

Consultation Paper on contracts for the supply of goods released

The Law Reform Commission's Supply of Goods sub-committee today (December 21) announced the publication of a consultation paper on proposals to reform the law governing contracts for the supply of goods and, in particular, the implied undertakings which should be imposed on suppliers of goods.

The paper explains that where goods are supplied under a contract of sale, the law imposes a number of statutory undertakings on the supplier. These include, for instance, an undertaking that the goods are of merchantable quality and fit for the buyer's particular purposes, and that the goods correspond with any description which has been provided. The paper points out that these statutory undertakings only apply in contracts of sale, and not where goods have been supplied in some other way, such as by hire or hire purchase. In those cases, the supply of goods is governed by the case law and it is unclear whether similar implied undertakings apply. The sub-committee's proposals are aimed at clarifying the law in this area, and follow an examination of the position in a number of other jurisdictions.

The Consultation Paper points out that there are a number of ways in which goods can be supplied other than by sale:

- hire - which can include items such as videotapes, cars, dinner jackets, wedding dresses, televisions, photocopying machines, plant and machinery, etc;
- hire purchase - this can include not only consumer goods, such as electrical appliances and motor vehicles, but also commercial goods such as plant and machinery;
- contracts for work and materials (the "materials" part) - this would include custom-made furniture, decoration work for residential properties, etc.

The sub-committee, which is chaired by Mr Justice Bokhary, believes that the law should be clarified and made more certain by setting out in new legislation suppliers' implied undertakings to customers in contracts for the supply of goods. These undertakings should be consistent with those which apply at present in contracts for the sale of goods. A supplier under a contract for the supply of goods would then be implied to have made the following statutory undertakings:

- that the supplier has the right to transfer or hire out (as the case may be) the goods, and the customer will enjoy quiet possession of the goods;
- where the supply is by description, that the goods correspond with the description;
- that the goods are of satisfactory quality, and are fit for the particular purpose for acquiring the goods which the customer has made known to the supplier;
- where the supply is by sample, that the bulk corresponds with the sample in quality.

The sub-committee recommends that where a customer is a non-consumer, if the breach by the supplier is so slight that it would be unreasonable for the customer to repudiate the contract, the customer cannot reject the goods but can claim damages only.

The sub-committee has also taken the opportunity to make a number of recommendations in relation to contracts for the sale of goods:

- where there is a sale of a specified quantity of unascertained goods forming part of an identified bulk and the buyer has paid for the goods, property in an undivided share in the bulk passes to the buyer, unless otherwise agreed;
- where the goods delivered under a contract are defective, the buyer should be able to reject the defective goods and accept those that conform;
- repealing the statutory exception to the rule (that a seller cannot give his buyer any better property rights than he himself has): a buyer buying from a shop or market, without notice of any defective title on the part of the seller, can still retain the goods even though the true owner claims back the goods;
- where a buyer is a non-consumer, he should not be able to reject for delivery of a wrong quantity if the error is so slight that it would be unreasonable for him to do so;
- clarifying that a buyer shall not be deemed to have accepted the goods merely because he asks for, or agrees to, their repair by or under an arrangement with the seller.

The sub-committee stresses that the recommendations in the Consultation Paper are intended to facilitate discussions and do not represent the sub-committee's final conclusions. The sub-committee invites and would welcome views, comments and suggestions on any issues discussed in the Consultation Paper.

Copies of the Consultation Paper are available on request from the Secretariat of the Law Reform Commission at 20/F Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. They are also available on the Internet at <www.info.gov.hk/hkreform>.

NNNN

End/Thursday, December 21, 2000