COMMERCIAL LAW

Case studies in a business context

DESMOND PAINTER

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COMMERCIAL LAW
Case Studies in a Business Context

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COMMERCIAL LAW

Case Studies in a Business Context

Desmond Painter

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Dorset Institute of Higher Education

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For Beatrice

The names and addresses of all the people and businesses in this book are invented, and any resemblance to any actual person or business is entirely coincidental

General Contents

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PART I

INTRODUCTION

SUMMARY OF CASE-STUDY

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SUMMARY OF LEGAL

TOPICS

Introduction

The objective of this book is to provide lecturers and students with a collection of learning materials in the form of case studies in commercial law which is

- realistic
- flexible
- wide ranging
- activity based
- useful for developing appropriate skills

Realistic

Each case study raises legal problems set in a business context, and consists of an introduction giving background information; two suggested activities for students; a set of relevant documents as they might actually appear; and notes on the legal points raised. Sometimes there is just one document; perhaps a long contract with a lot of small print; sometimes several. Some of the studies are based on real events, although the names and other details have been changed. They are mainly concerned with small businesses and individuals: not because big business is unimportant, or less beset by legal problems, but because it is easier for the student to relate to the human scale of a small business, and the legal principles involved are the same for both big and small.

As in real life, the problems raised by these case studies vary in size and complexity, and do not necessarily fit into neat academic compartments: thus the 'Wundatools' study is concerned with implied terms in contracts for the sale of goods; but in order to give good advice to the sales manager the student, in the role of assistant, will need to consider also aspects of the law of negligence and product liability. The sales manager will no doubt also want to know not merely what the company's legal position is, but what he ought to do about it; so the practical aspects of the problem need to be considered as well: is the quality control adequate? Should the packaging be changed? Legal problems have business implications.

I have also tried to place the students in realistic roles, such as they may expect to fill when they start work after completing their course: usually as assistants to managers or to professional advisers.

Flexible

The case studies grew out of my own material developed for students taking the commercial law option on a BTEC Higher National Diploma course in Business and Finance; but they can be used at different levels and in different ways: for example, as a formal assignment (written or oral) to be assessed as course work; as an informal assignment for practice in technique and skills development; as the basis for a seminar, led by lecturer or student; as the basis for oral or visual presentations by groups or

individuals; as material for role play; or in any other way considered useful. The legal content can be isolated and analysed, selectively or exhaustively; the business dimension can be emphasised; or the whole study can be approached in an integrated way, perhaps as part of a broader consideration of business problems.

Students taking law as part of a degree or diploma course in Business Studies will find the material particularly relevant, but the case studies may also be useful to add an element of practical realism to the sometimes artificial and abstract legal problems commonly encountered on more academic law courses.

Wide ranging

The studies cover most of the main areas of commercial law: contract; supply of goods and services; consumer credit; agency; employment; insurance. No attempt, however, is made at the kind of comprehensive treatment of all the legal aspects of these topics which would figure in a professional course. The purpose of this book is not to prepare students to become professional lawyers (although I hope that students whose aim that is would nevertheless find these studies useful); rather it is to supplement the textbook by providing material which shows how the law can affect actual business situations, and which can be used by students to develop their knowledge and skills in that context. It is assumed that students using the material will do so under the guidance of a qualified lecturer, who will be able to explain and discuss the points raised.

Activity based

It is important that students in any area of study should be actively engaged, and not mere passive recipients of doses of pre-digested knowledge administered by the lecturer; and examining boards and validating bodies are increasingly looking for this dimension in the courses with which they are concerned.

I have tried in suggesting activities to provide in each case study an opportunity for a piece of individual written work, often in the form of a report or similar document setting out the results of the student's research into the the problems presented. The second suggestion is usually for something more lively: role play, perhaps, with several students taking the parts of the participants in the events described; or a presentation, with a group (or an individual) explaining to their colleagues what they have found out. Such a presentation may take many forms: oral, visual, participatory, or a combination of several methods.

All these ideas are only suggestions: students and lecturers will want to use the material in different ways, which may differ from the activities suggested here. The possibilities are many, and there is no 'right way' to use the material, just as there may be no 'right answer' to the legal problems which the case studies raise. For this reason, the guidance for lecturers which follows the case studies is in the form of notes, rather than detailed 'model answers': indicative rather than prescriptive. Lecturers will wish to develop their own ways of giving students feedback which will be dictated by the use to which they wish to put the materials.

Useful for developing appropriate skills

An important aspect of the activity-based approach to teaching and learning is that it is concerned not only with the acquisition of knowledge, essential though that may be, but also with the development of skills. The most knowledgeable students are at a

disadvantage if they cannot use and communicate their knowledge effectively, and these case studies offer the opportunity for the student to practise a number of skills, including

- gathering information
- identifying, clarifying and analysing problems
- distinguishing the relevant from the irrelevant
- applying theoretical principles to practical situations
- synthesising information and opinion
- working with others
- communicating orally, visually and in writing; including communicating technical information to a non-technical audience

Although all these skills are useful in business and other aspects of life generally, law is a particularly good medium in which to exercise them, depending as it does so much on precision in the use of concepts and language: I hope therefore that these case studies, although dealing with legal problems, will have a value beyond the confines of the law lecture room, and both I and the publishers would welcome any comment which colleagues have, either on the materials or on the experience of using them.

