Sale Of Goods Law – A Case Study

[Student Name]

[Course Name and Number]

[Tutor Name]

[Date]

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The case under consideration today concerns Susan, who is a self-employed painter and decorator and a painting firm known as “Paintplus”. Susan had bought a cottage in a coastal area and had sought help from an assistant at the Paintplus store in recommending a heavy duty masonry paint that would withstand the harsh climate changes evident on a coastal area; and a brand of wipe-clean paint that would be suitable for interior use in a wet area (the bathroom). The assistant at Paintplus recommended their own brand of masonry paint (Everlast) because it was the cheapest available. Susan checked the description on the tin and agreed that the paint appeared to be suited to her requirements.

When asked about the bathroom paint the sales assistant told Susan that internal paints were not his speciality, but he had heard other customers comment favourably about a product known as “Cleaneasy”. The store had some tins of Cleaneasy going at half price because the written description about the product had become detached from the tins some time previously so the tins were being sold without this documentation. Susan did ask the sales assistant if there was anything that she should know about the paint that might have been written on the leaflet and the sales assistant said, [quote] “its standard paint so just slap it on”.

Over time Susan had problems with both paint types she had purchased from Paintplus. The masonry paint was easy to apply and withstood the harsh climate of winter, but over the summer months the temperatures were “unprecedented” and the paint started peel from the walls. The render under the paint was damaged through this and Susan had to employ a building professional to knock of the remaining render and paint, and then rerender and repaint the entire outside of the cottage.

Susan did not have much luck with the Cleaneasy paint either. While she was applying the paint some of it dropped on her skin and she suffered an allergic reaction to the paint. She needed medical treatment and was off work for three weeks because of this reaction. She also lost a major decorating contract because of her illness. Later investigations about the description that should have been on the tin when she bought it declared that if [quote] “any person suffering from skin complaints or sensitivities should refrain from using this product”.

The first question considered in this paper is whether or not Susan could claim a breach of contract against Paintplus, and if so, on what grounds. Briefly a contract can be said to occur when an offer is made to one party, by another, and that offer is accepted. Having goods for sale in a shop is not considered an offer as such, but rather an invitation to treat[1] although a bilateral contract can be said to occur in that the buyer agrees to pay a certain price for goods, which the seller promises to deliver. The essential parts of a contract include the offer and acceptance, the consideration

[1] See *Fisher v Bell* [1960] 3 All ER 731; *P.S.G.B. v Boots Chemists* [1953] 1 All ER 482.

elements of the contract (seller gets the money, buyer gets the paint)[2], the acceptance that the contract concerned a business rather than social or domestic matter[3], capacity (both parties had to be able to enter a contractual agreement), and the contract has to be based on a legal transaction (legality).

In the case between Susan and Paintplus there is no dispute that a contract was entered into because she visited the shop of her own volition, discussed different paint types with the sales assistant, and then based on the advice she had asked for and was given, purchased both the masonry and bathroom paint. She apparently paid for the goods and took them from the store, thereby completing the basic elements of the contract.

The case for a breach of contract in this situation relates to the Sale of Goods Act 1979 which applies to the concept of sales made in the course of a business and where goods are sold by a merchant that relate to the nature of the merchant's business[4]. In particular s14(2) makes the distinction between goods that can be considered a private sale and those that are made in the course of doing business. It could be considered that in one respect Susan was purchasing the paint for a personal project, despite the nature of her occupation, because it was for a house that she had purchased. However s14(2) relates to the sellers business, not the buyers.

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[2] See implied acceptance of an offer *Williams v Carwardine* [1833] 5 Car & P 566.

[3] For example the contract is not considered a business transaction if it occurs between family members or if the case is of a social rather than a business nature; see *Rose and Frank Co v Crompton Bros Ltd* [1925] AC 445.

[4] Sale of Goods Act, 1979, s14(2).

From there it is necessary to consider if the Susan was entitled to claim a breach of contract under the Sale of Goods Act 1979 or related legislation such as the Unfair Contract Terms Act 1977, s12. Section s12(1) states; "A party to a contract 'deals as consumer' in relation to another party if (a) he neither makes the contract in the course of a business nor holds himself out as doing so; and (b) the other party does make the contract in the course of a business". The case of *R&B Customs Brokers v United Dominion Trust*[5] applies here because although Susan was herself a painter and decorator she bought the goods from Paintplus as a consumer, not as part of her business. It can be argued that this is the case because firstly Susan was buying the goods as a consumer to do work on her own property. Even though she may plan to rent the property out at a later stage, renting property cannot be considered her normal occupation and therefore Susan's future plans for the property are negliable in this case. The second indicator of Susan's position as a consumer stems from her asking advice from the sales assistant at Paintplus because she herself was not knowledgeable about paints that were suitable for masonry at a coastal area, nor interior paints that were suitable for a wet room such as a bathroom.

