

Peter Cane Prize in Legal Reasoning

9. - Goods to be of satisfactory quality

- (1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.
- (2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—
 - a. any description of the goods,
 - b. the price or other consideration for the goods (if relevant), and
 - c. all the other relevant circumstances.
- (3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—
 - a. fitness for all the purposes for which goods of that kind are usually supplied;
 - b. appearance and finish;
 - c. freedom from minor defects;
 - d. safety;
 - e. durability.
- (4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory—
 - a. which is specifically drawn to the consumer's attention before the contract is made,
 - b. where the consumer examines the goods before the contract is made, which that examination ought to reveal, or
 - c. in the case of a contract to supply goods by sample, which would have been apparent on a reasonable examination of the sample.

Explain what this provision means for sellers, considering generally the extent of their duty, and specifically the four following issues:

- 1) What does 'satisfactory' mean?**
- 2) Can you provide some examples of "other relevant considerations" in section 2(c)?**
- 3) What does "fitness for all the purposes for which goods of that kind are usually supplied" in section 3(a) mean? Can you provide some examples of when this section would and would not apply?**
- 4) In what circumstances would the exception in section 4(b) apply?**

Note this answer has been put together by a law academic with no expertise on the topic, and besides the reference to a dictionary, only using material freely available on the internet.

What deals can you make with others? Can you offer to buy illegal drugs, or to buy someone's kidney for transplantation? Can you offer to sell another's car, without the owner's permission? Can you claim to be selling Coca Cola to a chain of restaurants, but actually be selling Cheapo-cola? Can you set up a business to sell vacuum cleaners and sell a product which you know

will need to be repaired within 13 months, but only offer a 12 month warranty? You might even advise purchasers to buy your 2 year extended warranty for a quarter of the cost of the vacuum cleaner.

Each of these things is prohibited by law, just in different ways and for different reasons.

You cannot create a valid contract to buy or sell illegal drugs:¹ contracts for illegal purposes would be creating obligations to do things you are not allowed to do. It is logically part of the rule against those illegal things (like the harmful effects of illegal drugs) that contracts to do them are also invalid. Indeed, it would usually even be a criminal offence to encourage someone to sell drugs.²

It's also against the law to buy or sell human organs.³ This is a little more challenging, but it seems that the risk of undue financial pressures from a wealthy person on a less wealthy one are thought to outweigh the benefits of allowing sales even of an organ, like the kidney, where it is commonly possible to donate one and still lead a normal life.

As for the car, it's definitely a criminal offence to offer for sale another's property without their consent.⁴ Knowing exactly what constitutes 'theft' is a little difficult, but it must cover me taking your car intending to keep it and so it must cover me offering it to another person, intending the owner never get it back.

As for the cola, it's a tort, a civil wrong, to "pass off" goods,⁵ and it might also be in breach of contract. You cannot trade on the goodwill of another person, company or product, to your benefit and their detriment.

But what about the vacuum cleaners? Why should the law care about a contract like this? We could assume that the vacuum cleaner does the job of a vacuum cleaner, but that it is knowingly designed or built so that it only lasts just longer than the warranty period. We are not dealing with the criminal law, significant penalties for the more significant wrongs a person can do in society, imposed and enforced primarily by the state. We are dealing with a part of contract law, broadly speaking, the law of voluntarily entered into obligations. Is a contract like this prohibited, or otherwise regulated? Should it be?

In short, section 9 of the Consumer Rights Act (CRA) 2015 affects what sellers can sell without being liable. If a good is sold which is not of satisfactory quality, the purchaser might have a claim in contract for any losses suffered. Other than working out precisely what "satisfactory quality" means, there is another important limit: s. 9 of the CRA only applies to contracts between 'traders' and 'consumers' (see s. 2 CRA). Put perhaps too simply, a trader's business is to sell, a consumer's purpose is for personal use.

¹ See generally *Patel v Mirza* [2016] UKSC 42: <http://www.bailii.org/uk/cases/UKSC/2016/42.html>

² Serious Crime Act 2007, ss. 44-46:

http://www.bailii.org/uk/legis/num_act/2007/ukpga_20070027_en_1.html#pt2-pb1-11g44

³ Human Tissue Act 2004, s. 32: http://www.bailii.org/uk/legis/num_act/2004/ukpga_20040030_en_1.html#pt2-pb5-11g32

⁴ Theft Act 1968, s. 1(1): http://www.bailii.org/uk/legis/num_act/1968/ukpga_19680060_en.pdf. See e.g., *Stanley v Benning* [1998] EWCA Civ 1206: <http://www.bailii.org/ew/cases/EWCA/Civ/1998/1206.html>

⁵ *Reckitt and Colman Products Limited v Borden Inc.* [1990] 1 WLR 491: <http://www.bailii.org/uk/cases/UKHL/1990/12.html>.

This trader-consumer relationship is an interesting one: there are a number of key imbalances with respect to goods sold. The trader will tend to be in a position to know a lot more about the goods and their quality. They will tend to be in a position to dictate terms to consumers, both by a set of standard terms, and because they take the time and energy to strategise how to trade, whereas consumers as individuals tend not to have the resources or inclination to do so. Also, as a matter of fact, traders will tend to have the consumer's money before any problems in the goods develop, putting the burden on the consumer to do anything about it.

