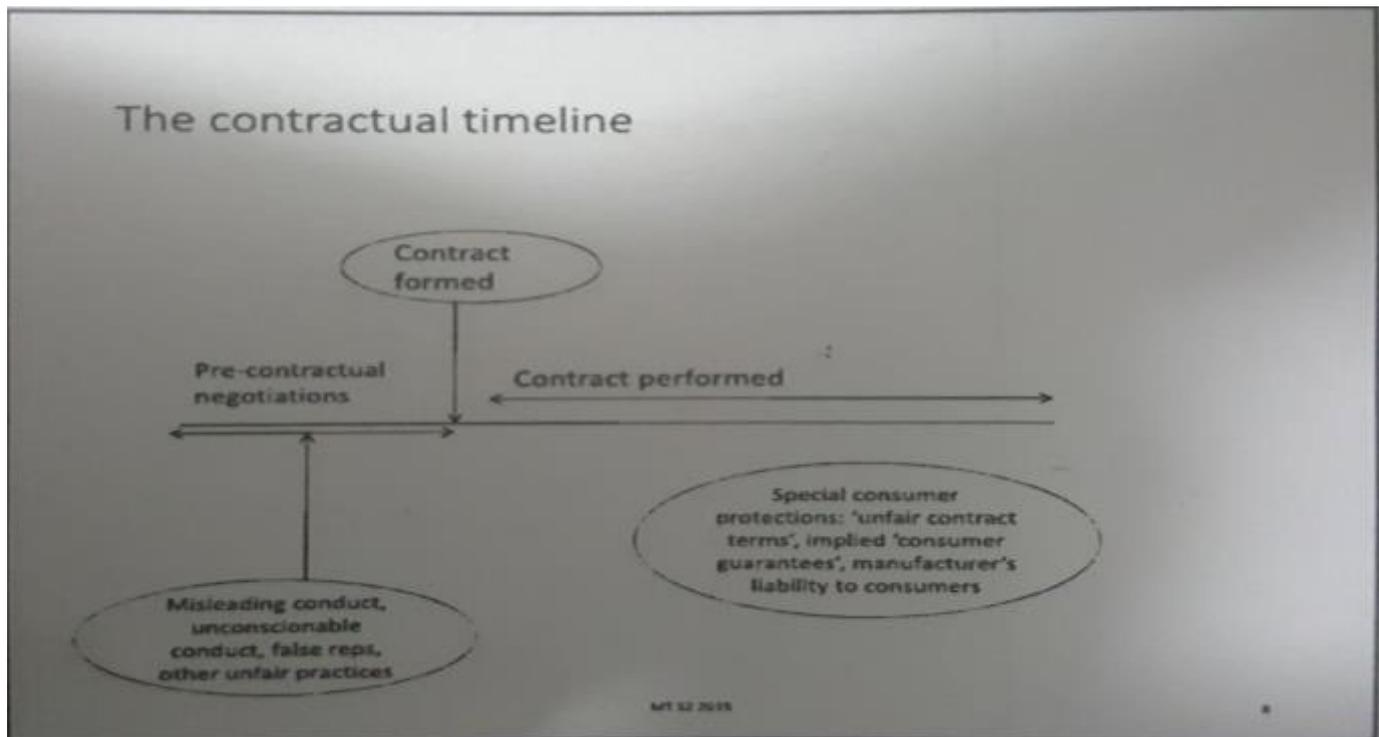


## Australian Consumer Law



## Contracts for Supply of Goods

### Consumer Guarantees – S3

ACL provides for **statutory guarantees** in the contracts for the supply of goods and services to consumers. These are guarantees imposed by the legislation and remedies for breach are to be found in the ACL (not private remedies).

#### Title: s51 (1)

There is a guarantee that the Seller has the right to dispose of goods.

### Consumer Guarantees: contracts for the supply of goods

Three that we look at:

#### 1) Acceptable quality – section 54

Seller supplies goods to a consumer in trade of commerce;

“There is a guarantee that the goods are of “acceptable quality.”

Goods are of acceptable quality if they are:

- *Fit for all purposes* for which goods are commonly supplied
- *Acceptable in appearance, finish, free from defects, safe.*

As a *reasonable consumer*, fully acquainted with the state and condition of the goods would regard as acceptable **having regards to**

- The nature of the goods – (second hand cheap or brand new and expensive)
- Price
- Statements on labels

- Reps by supplier of manufacturer

\*\* need to consider:

Supply s2 (1): not just sale but also takes into account exchange, lease, hire or hire purchase

Consumer: Anybody who purchases goods or services under the value of \$40,000 is a consumer. OR, if it's over that value and the goods are **ordinarily** used for personal, domestic or household consumption.

