

**Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway**

SEMESTER 1 Examinations, 2004/2005

Exam Code(s)	2CL1, 1EM1, 1OL1
Exams(s)	2 nd Bachelor of Corporate Law Erasmus & Occasional
Module Codes(s)	LW403
Module(s)	Commercial Law I
Paper No.	1
External Examiner(s)	Professor H. Ellis
Internal Examiner(s)	Professor L. O'Malley
Instructions	Answer THREE questions All questions or parts of questions carry equal marks unless otherwise indicated.
Duration	TWO Hours
Department	Law
Requirements:	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	✂
Other Material	Consumer Credit Act, 1995, Parts VI (6) and IX (9). Sale of Goods Act 1893 Sale of Goods and Supply of Services Act 1980 European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, SI 27/1995. Liability for Defective Products Act, 1991.

PTO

1. Advise the buyers on their legal position and rights, if any, in each of the following sale of goods transactions:
 - (i) Quality Foods plc agreed to buy by sample the 500 tonnes of oats that were said to be stored in the Galway Warehouse of Modern Milling Ltd. It was discovered, however, that there was only 300 tonnes in the warehouse, and it was this lesser quantity that was delivered. Quality Foods plc refused to take delivery. As justification for its failure to accept delivery, the company alleged that, in addition to the incorrect quantity having been sent, the bulk quantity of the oats was inferior in quality to the sample supplied, and was not fit for its intended purpose, namely, for use in the manufacture of breakfast cereals. Modern Milling Ltd argued that the lesser quantity must be accepted and paid for, and emphasised that its terms and conditions of sale excluded all conditions and warranties, express or implied, both under common law and statute.
 - (ii) Tom orally agreed with Executive Cars Ltd that he would give €18,000 together with his used VW car in exchange for a new BMW model. At the time of contracting, the BMW car had not yet been shipped from the UK and Tom continued to drive his old VW car. He offered Executive Cars Ltd a cheque for the €18,000 due, but an unsecured cheque was not acceptable to Executive Cars Ltd and payment was deferred. One week later, and before the arrival of the new car, Tom's old VW car was badly damaged through the negligence of another party. Tom seeks your legal advice as to his legal rights and liabilities.
2. John bought a refrigerator from Galway Electrical Stores Ltd. The appliance broke down after three months use. Advise John after each of the following rebuffs.
 - (i) The seller tells him that as far as the law is concerned, it is a matter of "caveat emptor" (let the buyer beware). If he made a bad bargain, it was the buyer's problem and he, as seller, had no legal liability.
 - (ii) John shows the manager of Galway Electrical Stores Ltd a manufacturer's guarantee covering the appliance for one year. The manager says that the guarantee is no concern of his; that it is not legally binding, and in any event it requires the buyer to return the goods to Germany for repair, and expressly replaces the buyer's statutory and common law rights.
 - (iii) John claims that he was induced to enter the contract by the seller's misrepresentation that appliances of this type were 'good for ten years' and that if they broke down within a year the manufacturers would replace them. The sellers point out that the sales order form signed by John exempts the seller from liability for any misrepresentation.

PTO

3. Answer **BOTH** parts (a) **AND** part (b):

(a) Examine the difference between a hire-purchase agreement and a credit sale agreement under the Consumer Credit Act 1995, and explain the legal differences between these two types of transaction whereby the hire-purchase agreement provides better security for the credit provider.

(b) Mary entered a hire-purchase agreement with Consumer Credit plc under which she acquired electronic goods. Under the terms of the agreement, Mary agreed to make a down payment of €70, to pay €80 installation charges, and to make instalment payments of €100.00 every month for two years. Advise Mary of her rights, if any, in each of the following circumstances:

(i) Immediately after signing the agreement, Mary has second thoughts about the deal. She considered the financial burden excessive and wanted to get out of the contract.

(ii) After eight months Mary lost her job and wished to give up her hire-purchase commitments.

4. Do **EITHER** part (a) **OR** part (b):

(a) 'The only way a supplier of goods can protect himself is to ensure that a clause is included in the contract of sale which reserves his ownership of the goods until such a time as he has been paid for them.' (J. Parris, *Effective Retention of Title Clauses* p.9.). Briefly examine the nature, effectiveness and problems posed by such retention of title clauses.

OR

(b) 'Statutory interference with freedom of contract and the obligatory provision of product and service information have been the principle means of protecting consumers against powerful and unscrupulous traders under both Irish and EU law.' Discuss.

5. Analyse and discuss potential liability (refer to liability under contract, tort, or the Liability for Defective Products Act, 1991 as appropriate) for damage caused by defective products in each of the following hypothetical situations:

(i) Mike was injured (he suffered lacerations of his mouth and throat) while eating a food product manufactured by an English company, Breakfast Fried Foods Ltd, which he bought at his local supermarket, U-Stores Ltd. Tiny sharp slivers of metal were found in the food product. Breakfast Fried Foods Ltd insist that its quality control system is state of the art, and that it is no way to blame for Mike's loss.

(ii) Susan was injured when the tyre on her motor bike blew out and caused her bike to go out of control. It was discovered that the valves used in the tyres were defective. Although the motor bike was produced by the Moteur SA company in France, the tyres were made by a Japanese company using valves manufactured in Italy by Novoteckno SPA.

PTO

6. Write brief notes on **ANY TWO** of the following:
- (i) The effect of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (SI No. 27 of 1995).
 - (ii) The protection provided by the Consumer Credit Act, 1995 for the benefit of consumers who take out a housing loan.
 - (iii) Implied terms in supply of service contracts;
 - (iv) The European Commission's proposal for a Directive on Unfair Business-to-Consumer Commercial Practices.
 - (v) The scope and impact of the European Communities (Protection of Consumers in respect of Contracts Made by means of Distance Communication) Regulations 2001, S. I. 207 of 2001.

END