Bournemouth, 1988 Desmond Painter

Summary of Case-Study Contents

Amberlocks
Skill and care in provision of service; negligence; contributory negligence; risks incidental to calling; employer's liability; defective equipment; health and safety at work; occupier's liability

Armtwist
Consumer Credit Act 1974; formalities, ss.60–64; statutory agency, s.56; cancellation, ss.67–69; default and repossession, protected goods, ss.87–90; entry to premises, s.92; punitive interest, s.93; right of termination, s.99; unmerchantable goods, s.75 and Supply of Goods (Implied Terms) Act 1973 s.10; void terms: Consumer Credit Act 1974 s.173 and Unfair Contract Terms Act 1977

Artmat
Contract: invitation to treat; offer and acceptance; counter offer; acceptance by telex; breach; damages. Conflict of laws: jurisdiction; proper law; Civil Jurisdiction and Judgments Act 1982

Bookworm
Sale of goods: merchantable quality; delivery by instalments; time of delivery; quantity delivered; acceptance and s.11(4) Sale of Goods Act 1979; damage in transit

Bradsall Motors
Contract: offer and acceptance; incorporation of standard form contract; misrepresentation; rescission; damages and 'available market'. Trade description. Consumer Credit Act 1974: formalities, ss.60–64

Catesby
Employment: sex/race discrimination in advertisement, recruitment and training; redundancy; change of place of work

Gladglaze
Standard form contract; exclusion clause and Unfair Contract Terms Act 1977. Negligence of contractor; vicarious liability; indemnity

Gradgrind
Construction of detailed contract for supply of technical equipment. Sale of goods: delivery by instalments; third party negligence causing damage in transit; property and risk; contract of carriage; quiet enjoyment; third party rights; Romalpa clause.

Hillaby's
Employment: sexual harassment; unfair dismissal; constructive dismissal; qualification

for protection under Employment Protection (Consolidation) Act 1978; strikes and trade union activities; compensation, reinstatement and re-engagement

Jane Perry Antiques
Agency: duty of agent to inform principal; authority. Sale of goods: transfer of title by non-owner; mercantile agency; Sale of Goods Act 1979 s.24 (seller in possession); voidable title, s.23; mistaken identity. Cheques: forgery; countermand

John Silver
Sale of goods; specific and unascertained goods: passing of property and risk. Sale of Cheque as contract: Bills of Exchange Act 1882 s.55; countermand. Agency: apparent authority. Misleading indication as to price. Consumer Credit Act 1974: statutory agency s.56; misrepresentation and breach of contract: s.75; damages for breach; indirect loss

Kidditoys
Time of delivery of goods: breach of contract: *Hadley* v. *Baxendale* and Sale of Goods Act 1979 s.51; market rule; mitigation; loss of profit

Merritons
Consumer credit: unsolicited credit token; *Elliott* v. *DGFT*. Contract: offer and acceptance

Osgood Finance
Consumer Credit Act 1974: termination and default by debtor, ss.87–89, 99; termination by creditor; minimum payment clause; penalty clause; damages for loss of profit. Appropriation of payment s.81. Powers of court: return, transfer and time orders, ss.129, 133. Protected goods s.90

Pentangle
Agency: apparent authority; ratification; secret profit; breach of agency contract. Employment: misconduct; unfair dismissal

Trendmaker
Sale of goods: specific and unascertained goods; passing of property and risk. Sale of Goods Act 1979 s.20; s.18 rules 1, 2, 4, 5; buyer as bailee

Wadsworths
Insurance: disclosure; insurable interest

Wendy's
Insurance: average; standard contract; loss of business profit; subrogation and right of recovery. Negligence and economic loss; indemnity

Wundatools
Sale of goods: implied terms, Sale of Goods Act 1979 ss.13, 14, 15; acceptance, s.11(4); exclusion clause. Trade descriptions. Product liability. Consumer safety. Manufacturer's negligence

Summary of Legal Topics

Topic	*Case study*
Agency	
Authority	Jane Perry
	John Silver
	Pentangle
Dismissal of agent	Pentangle
Duties of agent	Jane Perry
	Pentangle
Mercantile agency	Jane Perry
Ratification	Pentangle
Bailment	
Bailee's duty of care	Trendmaker
Conflict of laws	
Jurisdiction; proper law	Artmat
Consumer credit	
Agency: Consumer Credit Act 1974 s.56	Armtwist
	Bradsall Motors
	John Silver
Appropriation, s.81	Osgood
Breach of contract, s.75 and Supply of Goods (Implied Terms) Act 1973 s.10	Armtwist
	Bradsall Motors
	John Silver
Cancellation, ss.67–69	Armtwist
Default and repossession, ss.87–90	Armtwist
	Osgood
Entry to premises, s.92	Armtwist
Formalities, ss.60–64	Armtwist
	Bradsall Motors
Minimum payment clause	Osgood
Powers of the court, ss.129, 133	Armtwist
	Osgood
Punitive interest, s.93	Armtwist
Termination, s.99	Osgood
Unsolicited credit token, s.51	Merritons
Void terms, s.173	Armtwist
Withdrawal, s.57	Bradsall Motors

PART II

CASE STUDIES

1. Amberlocks

Amber Davidson is a qualified hairdresser. After working for some time in Ipswich, she moved to Colchester and set up in business on her own, opening a smart salon near the centre which she called 'Amberlocks'. She was successful, and the business grew, so that Amber was soon able to employ two qualified assistants, Doreen Francis and Mark Halliwell. She also took on a trainee, seventeen-year-old Yvonne Naismith.

In order to equip her salon Amber bought, among other things, three second-hand hair driers from Potters (Electrical) Ltd, a small firm in Manningtree which has since gone out of business. She had the driers overhauled by a local Colchester firm of electricians which she knew, Johnson and Miller (see Document A).

After a year or two, Amber decided that she wanted to improve her equipment, so she advertised the three hair driers in a local paper, planning to get what she could for them and buy new ones. Leslie Harrow replied to her advertisement (Document B), and on 18 January 1988 came into 'Amberlocks' to look at the driers. Two were in use, and Yvonne Naismith was putting the third into position over the head of an elderly customer, Mrs Maud Barrett. Leslie, having introduced himself to Amber, came over to look at the machine. Yvonne switched it on just as Leslie poked at a bit of cable near the hood. There was a flash and a loud bang; Yvonne and Leslie fell to the floor, and Mrs. Barrett let out a screech.

Amber has now received three letters (Documents C, D and E).

