

Consumer Guarantees under the ACL

- Contract – Purchase of an item/service – it does not work or is not as requested

Issue: The legal issue in this matter concerns consumer guarantees, specifically that a product has to be acceptable quality // services must be provided with due care and skill, under the Australian Consumer Law.

Rules & Application:

Section 3(1) ACL provides that a person is taken to have acquired goods as consumer if the amount paid for the goods does not exceed \$40,000; or if the price of the goods exceeds \$40,000, the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; or the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads. It matters that must be established is that you are a consumer. In this case, the cost of _____ is _____ which is less than \$40,000, which means you are a consumer within the definition of **s 3 ACL** // Even if the _____ costs more than \$40,000, it is goods of a kind ordinarily acquired for personal, domestic or household use and is not bought for resupply and to be used up in trade or commerce. Therefore, _____ has the benefit of the statutory guarantees.

GOODS
Section 54 ACL provides that suppliers and manufacturers guarantee that goods are of acceptable quality when sold to a customer.
Section 54 (2) provides that the test is whether a reasonable consumer, fully aware of the goods' condition (including any defects) would find them:
a. Fit for all the purposes for which goods of that kind are commonly supplied
b. Acceptable in appearance and finish
c. Free from defects
d. Safe
e. Durable
Section 55 states that the consumer specifies the purpose for which they acquire the goods and the consumer relies on the skill or judgement of the supplier, there is guarantee that the goods are fit for the disclosed purpose. _____ may sue for breach of the ACL guarantees that (a) the _____ does not comply with its description (s 56); _____ (defendant) recommends _____. This is in response to _____ (plaintiff)'s explaining that _____ [She// He] needs a reliable and functional _____ for [commercial// domestic purposes] to be used exclusively in _____. It turns out that _____ (i.e. issues // description of _____ appears) and _____ does not correspond with the description implied when _____ recommends. (b) is not acceptable quality (s54); It is not "fit for all purpose for which goods of that kind are commonly bought" and is not "free from defects" as the _____ either _____ or failed to _____.

(c) is not fit for its disclosed purpose (s 55); Under s 55, _____ is in breach of s 55 as the _____ is not fit for _____'s disclosed purposes - _____ and _____ relies on _____ (defendant)'s recommendation.

SERVICES

// **Section 3(1) ACL** provides that a person is taken to have acquired goods as consumer if the amount paid for the goods does not exceed \$40,000; or if the price of the goods exceeds \$40,000, the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; or the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads. It matters that must be established is that you are a consumer. In this case, the cost of _____ is _____ which is less than \$40,000, which means you are a consumer within the definition of **s 3 ACL** // Even if the _____ costs more than \$40,000, it is goods of a kind ordinarily acquired for personal, domestic or household use and is not bought for resupply and to be used up in trade or commerce. Therefore, _____ has the benefit of the statutory guarantees.

Section 60 ACL provides that suppliers guarantee their services are provided with due care and skill. This means they must:

- a. Use an acceptable level of skill or technical knowledge when providing the services
- b. Take all necessary care to avoid loss of damage when providing the services

The problem involves _____, which is a service. Pursuant to **s 60 ACL** all services must be carried out with due care and skill. The facts state that _____ but does not attach them securely. Therefore, _____ (plaintiff) could argue that _____ (defendant) has breached the consumer guarantee of due care and skill under the **ACL**.

Where the non-compliance is a *major failure* or cannot be remedied by the business, the consumer can reject the goods (that is, return the goods for a refund or a replacement) or require the business to pay to the consumer the difference between the value of goods and the price paid for them: **ACL s 260**. A failure to comply with a guarantee is a major failure:

- a. The goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure
- b. The goods depart in one or more significant respects from their description, sample or demonstration model
- c. The goods are substantially unfit for a purpose for which goods of that kind are commonly supplied and they cannot, easily and within reasonable time, be remedied to make them fit for such a purpose.
- d. The goods are unfit for a disclosed purpose that was made known to the business and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose
- e. The goods are not acceptable quality because they are unsafe

However, the consumer will lose the right to reject the goods if not within reasonable time:

- a. The rejection period for the goods has ended
- b. The goods have been lost, destroyed or disposed of by the consumer
- c. The goods were damaged after being delivered to the consumer for reasons not related to their state or condition at the time of supply
- d. The goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them

Remedies:

Remedies for non-compliance with an ACL consumer guarantee depend on whether the failure to comply with the guarantee is a “major failure” as defined in s 260.

On the facts it appears so as a reasonable person fully acquainted with nature / extent of failure would not have acquired _____ (product). _____ (plaintiff) may therefore reject _____ or recover compensation for any reduction in value of _____ below the price paid (**s 259 against the supplier**). _____ (plaintiff) may also cover damages for any reasonably foreseeable loss or damage (**s259**).

In turn, the supplier can sue the manufacturer for an indemnity under **ACL s 274**.

If a consumer guarantee relating to the supply of goods has not been complied with, the consumer has (in addition to any rights against the supplier) the right to recover compensation from the manufacturers: **ACL s 271**.

The manufacturer is not liable if the guarantee was not complied with only because of:
a. An act, default or omission of, any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer
b. A cause independent of human control that occurred after the goods left the control of the manufacturer
c. The fact that the price charged by the supplier was higher than the manufacturer’s recommended retail price, or the average retail price, for the goods: ACL s 271 (2)

_____ (plaintiff) may sue the manufacturer under **ACL s 271** where there is breach of non-compliance with the **s 54** guarantee as to “acceptable quality”: **ACL s 271**.

_____ (plaintiff) may therefore recover damages for any reduction in value of _____ below the price paid or its average retail price at time of supply and any loss that was reasonably foreseeable. The manufacturer is liable to _____ in damages for breach of **s 271**.

Conclusion: Given that consumer guarantees apply to suppliers, _____ is obliged to provide you with a replacement _____.