Section 9 should not be seen in isolation, as the CRA is a rather large piece of legislation affecting consumers in many ways. It deals not only with "quality", but also with being first for a particular purpose (s. 10), being as described (s. 11), the specific remedies available (ss. 19-24, such as to reject the goods or to have a repair or replacement, both of which put obligations on how sellers behave) and more generally in respect of services (not only goods) (Ch. 4) and of unfair terms in consumer contracts (Ch. 5). Section 9 is clearly part of a larger set of obligations on sellers, and how sellers comply with s. 9 will be affected by these other obligations.

Turning specifically to s. 9, it implies a term into every applicable contract, that the goods are of satisfactory quality. That means that a reasonable person would consider the goods satisfactory, particularly taking into account any description, the price and any other relevant considerations. Clearly this is going to be a very fact-dependent test. A reasonable person is not necessarily rational, nor necessarily equivalent in understanding and knowledge to the average consumer. There are many legal tests which use the "reasonable person", but in civil law such tests will be decided by a judge at trial, and it's slightly difficult to say that the judiciary represents all "reasonable" views, even if the judiciary were in fact as diverse as the population at large. Price and description are obvious issues, others will depend on the context, but might include what alternative goods were practically available, what regulation of that type of goods might have been imposed by the state, the environmental impact of alternatives, traditional or cultural attitudes to the goods in question (carnival flowers might be expected to be of poor construction but expensive in Notting Hill, but less expensive in Newcastle; a particular local desert might need to be reasonably priced and of high quality in its original home, but more expensive yet less satisfactory goods might be sold at some distance, such as Bakewell Puddings in London rather than the Peak District).

The quality of goods includes many aspects, some of which might be obvious to consumers, others not. One aspect is that traders need only have a "usual" set of uses for the product in mind. A laptop bag would not be used to carry 10 gold bars but should be able to hold a portable computer safely. A commuting bike should be suitable for those within a predictable range of heights and weights to ride to work in a city, not for craghopping in the Highlands of Scotland. Where the quality of the goods is open to a consumer to find out, what might otherwise be unsatisfactory becomes satisfactory: by having it drawn to her attention or by inspecting it (where the examination ought to reveal the issue) or a sample of it. In such situations the balance of power in power of discovery and decision has shifted and the liability shifts too. What about the vacuum cleaner example? For a normal (not cheap; not expensive) vacuum cleaner, a reasonable person would probably expect more than 12 months of useful life, or at least, a good chance at it, rather than the certainty that it will fail just after the warranty expires. The extended warranty as an addition to the package will not make the goods overall of satisfactory quality.

What is the practical effect of imposing an obligation like s. 9 on traders? Well, first off, just because something is the law does not mean it will in practice be the reality. Many laws are breached, and many of those breaching are not caught and made to remedy their wrong. In the consumer context, the fact that s. 9 is an implied term is important. A contract does not need specifically to mention the effect of s. 9, the law reads the contract between trader and consumer as if there were an extra clause promising that the goods are of satisfactory quality. But while that is neat, and avoids a sneaky trader depriving the Act of effect by “forgetting” to put the clause in, it has some limits. Many, perhaps most, consumers will not know about s. 9 at all or in much detail and their primary source of finding out their rights, the contract, does not mention it. The contract might even contain other clauses which appear to do the opposite of promise satisfactory quality. In law such clauses are invalid, but the consumer might know better, and might be persuaded that she has no rights, or has rights that it would be hard to prove and difficult to win on in court. So even having s. 9 does not solve the problems of unequal power in consumer transactions.

The issue is how much society bands together to help the less informed, and less powerful and what means it takes to do so. One force is the state: having a trading standards inspectorate or similar, to proactively investigate trading practices, to create standard form contracts for consumer situations. Such a body might help to deal with the most unpleasant traders. Similarly, consumer associations might help to inform consumers about their rights and negotiate with traders to resolve disagreements. The reality is that litigation is expensive, intimidating and time-consuming. Contract litigation will only happen where the consumer is incentivised by a significant loss or significant righteous indignation. Most of us put up with small losses all the time. Traders commonly deal well with minor and fully proven problems, but if they do not, litigation is not normally a very real threat. The CRA focuses on empowering the individual as a matter of law which will not translate directly into a legal advantage. The effect of s. 9 on sellers is therefore even more complicated, particularly by the risk attitude and social conscience of traders.

Indeed, legislation like the CRA represents a wider example of what it means to share burdens in a society. In simple terms, traders cannot gain what we might think of as too much of an unfair advantage from consumers. The law steps in to limit free market enterprises to promote a social good, slightly more reliable trade. The costs of living up to these obligations of quality are, in the first instance, born by the trader. The trader must provide goods that are good enough, and he will usually take care to do so, costing money and time, or less intelligently, to have to pay up every time the goods fail, similarly costing money. Importantly, the trader will then add these costs to the price of the goods he sells, spreading the total loss into little parts born by all consumers. Most consumer transactions we undertake each day have priced into them the cost of satisfactory quality making life simpler. It's also a more pleasant way to live, particularly for consumers: the trader, and behind him, the producers and distributors, know more about how to make products and they do the work, passing that cost on to consumer, who need not worry as much as he would otherwise, there being a minimum threshold of quality.

The consumer's simpler life comes at the cost of interfering with the trader, making the trader uncertain of what a reasonable person would think is satisfactory quality, and making it harder to do business. The value of this imposition can only be understood alongside other impositions, like the those on drugs, kidneys, drugs and cola, as part of society's allocations of roles, as well as benefits and burdens, in society.