Suggested activities

(a) As Amber Davidson, **WRITE A SET OF NOTES** setting out your legal rights and liabilities with respect to the accident and its consequences. Use your notes to **WRITE LETTERS** in reply to Documents C, D and E.

(b) Divide into groups, each group to **MAKE A PRESENTATION** to the rest, who represent the local Chamber of Commerce, explaining what people running small businesses should bear in mind in respect of one of the following topics:
   (i) possible liability to customers and visitors
   (ii) possible liability to employees
   (iii) purchase and maintenance of equipment

Amberlocks

HAIR FASHION
21 Cavill Road Colchester CO3 4JZ
Telephone Colchester 801915

19 September 1985

Dear Mr Johnson,

Thank you for overhauling the hair driers. I confirm the arrangement agreed with you on the telephone today for your firm to check and service the driers and all other electrical equipment in my salon on an annual contract basis at £45.00 per year for three years (including parts), renewable after three years by mutual agreement.

I enclose my cheque for £72.32 in payment of your account and for the first year of the service contract.

Yours sincerely,

Amber Davidson.

LESLIE HARROW & SON

Electrical Contractors and Retailers
10 Lillington Road, Maldon, Essex
Telephone: Maldon 9983

14.1.88

Dear Madam,

In reply to your advertisement in the local paper, I am interested in the hair driers and will call in to see them on Monday next at about 11.00 am.

Hoping this is convenient for you,

Yours truly

L. Harrow

L. Harrow

The Manageress
Amberlocks
21 Cavill Road
Colchester

72 Edwards Avenue
Colchester
Essex
19.1.88

Miss A. Davidson
'Amberlocks',
21 Cavill Road,
Colchester CO3 4JZ.

Dear Madam,

Our Yvonne was taken to hospital after an accident at your place yesterday when she got an electric shock from a hair dryer. She is very shaken and upset, and the hospital have kept her in because she banged her head when she fell and they say her ear is injured and it may affect her hearing permanently.

We think it is your responsibility for having faulty equipment, especially with Yvonne being only a young trainee, and our solicitor will be writing to you.

Yours faithfully

J. Naismith

MRS. J. NAISMITH

LESLIE HARROW & SON

Electrical Contractors and Retailers
10 Lillington Road, Maldon, Essex
Telephone: Maldon 9983

19.1.88

Dear Madam,

My father is off work with a bad burn on his right hand and shock, which I understand were caused by a defective hair drier on your premises yesterday. You will appreciate that this is very damaging to our business and we are taking legal advice.

Yours faithfully,

John Harrow

The Manager
Amberlocks
21 Cavill Road
Colchester

102 Corke Road
Colchester
CO8 9WX

21 January 1988

Mrs A Davidson
Amberlocks
21 Cavill Road
Colchester

Dear Madam,

My mother, Mrs Maud Barrett, who is 74 and lives with us, has suffered a bad burn to her scalp and some of her hair has been burnt as the result of your assistant's using a faulty hairdrier. My mother is shocked and in pain, and we are all very distressed by this occurrence, for which we hold you responsible. Please let us know immediately what steps you propose to take to compensate my mother.

Yours faithfully,

Hector Barrett

2. Armtwist

Armtwist Ltd is a finance company incorporated in 1984 by Larry Fidler, an expert in hard-sell techniques, which he uses to persuade an unsuspecting public to buy a variety of goods obtained by means which he did not wish to discuss in detail. Armtwist Ltd was used to help customers finance payment for the larger and more expensive merchandise which Fidler found most profitable, and in order to lend it respectability, two businessmen well known in the Wallisdown area were recruited as part-time directors with a token five per cent shareholding each: Fidler held the other ninety per cent of the shares. The two part-time directors were James Benson, a senior assistant in a small merchant bank, and Philip Hargreaves, an insurance broker. Fidler was full-time managing director.

The standard form hire purchase contract used by Armtwist Ltd (Document A) was designed by Fidler himself: he was rather proud of it. His technique was to make the sale as the representative of Ripoff Ltd, another of his one-man companies, and then offer to help the new purchaser by "seeing what he could do" to arrange credit with Armtwist Ltd at "very favourable rates," making a fictitious telephone call, and then producing the hire purchase contract and getting the purchaser to sign there and then. Benson and Hargreaves played no part in any of this: they merely attended occasional board meetings and collected generous fees and expenses.

Ripoff Ltd and Armtwist Ltd prospered; but in recent months there has been some bother. The following events have come to the notice of Philip Hargreaves, who is concerned.

14 December	Fidler knocked on the door of Jane Willcocks' house and sold her a washing machine on hire purchase through Armtwist Ltd. She paid £30 deposit in cash.
18 December	Fidler knocked on the door of Susan Taylor's house and sold her a spin drier, also on hire purchase through Armtwist Ltd. She paid £25 deposit in cash.
19 December	John Woodison failed to make the monthly payment due to Armtwist Ltd for his video recorder, because he had just been made redundant and was worried about his financial position. The recorder cost £420, of which £100 had been paid as deposit. The remaining £320 was payable under the hire purchase contract over 24 months with interest at 30% per annum. In addition to the deposit, John Woodison had by the time he was declared redundant made five monthly payments of £21.34 each.
21 December	Armtwist Ltd received a letter from Susan Taylor, posted on 20 December, saying that she did not want the spin dryer and wished to cancel the agreement. No reply was sent: the first monthly payment was not made, and the second is due shortly.
4 January	Two large acquaintances of Fidler bluffed their way past Helen Woodison while her husband John was out of the house signing on for unemployment benefit, took the video recorder "for non-payment", put it in their car, and drove off.
14 February	Armtwist Ltd received a letter from Jane Willcocks complaining that her new washing machine made loud clanking noises and emitted sparks from the back when running. She had stopped using it and wished to return it and have her money back.

Note: in every case, the hire purchase agreements are in Armtwist Ltd's standard form (Document A).

Suggested activities

As Philip Hargreaves:

(a) **WRITE A LETTER** to your fellow director, James Benson, explaining your view of the legal position of Armtwist Ltd in respect of the events described, and commenting on anything else you think he should know about.

