3. S55 Fitness for purpose ACL

In order to rely on this guarantee, the consumer must have disclosed the particular purpose to the seller. Disclosure can be express or by implication.

3 things need to be satisfied in order for a consumer to successfully rely on this guarantee:

(This is Step 1) Rule

S55(1) The goods must be supplied in trade or commerce (note, this contrasts with GA which needed to be goods ordinarily supplied in their course of business.

NB if it is obvious what the purpose is by the type of goods, then the purpose doesn’t need to be stated.

BUT if the goods can be used for multiple purposes, then the purpose does have to be stated in order to rely on this guarantee.

(This is Step 2) Rule

s55(2) Under this, the seller guarantees that if the buyer has disclosed the purpose for which the goods will be used, then the goods must be fit for that purpose. NB not absolutely fit for purpose, but reasonably fit for purpose. It is implied that the goods will be reasonably fit for purpose for a reasonable amount of time, depending upon the type/nature of the goods and the contract.

(This is Step 3) Rule

S55(3) There is a presumption that the consumer relied on the seller’s skill or judgment. It doesn’t need to be proved as such. This section provides an exception:

Exception- if the circumstances show that the consumer did not rely on the seller’s skill or judgment and the seller can prove this, then the buyer cannot rely on this guarantee. (NB this is different to the GA, where the buyer needs to show that they relied on the seller’s skill or judgment).

(This is Step 4) Application