

PART 1b

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To: Equipment Hire Limited

From: XXX Legal Advisors

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Abstract

Equipment Hire Limited (EHL) is a business whose service is to hire out plant and equipment to both business and individuals. Sunil, a window cleaner by trade, regularly hires ladders from EHL. Sunil hired a ladder from the company to paint the outside of his house upon which he paid £50 deposit and was issued with a receipt stating an exclusion clause:

'Conditions of Hire: EHL accepts no responsibility for any loss or damage suffered as a result of use of the equipment. Hirers use the equipment at their own risk'

Unfortunately due to a defect, Sunil fell off the ladder and landed on his personal radio, which was irreparably damaged, and suffered a broken leg.

EHL seek legal advice as to their liability for damages, if any, concerning Sunil's broken leg and the damaged stereo.

1.0 Introduction

To establish damages owing in the incident concerning the client, EHL, and their customer Sunil, the following report aims to advise EHL and distinguish differences in liability of damages regarding Sunil as a consumer and as a business. In this case EHL are attempting to exclude liability for damages with their exclusion clause.

This report explores the legal rules that control contracts for **The Supply of Goods and Services Act 1982**, **The Unfair Contract Terms Act 1977** and **The Unfair Terms in Consumer Contracts Regulations 1999**.

2.0 The Contract Subject to the Supply of Goods and Services Act 1982

The contract between EHL and Sunil for the hire of the ladder is 'subject to Part 1 of the Supply of Goods and Services Act 1982' (Keenan, 2002). The contract is made and discussed in part 1 section 1 of the act which covers the transfers of goods from supplier to customer and also part 2 section 2 which covers the supply of services; in this case it is EHL hiring the ladder to Sunil.

Sunil's statutory rights are covered in part 1 of SGSA 1982. Section 2 of part 1 assumes that EHL as the supplier has the right to supply and in section 3 'it is implied that transfer of the goods is by description'. Which means Sunil may have agreed to hire the ladder on the basis of its description alone and therefore never had the chance to inspect the ladder.

Also, section 5(1) states 'This section applies where, under a contract for the transfer of goods, the transferor transfers or agrees to transfer the property in the goods by reference to a sample'. This indicates that Sunil could have seen a different ladder of the same specifications as the ladder he actually hired. This section complies with section 4 in defects in supply of goods and section 9 in contracts for the hire of goods. In section 4 it is assumed 'supply of goods are of satisfactory quality and fit for purpose' and section 9(2): 'Where, under such a contract, the bailor bails goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality' and the ladder is clearly not of a satisfactory quality or fit for purpose. Section 5(2c) states 'the goods will be free from any defect, [making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample.' This means Sunil would assume the ladder is in working order and safe to use. EHL are liable for damages as they are breaching the act in these sections as the ladder supplied had a defective rung.

3.0 EHL's Liability Concerning Sunil as a Consumer.

EHL's receipt of hire states an exclusion clause excluding liability for injury and damages. The definition of a consumer is stated in the Unfair Contract Terms Act 1977 in section 12: 'where one party makes the contract in the course of business and the other does not AND any goods supplied are of a type ordinarily supplied for private use.' In this case Sunil is using the ladder to paint the outside of his house so he is hiring the ladder as a consumer. Sunil can claim for injury as section 2(1) of UCTA 1977 covers negligence liability and states: 'A Business cannot (by contract or notice) exclude or restrict liability for death or personal injury resulting from negligence.' Therefore EHL's exclusion clause is deemed void and Sunil will be compensated, whether Sunil is acting as a consumer or not, as EHL have been negligent in supplying faulty goods and services as discussed in 2.0.

Sunil as a consumer can also claim to replace his broken radio as section 7 – 'Miscellaneous contracts under which goods pass' of UCTA 1977; section 7(2) states: 'As against a person dealing as a consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term.' In addition to UCTA 1977 the Unfair Consumer Contracts Regulations 1999 would be used particularly that stated in schedule 2. This is because most of the sections only apply to the customer dealing with a business as a business and 'it does not deal with all unfair terms in contracts, only unfair exemption clause' (Keenan, 2002). There are similarities between UCTA 1997 and UCCR 1999 such as the test of reasonableness and the test of fairness amongst others. The regulations act however covers all unfair terms in a consumer contract upon which exclusion clauses can be deemed void. Schedule 2 contains a list of terms that can be seen as unfair. For instance EHL are trying to imply that Sunil cannot seek compensation for damage or for his injury as the exclusion clause states that EHL accepts no responsibility for loss or damage and hirer's use equipment at their own risk. This is unfair and the exclusion is void as it is misleading Sunil about his consumer rights. 580

4.0 EHL's Liability Concerning Sunil as a Business

As Sunil is normally a business customer, in their defence EHL could say the contract written was a business contract and not a consumer contract as Sunil may not have told EHL that he was hiring the ladder for personal use. Nevertheless EHL would still have to pay compensation for Sunil's broken leg as they were negligent in hiring the defective ladder under section 2.1 of UCTA 1977 which also applies to business customers. EHL could claim the defective ladder was the manufacturer's fault but this would be a poor defence.

Sunil will find it harder to claim for his radio as EHL can exclude their liability for damage to other goods if it is seen as being reasonable, UCTA 1977 section 2(2) states: 'A business cannot (by contract or notice) exclude or restrict liability for other loss or damage resulting from negligence – EXCEPT IF THE EXCLUSION IS REASONABLE.' Also, as described in 3.0, section 7(2) of the act where Sunil could claim for his damaged radio as a consumer the test of reasonability of the exclusion can be applied under section 7(3).

Whether the clause can be seen as reasonable or not is decided by 'the "reasonableness" test' (section 11, UCTA 1977). Sunil could argue that he didn't know of the exclusion clause. However the terms are clearly stated on the receipt; and come under section 11(2) of the act which refers to schedule 2 of the act (appendix A). Sunil regularly hires equipment from EHL for his window cleaning trade, which means he should know the terms of hire. In court the judge will use case law. Case law in the past has decided the exclusion clause is acceptable and the company is not liable for damage, even if on the last occasion the exclusion clause was not seen, due to a course of regular dealing (*Spurling v Bradshaw* 1956). 867

When applying the test of reasonableness in section 11 the judge will look at the clause and see if it covers the situation. EHL's clause only seems to exclude liability for wrong of equipment only. This means EHL are liable for the Radio as well. Also when the court looks at the situation they will consider Sunil's bargaining power which schedule 2 of the act states: 'the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer's requirements could have been met.' For instance, are there any other hire companies Sunil could have gone too? If so Sunil may have been able to go elsewhere in which the incident may have never occurred.