(b) Taking the contract (Document A) as your basis, **MAKE A PRESENTATION** to the board of directors of Armtwist Ltd, explaining the company's obligations to its customers under the Consumer Credit Act 1974.

ARMTWIST LIMITED

HIRE PURCHASE AGREEMENT

This Hire Purchase Agreement is made between **Armtwist Limited** of Wildey House 72 Johnson Avenue, Wallisdown, Dorset (**the Owner**) and **the Hirer** named in the schedule hereto whereby **the Owner** agrees to let and **the Hirer** agrees to hire the goods specified in the Schedule.

1. The Hiring shall commence on the date the agreement is signed on behalf of **the Owner. The Hirer** shall thereupon pay the first payment specified in the schedule and thereafter shall pay the rentals set out in the said schedule. Interest shall be payable on overdue payments at 40 per cent (40%) per annum.

2. When signed on behalf of **the Owner** this agreement shall thereafter remain in force and any right of cancellation or premature termination by **the Hirer** is hereby excluded.

3. **The Hirer** shall
   a) keep the goods in good order, repair and condition;
   b) pay any licence fees, registration charges or insurance premiums due in respect of the goods;
   c) neither use the goods nor permit them to be used for any purpose for which they were not designed nor are reasonably suitable;
   d) allow **the Owner** or its representative at all times to have access to the goods to inspect the condition thereof;
   e) forthwith insure and keep insured the goods to their full replacement value and immediately notify **the Owner** of any event which might give rise to a claim under such insurance.

4. If **the Hirer** shall duly make the said payments and perform all the terms and conditions on his part herein contained he shall thereupon have the option of purchasing the goods for the sum of three pounds (£3.00).

5. If **the Hirer** shall
   a) default in punctually paying the first payment or any of the rentals or
   b) commit any act of bankruptcy or
   c) fail to observe and perform any of the terms and conditions on his part herein contained or
   d) do anything which in **the Owner's** opinion may prejudice its rights to ownership of the goods

then it shall be lawful for **the Owner** forthwith to terminate this agreement without notice and with or without **the Hirer's** consent to repossess the goods and for that purpose with or without **the Hirer's** consent to enter on to any premises where the goods may be.

6. If this agreement is terminated by **the Owner** in accordance with Clause 5 hereof all sums due or to become due hereunder shall carry interest at 40 per cent (40%) per annum from the date of temination without prejudice to **the Owner's** right to any damages arising.

7. All conditions and warranties in respect of the goods whether express or implied statutory or otherwise are hereby excluded.

8. Any dealer manufacturer or other person by or through whom this transaction may have been introduced negotiated or conducted is not an agent of **the Owner** and **the Owner** accepts no liability for the statements or actions of such dealer manufacturer or other person.

- - S C H E D U L E - -

Hirer's Name : _____ Hirer's Address : _____

Telephone Number: _____

Deposit Paid : £_____ on (date) _____. First Payment: £_____ due (date) _____.

Thereafter ___ payments of £___ due on the _____ day of each month.

Signed by **the Hirer** Signed on behalf of Armtwist Limited

Date _____ 19__ Date _____ 19__

3. Artmat

L. D. Jameson, managing director, and F. H. G. Wiggins, buyer, of Artmat Ltd, suppliers of artists' materials to the trade, negotiated with Rivard Frères, a French manufacturer, for a supply of picture frame mouldings (Documents A to E). In the end, the mouldings never came (Document F), and as a result Artmat Ltd is in difficulties with some of its own customers, whose orders it will be difficult or impossible to fulfil. The managing director of Artmat Ltd thinks that he will be able to replace some of the mouldings from other suppliers, but is likely to have to let many of his customers down.

Suggested activities

(a) As assistant to Mr Jameson, the managing director, **WRITE A REPORT** setting out the legal position between Artmat Ltd and Rivard Frères as you see it and recommending any action you think appropriate.

(b) The group divides into three, each sub-group to **RESEARCH AND MAKE A PRESENTATION** to the others on one of the following topics:
   (i) The formation of the contract.
   (ii) Whether the English or French courts have jurisdiction to hear a case brought by Artmat against Rivard, and whether English or French law would apply.
   (iii) Assuming that English Law applies, what rules would govern claims for damages by Artmat against Rivard, and by Mr. Jameson's customers against Artmat.

Artmat Limited

Glenarthur Trading Estate Andover Hants SP10 6QZ
Telephone: (0264) 80922 Telex: 68672 G

9th July 1987

M. G Rivard
Rivard Freres
114 rue Richelieu
50400 Granville
France

Dear M Rivard

Following the discussions at your office last week between yourself and our Mr Wiggins, I write to say that we are interested in buying a quantity of your picture frame mouldings. Please let me know what prices you can offer us for a consignment made up as follows:

Your catalogue code	Quantity (metres)
B 14	500
B 18	500
N 42	500
O 21	400
O 23	500
X 3	200
X 3(F)	200
4A 48	600
5A 9	600
5A 15	200

Delivery arrangements c.i.f Poole; details as agreed by you with Mr Wiggins.

Yours sincerely

L D Jameson.

L D Jameson
Managing Director

Directors: L.D.Jameson (Managing) J.N.Peters F.H.G.Wiggins
Registered in England No. 3958661 VAT Reg. No. 242 0635 57

RIVARD FRERES

Fabrications en Bois

Granville, le 16 juillet 1987

Monsieur L D Jameson
Managing Director
Artmat Limited
Glenarthur Trading Estate
Andover
Hants SP10 6QZ
Angleterre

Sir,

We have received your letter of the 9th July and thanking you. We can to send the mouldings you ask, the price will be : French Francs 19 540 paid at our bank Credit Lyonnais Granville as we have agreed with Mr Wiggins. Please confirm your order.

Be assured, Sir, our sincere sentiments.