MacDonald[6] noted that there have been other cases since *R&B Customs Brokers* and a precedent case *Stevenson v Rogers* that provide more latitude in the definition of "consumer sales" and "in the course of a business" especially when s14(2) of the Sale of Goods Act 1979 is considered alongside s12 of the Unfair Contract Terms Act 1977.

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[5] *R&B Customs Brokers v United Dominion Trust* [1988] 1 All ER 847.
[6] Elizabeth MacDonald. "In the course of a business – a fresh examination" *Journal of Current Legal Issues,* (1999).

She notes that there is a difference is phraseology that shows a subtle distinction between the phrase “in the course of a business” and the phrase “in the course of business” and cites Kidner[7] as holding that the second phrase “suggests things done by and for a business”.

A final consideration in the first part of this paper concerns Susan’s inspection of the goods while she was at the paint store. Firstly in relation to the masonry paint, Susan did read the description of the product listed on the tin, and therefore would reasonably expect the products she bought to adhere to the description provided. Likewise it can be assumed that the tin’s description did include enough information about the paint’s use under different weather conditions for Susan to have purchased the paint without further questioning of the sales assistant. It can be argued therefore that in the case of the masonry paint, the paint did not meet the reasonable expectations of the purchaser[8] and therefore Susan could claim breach of contract in connection with the masonry paint.

In the second instance, regarding the illness Susan sustained when using the bathroom paint, initially the description of the product was not present on the can although Susan did ask the sales assistant about any information about the paint that she should know before using it. The sales assistant said that there was nothing she need to be worried about, although a later investigation showed that the description that should have been on the can did mention that “any person suffering from skin

[7] R. Kidner. “The Unfair Contract Terms Act 1977 – Who deals as consumer?” 38 *Northern Ireland Legal Quarterly* 1987:46

[8] For “reasonable expectations” see *Rogers v Parish* [1987] 2 All E.R. 232; c.f. *Shine v General Guarantee Ltd* [1988] 1 All E.R. 911

complaints or sensitivities should refrain from using this product." The case study notes do not indicate if Susan had prior experience with being allergic to certain paints, and we can assume that she didn't because she was an experienced painter and decorator and would think to ask the sales assistant specifically about this matter if she had experienced problems before.

Whether or not Susan could claim breach of contract in the case of the bathroom paint would depend on whether the sales assistant could be considered liable because he did not mention that the paint had a health warning notice, but as s14(2) of the Sales of Goods Act 1979 states that goods do not need to be examined at the point of sale (by the buyer) and that a protection against faulty goods is allowable even if Susan had read the description of the paint used in the bathroom before she bought it. Therefore it can be argued that in both the masonry paint and the bathroom paint that Susan can claim breach of contract. In the case of the masonry paint the case would be based on the "reasonable expectation" Susan had that the paint would do what she required of it and in the case of the bathroom paint Susan can claim damages because the terms of the sale between buyer and seller could not be considered equitable in light of the illness she suffered as a result of the transaction and the money she lost for the jobs she could not do for three weeks while she was recovering from her allergic reaction.

The second part of this paper deals with whether or not Paintplus can argue any of the statements made on the back of their receipts or on the door of their building as defence in a breach of contract case. These statements are made as follows:

1. Paintplus agree to refund the purchase price of any products that fail to meet satisfactory standards of quality or fail to comply with any written description applied to the goods.
2. Subject to clause 1 above, Paintplus undertake no liability for damage however caused by any product that fails to meet satisfactory standards of quality or fail to comply with any written description applied to the goods.
3. Paintplus undertake no liability as to fitness for any specified purpose of the goods sold.
4. Paintplus undertakes no liability for advice given by Paintplus employees.

Items one and two of this terms of business agreement indicate that the company is prepared to refund the cost of the goods bought if they have proven to be defective in some way, or that they do not meet the standards described on the tin. However, they disclaim liability for any damage caused through the use of the goods. The Sale of Goods Act 1979 s15 indicate that a buyer is entitled to discharge a contract regardless of how slight the damage, or sellers breach may be[9] but the same act does not consider liability in such clear cut terms. Undoubtedly if the clauses described in Paintplus's terms of business are contrary to legislation in the Sale of Goods Act 1979, then the courts will take the side of the applicable legislation as opposed to Paintplus's own efforts to disclaim liability, but whether this extends to forcing the company to pay out on damages as well as simple refund of costs incurred through the original purchase will be examined later in this paper. There is a precedent that relates to clauses in a contract

[9] See for example *Arcos Ltd. V E.A. Ronaasen & Son* [1933] A. C. 470

that states if a clause in a contract (such as those outlined by Paintplus on their receipt and on the door of their premises) is ambiguous or vague then the courts will find for the innocent party[10] and indeed some legislation does set a precedent for the insistence on the payment of damages in some cases[11].