Including vehicles on public roads.

- **NOT** if the goods are to be used up in the production/re-supply or repair of something.

### Steps to follow before assessment:

1. What is the price of the good? (less than 40K)
2. Is it for resale?
3. If greater than 40K, is it for personal and domestic and NOT for resale?
4. If so then YES a consumer contract

### 2) Fitness for Disclosed Purpose: s55

Guarantee that goods are reasonably fit for a disclosed purpose.

The consumer has a particular PURPOSE or REASON for buying the product.

Once this has been informed to the supplier, the goods have got to be fit for that disclosed purpose if told to buy.

The consumer must make it clear that they are RELYING on the JUDGEMENT of the SUPPLIER, and not their own

**S55 (3): relied on supplier's skill and judgement**

*Merke, Sharpe & Dohme v Peterson:*

- Did NOT comply with the guarantee that a good is reasonable fit for a disclosed purpose
- Subscribed drugs that increased the chance of heart attack but the patient had no implied or expressly made know that the drug needed to be "absolutely safe from side effects", therefore IT WAS fit for the disclosed purpose

### 3) Guarantees and supply of service s60-64

The services must be of a particular standard, quality or value etc.

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Including vehicles on public roads.

- **NOT** if the goods are to be used up in the production/re-supply or repair of something

Service: includes any rights (including interests), benefits, privileges, facilities that are for i) contract for or in relation to the performance of work (including professional) ii) the use of entertainment services (enjoyment services) iii) conferring of rights, benefits and privileges iv) contract of insurance and iv) contract for the lending of money.

Supply s2 (1): not just sale but also takes into account exchange, lease, hire or hire purchase

**s60** - "If a person supplies a service in Trade or commerce there is guarantee that the services will be rendered with **due care and skill.**"

**s61(1)**- Consumer makes known the result he/she wishes to achieve, guarantees that the services will be reasonably **fit for that purpose**

**s61 (2)** -Must be of such a nature and quality, state or condition that they might reasonably be expected to achieve that result (must be supplied within a reasonable time).

**s61 (3)** - Guarantee does not apply where consumer does NOT rely or it's UNREASONABLE TO RELY on the suppliers SKILL and JUDGEMENT

### Other guarantees

**s56 (2)** Correspondence with the description

**S57 (1)**-Goods must comply with the sample or demo model

**S58 (2)**-Repair and spare parts available

**S59 (1)** -Express warranties must be complied with  
Auction sales excluded for consumer guarantees

### Limitation of Liability regarding consumer guarantees

**S64 (1):** Cannot exclude the guarantees or limit the liability for consequential losses in contracts for supply for goods and services:

Exceptions:

1) *Where the goods are not of a kind ordinarily used for personal, domestic or household use, purchased under \$40000*

Supplier can limit the liability to:

- Contract for good: limit liability to replacement or repair cost
- Contract for service: limit the liability to supplying the services again

But these limitations must be **fair and reasonable s64 (3):**

Factors to consider

1. Relative strength of the bargaining position
2. Were there alternative sources that did not have the term
3. Did the Buyer know of the of the terms
4. Was it a special order from the buyer

2) Recreational services exception

In situations such as high risk activities, the supplier can limit the liability for death or injury **s139 A (1), (3)**

### Remedies for Breach of Consumer guarantees

Similar for both goods (**s259-266**) and services (**s267-270**).

**But need to consider both minor and major failures.**

#### Minor:

S needs to remedy the failure within a reasonable time and then take action to recover all reasonable costs incurred by the consumer. If fixed by the supplier the consumer can reject the good.

**Major:**

- The goods would **not have been acquired** had they known the extent of the failure
- The goods significantly do not match the description
- Goods substantially **unfit for a purpose**, either common or disclosed, and can't easily be remedied to fit that purpose
- Goods no of **acceptable quality** because they're **unsafe**

**Remedies for Major Failure:**

Consumer can:

- A) **Reject** the goods (within a reasonable time)
- B) **Recover compensation** for any reduction in value **s259 (3)**
- C) **Recover damages** for reasonable foreseeable loss or damage, unless failure caused by problem outside the control of the supplier **s259 (4)**

If the good is given off as a **gift**, the same rights still apply **s266**

The consumer has a right to return the good and receive a refund or replacement.

Can't reject if the rejection period has ended, goods been lost and destroyed, damaged after delivery and if it has been incorporated to other property making it not detachable.

## Misleading or deceptive conduct