G. Rivard

G Rivard

Rivard Frères 114 rue Richelieu 50400 Granville France
tél: 33 50 00 29 télex: 279982
SIRET 8700009332009 code APE 7866

Artmat Limited

Glenarthur Trading Estate Andover Hants SP10 6QZ
Telephone: (0264) 80922 Telex: 68672 G

20th July 1987

M. G Rivard
Rivard Freres
114 rue Richelieu
50400 Granville
France

Dear M Rivard

Thank you for your letter of July 16th, quoting a price for picture frame mouldings. We accept your price, subject to:

1. Deletion from our original list of the item 600 metres moulding 4A 48, and its replacement with 600 metres 4A 56;

2. Addition to the order of 500 metres moulding 5A 19.

We look forward to receiving your consignment by 22nd August as agreed.

Yours sincerely

L D Jameson
Managing Director

RIVARD FRERES

Fabrications en Bois

Granville, le **25 juillet 1987**

Monsieur L D Jameson
Managing Director
Artmat Limited
Glenarthur Trading Estate
Andover
Hants SP10 6QZ
Angleterre

Sir,

We have received your letter of 20th July.

Unfortunately we are not making 5A 19 now. The change with 4A 56 is accepted, the price is a litle bigger so the total is FF 20 080.

Be assured, Sir, our sincere sentiments.

G.Rivard

G Rivard

Rivard Frères 114 rue Richelieu 50400 Granville France
tél: 33 50 00 29 télex: 279982
SIRET 8700009332009 code APE 7866

TELEX TELEX TELEX

TELEX TELEX TELEX

68672 G ARTMAT

31-08-87
279982 RIVARD FR

ATT RIVARD GRANVILLE

LETTER OF CREDIT OPENED IN YOUR FAVOUR CREDIT LYONNAIS GRANVILLE FRENCH FRANCS 22,000 (TWENTY-TWO THOUSAND) PAYABLE ON RECEIPT OF BILL OF LADING.

ARTMAT
ENGLAND
279982 RIVARD FR

RIVARD FRERES

Fabrications en Bois

Granville, le 12 aout 1987

Monsieur L D Jameson
Managing Director
Artmat Limited
Glenarthur Trading Estate
Andover
Hants SP10 6QZ
Angleterre

Sir,

We have a problem that our sawmill is not supplying the wood because his workers are in strike. So we cannot send you the mouldings you have asked in your letter. We send you our profound regrets for this.

Be assured, Sir, our sincere sentiments.

G. Rivard

G Rivard

Rivard Frères 114 rue Richelieu 50400 Granville France
tél: 33 50 00 29 télex: 279982
SIRET 8700009332009 code APE 7866

4. Bookworm

Mr Sefton, proprietor of The Bookworm, a bookshop in Hertfordshire, ordered some books from Haughton Trend Ltd, a specialist art publisher in Glasgow. Documents A to G comprise extracts from the relevant correspondence.

The following events took place:

20 May	A customer called at the shop, complaining that the copy of Johnson's *Modern Art* which he had bought some days before had eight pages of colour pictures printed with inaccurate registration, so that they appeared 'out of focus'.
23 May	A second customer telephoned with an identical complaint.
31 May	Roadline's van driver delivered parcels containing six copies of Johnson's *Modern Art* and six copies of Hazeldine's *George Unsworth*. The copies of Johnson appear to be free of the printing defect, but they are all slightly damaged as a result of the van driver's dropping the parcel.
6 June	The copy of Baxter's *Famous Houses* ordered for Mr Frensham arrived.

Mr Sefton is not happy with the service he has received from the publishers.

Suggested activities

(a) As Mr Sefton, **WRITE A SUMMARY** setting out your rights and obligations; then **WRITE A LETTER** to Haughton Trend Ltd dealing with the problems that have arisen.

(b) Divide into four groups, each group to **RESEARCH AND MAKE A PRESENTATION** to the others on one of the following topics in relation to the case study:
   (i) Merchantable quality
   (ii) Acceptance of goods and the right to reject
   (iii) Damage to goods in transit
   (iv) Time of delivery and quantity delivered.

HAUGHTON TREND LTD

Publishers of Quality Art Books
16 Regent Square Glasgow G2 7QN
Telephone (041) 236 7658

Our ref Sales/67/414036 G Date 8th Jan 1988

Your ref HTO 96

Mr J. Sefton,
The Bookworm,
6 Gayles Lane,
Waterford,
Herts. SG16 9QN

Dear Mr Sefton,

Thank you for your order of 4th January. We confirm the following delivery dates:

Author/Title	ISBN	Qty	Price	Delivery Date
Cendrowicz: Art Nouveau	066 589 2720	4	7.95	29.2.88
Johnson:Modern Art Made Easy	066 589 3890	6	3.95	29.2.88
	-do.-	6		15.4.88
	-do.-	6		31.5.88
	-do.-	6		15.7.88
	-do.-	6		27.8.88
Hunter: Stubbs	066 589 4000	2	21.50	29.2.88
Hazeldine:	066 589 1910	12	5.95	29.2.88
George Unsworth of Wadesmill	-do.-	12		31.5.88

We shall invoice you with each delivery; our payment terms are net cash 28 days.

We look forward to your further custom.

Yours sincerely,

Linda Gregory

Linda Gregory,
Assistant Sales Manager

The Bookworm
J Sefton 6 Gayles Lane
Waterford Herts SG16 9QN
Telephone 0992 805912

Your ref: Sales/67/414036 G
Our ref: HTO 97

14.3.88

Dear Ms Gregory

Thank you for the books which you sent at the end of last month. I enclose my cheque for £268.40 in payment of your invoice dated 29 February.

While I am writing, you may like to know that one of my customers has expressed interest in your forthcoming reprint of Baxter's "Famous Houses of Britain", which I understand is due soon. Can you let me have a publication date and price for this?

