**Answer Guidance for Chapter 10 Practice Questions**

**1. What are the different ways in which goods can be acquired other than pursuant to a contract of sale?**

Although a contract of sale is the typical way in which goods are supplied, it is by no means the only one. It is important to appreciate that certain legal consequences may depend on the way in which the supply of goods occurs.

Non-contractual supply

In the main, goods will be supplied pursuant to a contract of one kind or another, although the supply can arise without one. A typical example of a non-contractual supply of goods is a gift which, once handed to the recipient, becomes his property. The donor in such a case has little, if any, liability in respect of the condition of the gift, which immediately distinguishes it from a contract of sale. The donor might be liable if, for example, he knew the goods were dangerous but failed to warn the recipient of such danger, but would not be liable if they proved to be unsatisfactory in quality. Thus, if X gave his wife a food processor as a gift, X might be liable if he knew it was dangerous and she sustained injury from its use, but X would have no liability if it failed to process food satisfactorily. This example exposes the rather tortuous route that exists if a claim is to be brought. The retailer from whom X purchased the machine would doubtless be in breach of contract, but the contract was with X and X has suffered no loss. X’s wife would not be entitled to sue the retailer for her loss as she has no contract with them (although had X given her the money and she bought the machine herself, she could then sue the retailer for breach of contract). She could bring a claim against the manufacturer, but only if it could be established that they were negligent in the manufacture of the machine.

In certain situations a relationship that has been created by legal compulsion will not be contractual and therefore cannot amount to a contract of sale. Thus, for example, there is no contract of sale where a hospital dispenses medicine to an outpatient even where the patient pays the statutory prescription charge. The relationship in such a case is a statutory one: the hospital is statutorily obliged to supply the medicine and the patient is similarly entitled to receive it.

Exchange or barter

A simple exchange where one person exchanges his goods for another person’s goods can form the basis of a contract, but not one of sale of goods because of the absence of money consideration. However, if the exchange involves some money changing hands, for example, because one person’s goods are worth more than the other’s, then this may be deemed to be two contracts of sale. See *Aldridge v Johnson* (1857) 7 E&B 885 and *G J Dawson (Clapham) Ltd v H & G Dutfield* [1936] 2 All ER 232.

Work and materials

Many contracts of sale include, in addition to the sale of goods, the provision of a service. At one time the classification of contract was important because, until its abolition in 1954, contracts of sale of goods valued at £10 or higher had to be evidenced by a note or memorandum in writing, whereas there was no such requirement for contracts for work and materials. See, further, *Lee v Griffin* (1861) 1B&S 272 and *Robinson v Graves* [1935] 1 KB 579.

Free issue of materials

With this type of contract, the customer provides the supplier with the materials which the supplier then uses to make the finished goods. It might be seen, for example, where the customer provides a roll of material to a dressmaker to make a dress. This kind of arrangement is not one of sale of goods because there is no transfer of ownership in the goods, but is a contract for services to which the Supply of Goods and Services Act 1982 applies.

Hire purchase and hire

With these methods of possessing goods, ownership remains with the supplier. With hire purchase, the customer enters into an agreement to hire the goods for a period with an option at the end to purchase them. Even though most customers will exercise this option to purchase, and will therefore end up as owner, there is no obligation to do so. Accordingly, it is not a contract of sale.

**2. How has the CRA 2015 altered the position in respect of consumer contracts?**

This is a general question on the CRA 2015. A good starting position would be to note that the SGA 1979 has been the subject of significant amendments by way of the Sale and Supply of Goods Act 1994, the Sale of Goods (Amendment) Acts 1994 and 1995, and, as is directly relevant to this question in respect of consumer sales, by the Sale and Supply of Goods to Consumers Regulations 2002. Since 1 October 2015, certain consumer transactions have been governed by the CRA 2015.

The CRA governs contracts between a trader and a consumer (as defined by section 2 of the Act) that were entered into on or after 1 October 2015. The Act does not apply to consumer-consumer or business-business transactions, for which one must still look to the SGA 1979 and the common law rules.

The CRA sets out a framework that consolidates in one place key consumer rights covering contracts for goods, services, digital content (which was not previously codified by Statute) and the law relating to unfair terms in consumer contracts.

‘Digital content’ means data which are produced and supplied in digital form. The creation of a category of digital content in the CRA 2015 does not affect the treatment of digital content in any other legislation.

The following sections of the CRA 2015 need to be discussed.

* Section 9 - goods to be of satisfactory quality. This is similar in effect to the corresponding implied term in s 14(2) SGA.
* Section 10 - goods to be fit for particular purpose. This is similar in effect to the corresponding implied term in s 14(3) SGA.
* Section 11 - goods to be as described. This is similar in effect to the corresponding implied term in s 13 SGA.

The key difference between the SGA and CRA regimes is the remedies available to the buyer.

Insofar as the requirement for the goods to be of satisfactory quality (s 9), fit for particular purpose (s 10) and as described (s 11), the buyer will have a short-term right to reject (ss 20-22), a right to repair or replacement of the goods (s 23) and a right to a price reduction or the final right to reject (s 24).

Furthermore, if the breach of the statutory right arises in the first 6 months from delivery, it is presumed to have been present at the time of delivery unless the trader proves otherwise or this presumption is incompatible with the nature of the goods or the particular breach or fault. This applies where the consumer exercises their right to a repair or replacement or their right to a price reduction or the final right to reject but not where the consumer exercises their short-term right to reject (ss 19(14) and (15)).