity to carry out a repair.” Asha bought a desktop computer and colour printer for £1,100. The computer came with pre-loaded software which the salesman told her was ideal for editing photographs. On the reverse of the invoice in small print there was a long list of exemptions which Asha did not bother to read. These included conditions stating: “Our liability is limited to the value of the goods supplied. In the event of a dispute our technician’s report will be conclusive.” A week after buying the computer and printer, Asha discovered that the pre-loaded software was totally unsuitable for editing photographs. Two months later, Asha received a powerful electric shock when she connected the computer to the printer. This left her with severe burns. The computer has broken down completely and will cost £750 to repair. Oldman’s Discount Warehouse has told Asha the problem was caused by misuse but have offered to repair the computer and printer. Asha insists she followed the instructions for use carefully and is adamant that she wants a refund together with compensation for her injuries.

Discuss Asha's rights and remedies against Oldman's Discount Warehouse. Would it make any difference to your answer if she had bought the computer for use in her photographer's shop?

Answer guidance

This problem question requires consideration the application of rights, remedies and the validity of exemption clauses under the common law and Consumer Rights Act (CRA) 2015. You will need to consider whether there has been a breach of terms and then consider what remedies are available under statute and common law.

Issues for consideration are:

- identification of a consumer sales contract s5(1) CRA 2015;
- notice behind the counter and its validity under common law rules of incorporation and construction and the sections 62-69 CRA 2015;
- salesman's statement about the computer software being fit for a particular purpose under common law and s10 CRA;
- exemptions on the back of the invoice and their validity under common law and sections 62-69 CRA 2015;
- implied terms of satisfactory quality and fitness for purpose under s 9 CRA 2015;
- application of hierarchy of remedies under sections 22-23 CRA 2015;
- short term right to reject within 30 days under s 22 CRA 2015.

Question 4

Critically discuss the adequacy of the redress mechanisms available to consumers who want to enforce their rights.

Answer guidance

You have to build an argument here and the word 'adequacy' tells you where to start.

Essay type questions are usually about building an argument for and against a proposition. Think about the wording of the question and plan your answer carefully. Don't forget to include an introduction and a conclusion. Write your answer in a succinct way using plain English. Avoid an overly descriptive approach and analyse the issues. In the main body of your answer you may find it helpful to adopt a PEA (point, evidence, analysis) approach:

- Each paragraph should begin with a sentence that introduces the topic of the paragraph – *the topic sentence*. We can define the topic or give it context in further sentences, if required.
- The point should be supported by evidence from an academic or legal source, offering an explanation, if necessary.
- The final element of the paragraph should provide an analysis of the evidence, explaining its relevance, tying it in to your own argument and leading into the next paragraph

This question is about problems consumer face enforcing their rights with a focus on redress mechanisms. Answers should briefly outline the advantages and disadvantages of the small claims track in the county court, arbitration and ombudsmen schemes.