Yours sincerely

J. Sefton.

J Sefton

Ms L Gregory
Assistant Sales Manager
Haughton Trend Ltd
16 Regent Square
Glasgow G2 7QN

HAUGHTON TREND LTD

Publishers of Quality Art Books
16 Regent Square Glasgow G2 7QN
Telephone (041) 236 7658

Our ref Sales/67/414036 G

Date 18th March 1988

Your ref HTO 97

Mr J. Sefton,
The Bookworm,
6 Gayles Lane,
Waterford,
Herts.
SG16 9QN

Dear Mr Sefton,

Baxter: Famous Houses of Britain

This limited edition classic reprint will be available in cloth only, price £59.00 for each of the four volumes. Publication date is 15th April.

Yours sincerely,

Linda Gregory

Linda Gregory,

Assistant Sales Manager

The Bookworm
J Sefton 6 Gayles Lane
Waterford Herts SG16 9QN
Telephone 0992 805912

Your ref: Sales/67/414036
Our ref: HTO 98

27.3.88

Dear Ms Gregory

Thank you for your letter of 18 March.

My customer, Mr Frensham, has placed an order with me for Baxter's "Famous Houses"; I should therefore be glad if you would supply me with one copy as soon as it is published on 15 April.

Yours sincerely

J. Sefton

Ms L. Gregory
Assistant Sales Manager
Haughton Trend Ltd
16 Regent Square
Glasgow G2 7QN

The Bookworm
J Sefton 6 Gayles Lane
Waterford Herts SG16 9QN
Telephone 0992 805912

Your ref: Sales/67/414036
Our ref: HTO 99

25.4.88

Dear Ms Gregory

Thank you for the six copies of Johnson's "Modern Art" delivered last week. I enclose my cheque for £23.70 in payment.

I am concerned that the copy of Baxter has not come. My customer, Mr Frensham, is leaving the country shortly and is anxious to have the book before he goes. Can you tell me when I may expect it?

Yours sincerely

J. Sefton

J. Sefton

Ms L. Gregory
Assistant Sales Manager
Haughton Trend Ltd
16 Regent Square
Glasgow G2 7QN

HAUGHTON TREND LTD

Publishers of Quality Art Books
16 Regent Square Glasgow G2 7QN
Telephone (041) 236 7658

Our ref Sales/67/414036 G

Date 29th April 1988

Your ref HTO 99

Mr J. Sefton,
The Bookworm,
6 Gayles Lane,
Waterford,
Herts.
SG16 9QN

Dear Mr Sefton,

Baxter: Famous Houses of Britain

Thank you for your letter of 25th April. Unfortunately, technical problems at the binders have forced us to put back the publication date of the Baxter reprint, but we expect the copies any day now.

Yours sincerely,

Linda Gregory

Linda Gregory,

Assistant Sales Manager

The Bookworm
J Sefton 6 Gayles Lane
Waterford Herts SG16 9QN
Telephone 0992 805912

Your ref: Sales/67/414036 G
Our ref: HTO 100

14.5.88

Dear Ms Gregory

Mr Frensham is leaving for Australia in two weeks' time, on Monday, 30th May. I must have the copy of Baxter's "Famous Houses" here for him to collect by Tuesday week, 24th May: later than that will be too late.

Yours sincerely

J. Sefton

J. Sefton

Ms L. Gregory
Assistant Sales Manager
Haughton Trend Ltd
16 Regent Square
Glasgow
G2 7QN

5. Bradsall Motors

Linda Whitton lives in Wolverhampton. She was left £500 by her grandfather when he died some months ago, and she decided to spend it on a car. She already had an ageing Escort which seemed to have been costing rather a lot lately in maintenance, and the legacy seemed a chance to go for something a bit better. One Saturday she took the plunge and went with her friend Tracey Hill down the road to Bradsall Motors to see what they had to offer. Colin Varley, a young and enthusiastic salesman, saw the two women coming and, sensing an opportunity, headed out of the office to meet them, turning on the charm as he went. In the course of a good deal of backchat, Colin steered Linda towards a gleaming red MGB with a sign on it saying "Low Mileage, Superb Condition, £2,795, Finance Available." It was even older than Linda's Escort, and quite a lot more expensive than she had planned, but she fell for the flattering image of the lively, sporty, independent-minded modern girl that Colin painted, and by the end of half an hour had become quite set on the car. Tracey expressed some doubts as to whether this was really what Linda wanted or should be getting, but Linda's crushing reply was, "Oh, you're so *boring* sometimes, Tracey: I want a bit of zip in my life!" Colin offered Linda £900 for her Escort, and then let her bargain him up to £1,200, which is what he had intended to allow her anyway. Linda then discovered that another £55 was added on for road tax: but by this time she felt committed, and eventually agreed — to pay a deposit of £50, for which she wrote a cheque; to put in her £500 legacy; and to take the car on hire purchase from Kwiklone Finance in order to raise the remainder of the price. Colin thereupon filled up Bradsall Motors' standard order form (Document A), and Linda signed it, handed over the cheque for the deposit, and promised to bring in the £500 on Monday and collect the car. She was rather pleased with herself and her new image. Colin returned to the office even more pleased with himself: the MG had been on the forecourt for some time, and he suspected it had done rather more miles than were revealed by the odometer.

Linda's boyfriend, Rob Jerrom, knows quite a lot about cars and something about the law. On the following day, when Linda took him to the garage forecourt and showed him her new acquisition, he expressed forceful doubts as to Linda's sanity and the car's recorded mileage. Linda was already somewhat depressed about the whole business, having slept badly and woken up with a distinct feeling that a debt to Kwiklone of £1100 plus interest was going to cause difficulties between her and her bank manager. By the end of the day she had, to Rob's relief, talked herself out of the whole transaction; but when she went into Bradsall Motors first thing on Monday morning to call it off, the manager said that as far as they were concerned they had a valid legal contract with her and they were sticking to it, and would she please pay the £500 forthwith. In Wednesday's post, Linda received confirmation from Kwiklone Finance of the hire purchase agreement.