Item 3 concerns the fitness of a product for a specific purpose. In one case, *Griffiths v Conway Ltd.,* 1939[12] a coat purchased from the claimant that caused dermatitis to be suffered by the buyer, the case was voided because the claimant had not told the seller about a known skin condition. This harks back to whether or not Susan had experienced allergies before when using certain types of paint. If she had done so then under law the onus would have been on her to disclose this to the sales assistant so that this issue could be resolved before the contract was completed. In regards to the masonry paint if the goods are specific, the risk for use is passed on to the buyer, but the buyer can still claim breach under the Unfair Contract Terms Act 1977.

Finally under item 4 of Paintplus's terms of business agreement the company attempts to refuse liability for the actions of a staff member. It can be argued in the case of the masonry paint that as the staff member had made the recommendation of the type of paint based on his own expertise on that topic (which can be implied by the sales assistant disclaiming expertise over the internal paint) and that he was employed specifically to sell products for which a limited amount of knowledge at least would be

[10] See *Edwards v Skyways* [1964] 1 All ER 494; *JH Milner v Percy Bilton* [1966] 1 WLR 1582 for example.
[11] Consider *Hong Kong Fir Shipping Co. Ltd. V. Kawasaki Kisen Kaisha Ltd* [1962] 2 Q. B. 26, at 66 (per Diplock L.J.), Section 35 of the Sale of Goods Act 1979 and *Phillips v. Lamdin* [1949] 2 K.B. 33.
[12] *Griffiths v. Conway Ltd* [1939] 1 All E.R. 685.

required; combined with the concept that the terms of business agreement made by Paintplus itself is binding on the staff, that they would not be able to dismiss liability for the masonry paint at least. The defendant could argue however in the case of the bathroom interior paint that because the sales assistant did specify that he was not an expert on that type of paint, that Susan did have the opportunity to ask to be directed to another sales person who was better qualified to make the sale of interior paint. Likewise she could have asked to see the written description of the product that she did buy, even if it was not included as part of the sale. However, from Susan's point of view she could argue that there was a reasonable expectation that the sales assistant knew his job and would have referred Susan to another sales person if he was not comfortable in recommending products that may or may not have met with Susan's expectations of the product or her needs related to the product.

Definitely it can be assumed that Susan had a reasonable expectation that the salesperson she dealt with was trained on paint types and was able to offer applicable advice and recommendations based on client needs because she did visit a specialist paint shop. This same argument might not be applicable if she had visited a non-specialist shop for her paint such as a second hand vendor.

The final part of this paper deals with the possible remedies available to Susan if her breach of contract claim was successful. Section 55(1) of the Sale of Goods Act allows for the negating or variance of a "right duty or liability" that is applicable to Susan in that she can claim a remedy regardless of the fact that the contract was completed. Under general terms however such remedy is often limited to a rejection of the goods

(which is not strictly applicable in this case but could support any claim for a refund of price paid); or a claim for damages that is often limited simply to the difference between the price of goods that could have met the buyers expectations and the actual goods that were purchased.

There is provision under the Sale of Goods Act 1979 to award "specific performance", but this is a discretionary element and not often awarded by the courts[13]. For example s52(1) limits specific performance to "specific" or "ascertained" goods, but again this is determined at the courts discretion relating to the specific case and elements thereof. There is no guarantee even if the buyer was harmed or went through significant hardship because of the goods purchased that any claim for damages beyond the refund price of the goods could be claimed. A second concern related to the laws surrounding remedies is that there is a dissention as to whether or not the Sale of Goods Act 1979 can be considered a codification of common law regarding sales law, or if the Sale of Goods Act could be applied in addition to those remedies considered under common law[14].

One final point needs to be made in this case and it is in respect to the bathroom paint that Susan purchased from Paintplus. Under section 53 if a buyer has accepted a lower price for goods (the bathroom paint was at half price because the labels had been removed) this can be considered a remedy of a breach of contract and therefore negate any future claim on other losses suffered by the buyer (such as her painting and

[13] See concepts of mutuality and adequacy of damages, Chapter 2 G. Jones & W. Goodhart, *Specific Performance* 2nd Edition, London: Butterworths (1996, pp. 1-23).
[14] Section 62(2) of the Sale of Goods Act states that common law continues to apply except where inconsistent with the terms of the Sale and Goods Act.

decorating contract). In this case then it is fair to surmise that Susan would not be able to claim any damages in relation to the bathroom paint.

The question of damages in relation to the masonry paint (the rerendering and repainting of the building) Susan could attempt to claim damages from Paintplus but unless the Courts decided that the goods used were both “specific” or “ascertained” and therefore damages could be claimed, the amount awarded (if any) will be solely at the courts discretion.

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