

Overview of steps to write an answer in the exam:

1. s54(2)-
 - a. What are the goods? Are they fit for ALL purposes?
 - b. Are the goods acceptable in the consumers eyes in terms of appearance, finish, free from defects, safe, durable?
2. S54(3)-
 - a. Reasonable consumer test:
 - i. Nature of the goods
 - ii. Price
 - iii. Statements/misrepresentations made
3. S54(4), (5), (6), (7)-
 - a. Do any of these exceptions apply to limit the AQ guarantee?

1. 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

Grand Barkly Oysters case: argued that it was unreasonable for the oyster farmers to be able to guarantee oysters will be totally free from contamination. In this case, the court considered the relative knowledge of the seller & buyer. Held: reasonable for the consumer to rely on the manufacturer.

Gordon Fleece case: used the prime mover to tow a tanker. It wasn't suitable for this purpose, and an accident took place. Gordon sued Aris stating that the prime mover wasn't fit for purpose because they relied on the seller's skill and judgment. Aris used this as a defence. Aris claimed the purpose was not made known to them and therefore the buyer couldn't rely on their skill and judgment. Held: Aris was correct.

(This is Step 9) Conclusion

Based upon the facts, were the 3 rules satisfied? Can the consumer therefore rely on the fit for purpose guarantee?

NB An exam question may involve a number of issues, not just one- ie you might have to discuss fitness for purpose and acceptable quality in one question.

2. S56 Goods by Description ACL

Is this case scenario a case of sale by description? If it is, does s56 apply?

S56(1) If goods are supplied in trade or commerce by description, then the goods must comply with that description.

Ashington Piggeries case: (mink). AP argued that the herring meal did not conform with the description. Held: yes it did. Herring meal was still herring meal. The dispute was more about the quality of it.

Sale by description goes towards identity or quality.

Exception: no guarantee that goods can conform when sold at auction.

3. S57 Supply by Sample ACL

Where the seller, expressly or impliedly, promises that the goods will conform to the sample. This does not include where part of the negotiations, a sample was used as an example.

The buyer must be given a reasonable opportunity to compare the bulk with the sample. Also, it should be free from defects which were not apparent by the sample.

Carpet case: held, aesthetics were relevant.

Exception- auctions.

4. S58 Repairs ACL

(you don't need to know this in a lot of detail for exam. What she mentions in this lecture about it is sufficient).

Under ACL, there are guarantees that there are facilities for parts and repairs. If something goes wrong with the goods, you need to know whether or not it can be repaired - NB must be within a reasonable time though.

Panasonic case- Held: the consumer will need to establish that the spare part is required to repair the goods. Need to show that the manufacturer acted unreasonably & the consumer suffered loss or damage as a result.

Q.

- is it unreasonable for the manufacturer not to have these spare parts?
- What is a reasonable time? It really depends on what you are buying as to how long parts should be available for by the manufacturer in the case of repair or break. ie compare a \$10 toy to a \$1000 tv.
- Court will need to consider:
 - Nature/type of goods
 - Industry practices
 - Are newer models likely to be made

Exceptions:

- Auctions
- If consumer was told by seller at the time of sale that it could be hard to find parts

5. S59 Express Warranties ACL

These are on top of the other guarantees under the ACL eg AQ, FFP. These are extra things eg the seller tells the buyer that the chair can hold up to 100 kg of weight.

Exceptions:

- Auctions

Breach: if there is a breach of an express warranty, then you are entitled to a repair, replacement or refund.

6. S29 False and Misleading Statements ACL

A person must not, in trade or commerce, in connection with the supply or possible supply of goods, make a false or misleading statement about the particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use of the goods.

S64 ACL guarantees not excludable

*** know this!

S64 Consumer guarantees are not to be excluded by a contract. If the seller tries to exclude a consumer guarantee, the ct will be void. Consumer guarantee regime cannot be altered by sellers. (Only the GA can be excluded).

S64(a) permits the supplier to limit their liability- not exclude! This might be done in relation to replacement, payment etc if the goods are below \$40,000.

Breach: 2 types: Minor/Major failure

Breaches are categories into 2 types.

- Major failure- can reject the goods because substantially unfit for purpose/quality; can ask for compensation; can seek damages.
- Minor failure- not a major fault. Cannot reject the goods. Only remedies: replacement, refund. No compensation or damages.

NB you cannot reject the goods if they are

- Lost, destroyed, damaged after delivery.; OR
- If the goods need to be installed; OR
- If rejection period has ended.

Remedies

These are contained in Pt 5 and are available for a breach of any consumer guarantees.

- Injunction
- Damages
- Compensation orders
- Refund
- Replacement of item

Summary

- Know whether the person in the case scenario is a consumer? If yes, apply the ACL
- Was there a breach of any of the consumer guarantees? Title, AQ, FFP, Sale by description, sale by sample etc
- Remedies: (don't need to explain these in detail)- Can the consumer access any remedies available under Pt 5 ACL?
- Also look for any exclusion clauses! Because s64 ACL states that consumer guarantees cannot be excluded.