Suggested activities

(a) As Linda Whitton's boyfriend Rob Jerrom, **WRITE A BRIEFING DOCUMENT** for her to enable her to prepare her case against Bradsall Motors and Kwiklone Finance.

(b) Different members of the group take the roles of Linda Whitton, Bradsall Motors, Kwiklone Finance and their respective advisers, and **PREPARE AND PRESENT THEIR CASES** in a small claims action before the lecturer or other arbitrator.

NEW/USED VEHICLE ORDER FORM

(DELETE WHERE APPLICABLE)

To BRADSALL MOTORS, HEMMING LANE, WOLVERHAMPTON, WV8 9XJ. Tel: (0202) 295588
(hereinafter described as the "Seller")

I/WE HEREBY AGREE TO PURCHASE FROM YOU **SUBJECT TO THE TERMS AND CONDITIONS HEREOF (including those overleaf)** THE UNDERMENTIONED VEHICLE, EXTRAS AND ACCESSORIES, HEREINAFTER CALLED THE 'GOODS'

DETAILS OF VEHICLE BEING ORDERED

Make	Model and C. Capacity	Colour	Trim
MG	BGT	RED	
Chassis No./Frame No.	**Engine No.**	**Key No.(s) Door / Ignition**	**Stock No.** U 4428
Reg. No. NRV 984S	**Date First Reg.** 3/78	**Odometer Reading** 57520	Recorded mileage cannot be relied upon as the actual mileage run by the vehicle.

VEHICLE – SPECIAL BODYWORK, FACTORY FITTED OPTIONS	£	p	%	VAT £	VAT p
MGB GT	2795	00			

ACCESSORIES TO BE FITTED	@.....VAT		@.....VAT	
TOTALS EXCL. VAT				

	£	p
Accessories		
Accessories		
Delivery		
Fuel .....Galls/Litres (Excl VAT)		
Number Plates		
Car Tax		
Sub Total		
V.A.T.		
R.F. License 6 Months	55	00
Insurance		
Total Price	2850	00
Less P/Ex Allowance*	1200	00
Sub Total	1650	00
Add H. P. Settlement to.	—	
Nett Price	1650	00
Amount due from 11% Finance Co.	1100	00
Balance	550	00
Less Deposit	50	00
Balance Due From Cust.	500	00

Type of Sale (✓ Where applicable)
New ☐ Used ☑
Car ☑ Van ☐
Truck ☐ Retail ☐
Fleet ☐ Trade ☐
Motorcycle ☐
Customer settling balance by:-
CASH ☑ CHEQUE ☐
OTHER ☐

THIS DOCUMENT CONTAINS THE TERMS OF A CONTRACT. SIGN IT ONLY IF YOU WISH TO BE LEGALLY BOUND BY THEM. NOTHING HEREIN CONTAINED IS INTENDED, NOR WILL IT AFFECT, A CONSUMERS STATUTORY RIGHTS UNDER THE SALE OF GOODS ACT 1979 OR THE UNFAIR CONTRACT TERMS ACT 1977.

I/WE AGREE TO DEPOSIT THE SUM OF £50-00 FORTHWITH AND TO PAY THE BALANCE AS SOON AS THE GOODS HAVE BEEN COMPLETED FOR DELIVERY AND NOTIFICATION THEREOF BEEN GIVEN TO ME/US BY POST AT THE ADDRESS BELOW, AND I CERTIFY THAT I AM 18 YEARS OF AGE OR OVER (where the Purchaser is an Individual).

IN THE CASE OF PURCHASING A USED VEHICLE I/WE CERTIFY THAT BEFORE SIGNING THIS DOCUMENT MY/OUR ATTENTION HAS BEEN DRAWN TO THE AGE OF THE VEHICLE (AS SHOWN ABOVE) AND THE FACT THAT ANY DEFECTS MAY BE PRESENT ON THAT ACCOUNT. IN ADDITION I/WE UNDERSTAND THAT IT IS A TERM OF THE CONTRACT THAT I/WE SHOULD EXAMINE THE VEHICLE BEFORE SIGNING THIS ORDER FORM TO SATISFY MYSELF/OURSELVES AS TO ITS QUALITY AND THAT I/WE HAVE CARRIED OUT SUCH AN EXAMINATION. IN PARTICULAR MY/OUR ATTENTION HAS BEEN DRAWN TO THE FOLLOWING ITEMS: TYRES: BODY & PAINTWORK: GLASS: INTERIOR: TRIM & UPHOLSTERY: THE GENERAL CONDITION WITH RESPECT TO ITS AGE.

Purchasers Signature Linda Whitton

Name (Block Capitals) LINDA WHITTON

Address 79a CRAGWALL RD, W'TON

Tel. No. 408156

"SELLERS" DECLARATION

I/WE ACCEPT AND CONFIRM THE ABOVE ORDER AND UNDERTAKE TO SUPPLY THE SAID GOODS UPON AND SUBJECT TO THE TERMS AND CONDITIONS REFERRED TO HEREIN

Signature ..... *Date* 15·10·87

Place of Delivery .....

Estimated Delivery Date ..... *Salesman* CV

DETAILS OF VEHICLE TO BE PURCHASED IN PART EXCHANGE

Make/Model	Reg. No.	Colour	Stock No.	Date of expiry of last M.O.T. Cert.	Licence Expires
ESCORT	JOF 68W	WHITE		7·12·87	1/88

Engine No.	Chassis No./Frame No.	Date First Reg.	Odometer Reading	*Allowance given in P/Ex for above:	Date of Appraisal	Appraisal No.
		9/80	54300	£ 1200-00	15·10·87	

THE VEHICLE IS/~~IS NOT~~ SUBJECT TO ANY LIEN OR ENCUMBRANCE. IF IT IS STATE DETAILS.
THE ABOVE MILEAGE IS/~~IS NOT~~ CORRECT. (IF NOT CORRECT THE APPROXIMATE TRUE MILEAGE IS:.....miles)
IT ~~WAS~~/WAS NOT PURCHASED BY ME NEW.
IT ~~WAS~~/WAS NOT USED ABROAD BEFORE BEING REGISTERED IN THE U.K.
IT ~~HAS~~/HAS NOT BEEN USED FOR SELF DRIVE HIRE, HACKNEY CARRIAGE OR TAXI WORK, AS AN INSTRUCTION VEHICLE.
IT ~~HAS~~/HAS NOT BEEN INVOLVED IN ANY ACCIDENT WHICH RESULTED IN A TOTAL LOSS CLAIM.

