

Buyer be Faintly Cautious

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The old Latin maxim *caveat emptor* (buyer beware) states the English common law position relating to the sale of goods and the supply of services. This position has been eroded over time by the imposition of a statutory framework implying terms automatically into every consumer contract for the sale of goods and/or the supply of services.

This raft of English legislation, beginning with the **Sale of Goods Act 1893**, sought to address the perceived imbalance of power between a consumer and a trader, both in terms of their respective levels of knowledge and economic power. It was recognised that although consumers were, to some extent, protected by the ordinary common law of contract a clearer, more instantly accessible form of protection was required. It simply was not realistic to expect individual consumers to launch costly legal proceedings against large vendors for the recovery of small sums.

Following the *Review of Consumer Protection in Jersey* (“the Review”), carried out in 2001, Jersey has gradually placed the regulation of the supply of goods and services on a statutory basis. As a result

of the Review, and following further consultation, the States (Jersey’s Parliament) have already brought into force the **Consumer Safety (Jersey) Law 2006** and the **Distance Selling (Jersey) Law 2007**. The draft **Supply of Goods and Services (Jersey) Law 200-** (“the Draft Law”) is designed to implement the last of the Review’s recommendations on legislation and is working its way through the legislative process.

Before the Review and the subsequent legislation, Jersey had very limited statutory consumer protection. Jersey consumers have long been protected under the common or customary law against a vendor who employs fraudulent misrepresentation to induce a contract of sale, as well as for any breach of an express warranty. However, the Jersey consumer enjoys much greater protection under customary law than the English consumer under common law, but identifying the extent of such protection is, at times, difficult.

GREATER PROTECTION

In matters of contract law, where the law of Jersey is unclear, the Royal Court has often turned to the common law of pre-*Code Civil* France for clarification. In **Kwanza Hotels Limited v. Sogeo Company Limited** [1983] JJ 105, the Jersey Court of Appeal discussed the extent of a vendor's responsibility for any defects in the item sold, in the absence of any misrepresentation or express warranty. Returning to the traditional commentators on the customary law of Jersey, the court accepted the view of Poingdestre (*Lois et Coutumes*) that every vendor has some responsibility for the character or quality of what he sells. It is at least arguable that this would translate to implied terms in a contract for the sale and supply of goods and services as to the quality and/or fitness for purpose of such goods and services.

The court also approved Basnage, writing on the customary law of Normandy, who states that a vendor is held to have given certain implied warranties and that where an item has "*certaines vices latens et caches*" the purchaser can require the vendor to take back the item and refund the purchase price. The court then looked to Domat who suggested that if a defect rendered an item useless, or rendered its use greatly diminished or so inconvenient that a purchaser would not have bought it (i.e., if the goods or services were not of sufficient quality or were unfit for purpose), then that will be sufficient to rescind the contract of sale.

Such present rights as are enjoyed by the Jersey consumer are subject to limitations. The court also examined the writings of Pothier, *Traité du Contrat de Vente*. Pothier states that rescission is not open to the consumer where any defects were either obvious, expressed, or could have been discovered by a reasonable examination, either by the purchaser or by a suitably qualified person in his stead. This position has been confirmed (in France) by the *Code Civil*, Articles 1641 and 1642.

The Jersey law of contract also has as one of its fundamental aspects the maxim "*la convention fait la loi des parties*", which means the parties to a

contract are presumed to have agreed to the terms of such contract and to be bound by them. Article 91 of the Draft Law, or customary law as to any rights, duties or liabilities thus ensuring the fundamentals of the Jersey law of contract are retained.

Notwithstanding the present protection afforded to the Jersey consumer by the customary law of the Island, such consumers have also benefitted from Jersey's close ties with the UK as well as the nature of a small island community. The reality of life in Jersey is that the majority of goods sold are imported, mainly from the UK. The chain stores in St Helier are primarily UK based companies, whose stock comes from the UK. The result is that the vast majority of the goods sold in Jersey have been designed to adhere to the UK statutory framework, even though the Jersey consumer could not use that statutory framework to seek redress.

In the UK the introduction of a statutory framework governing the relationship between the parties in consumer contracts was necessary to make up for the deficiency of the common law in maintaining an equitable balance between them. In Jersey the rights of the consumer have been protected, not just by the customary law, but also by the realities of island life and the geopolitical situation of the Island.

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