I HAVE READ AND UNDERSTAND THE SELLERS TERMS AND CONDITIONS AND VERIFY THE DETAILS SUPPLIED BY ME/US ARE CORRECT

THIS FORM HAS BEEN APPROVED BY THE MOTOR AGENTS ASSOCIATION

Used Vehicle Owners Signature Linda Whitton *Date* 15·10·87

SNOWS BUSINESS FORMS - SOUTHAMPTON 777711

Re-order Ref. SBF V/2

TERMS AND CONDITIONS

Nothing herein contained is intended to affect, nor will it affect, a consumer's statutory rights under the Sale of Goods Act 1979 or the Unfair Contract Terms Act 1977.

1. This order and any allowance in respect of a used motor vehicle offered by the Purchaser are subject to acceptance and confirmation in writing by the Seller.
2. Any accessories fitted as new to the vehicle will be entitled to the benefit of any warranty given by the manufacturers of those accessories.
3. (a) The Seller will endeavour to secure delivery of the goods by the estimated delivery date (if any) but does not guarantee the time of delivery and shall not be liable for any damages or claims of any kind in respect of delay in delivery. (The Seller shall not be obliged to fulfil orders in the sequence in which they are placed.)

   (b) If the Seller shall fail to deliver the goods within 21 days of the estimated date of delivery stated in this contract the Purchaser may by notice in writing to the Seller require delivery of the goods within 7 days of receipt of such notice. If the goods shall not be delivered to the Purchaser within the said 7 days the contract may be cancelled.
4. If the contract be cancelled under the provisions of clause 3 hereof the deposit shall be returned to the Purchaser and the Seller shall be under no further liability.
5. If the Purchaser shall fail to take and pay for the goods within 14 days of notification that the goods have been completed for delivery, the Seller shall be at liberty to treat the contract as repudiated by the Purchaser and thereupon the deposit shall be forfeited without prejudice to the Seller's right to recover from the Purchaser by way of damages any loss or expense which the Seller may suffer or incur by reason of the Purchaser's default.
6. The goods shall remain the property of the Seller until the price has been discharged in full. A cheque given by the Purchaser in payment shall not be treated as a discharge until the same has been cleared.
7. Where the Seller agrees to allow part of the price of the goods to be discharged by the Purchaser delivering a used motor vehicle to the Seller, such allowance is hereby agreed to be given and received and such used vehicle is hereby agreed to be delivered and accepted, as part of the sale and purchase of the goods and upon the following further conditions:

   (a) (i) that such used vehicle is the absolute property of the Purchaser and is free from all encumbrances;

   or (ii) that such used vehicle is the subject of a hire purchase agreement or other encumbrance capable of cash settlement by the Seller, in which case the allowance shall be reduced by the amount required to be paid by the Seller in settlement thereof;

   (b) that if the Seller has examined the said used vehicle prior to his confirmation and acceptance of this order, the said used vehicle shall be delivered to him in the same condition as at the date of such examination (fair wear and tear excepted);

   (c) that such used vehicle shall be delivered to the Seller on or before delivery of the goods to be supplied by him hereunder, and the property in the said used vehicle shall thereupon pass to the Seller absolutely;

   (d) that without prejudice to (c) above such used vehicle shall be delivered to the Seller within 14 days of notification to the Purchaser that the goods to be supplied by the Seller have been completed for delivery;

   (e) that if the goods to be delivered by the Seller through no default on the part of the Seller shall not be delivered to the Purchaser within 30 days after the date of this order or the estimated delivery date, where that is later, the allowance on the said used vehicle shall be subject to reduction by an amount not exceeding 2½% for each completed period of 30 days from the date of the expiry of the first mentioned 30 days, to the date of delivery to the Purchaser of the goods.
8. In the event of the non-fulfilment of any of the foregoing conditions, other than (e) the Seller shall be discharged from any obligation to accept the said used vehicle or to make any allowance in respect thereof, and the Purchaser shall discharge in cash the full price of the goods to be supplied by the Seller.
9. Notwithstanding the provisions of this agreement the Purchaser shall be at liberty before the expiry of 7 days after notification to him that the goods have been completed for delivery to arrange for a finance company to purchase the goods from the Seller at the price payable hereunder. Upon the purchase of the goods by such finance company, the preceding clauses of this agreement shall cease to have effect, but any used vehicle for which an allowance was thereunder agreed to be made to the Purchaser shall be bought by the Seller at a price equal to such allowance, upon the conditions set forth in clause 7 above (save that in (c), (d) and (e) thereof all references to "delivery" or "delivered" in relation to "the goods" shall be construed as meaning delivery or delivered by the Seller to or to the order of the finance company) and the Seller shall be accountable to the finance company on behalf of the Purchaser for the said price and any deposit paid by him under this agreement.
10. If the goods to be supplied by the Seller are new, the following provisions shall have effect:

    (a) this agreement and the delivery of the goods shall be subject to any terms and conditions which the Manufacturer or Concessionaire may from time to time lawfully attach to the supply of the goods or the re-sale of such goods by the Seller, and the Seller shall not be liable for any failure to deliver the goods occasioned by his inability to obtain them from the Manufacturer or Concessionaire or by his compliance with such terms or conditions. A copy of the terms and conditions currently so attached by the Manufacturer or Concessionaire may be inspected at the Seller's Office;

    (b) the Seller undertakes that he will ensure that the pre-delivery work specified by the Manufacturer or Concessionaire is performed and that he will use his best endeavours to obtain for the Purchaser from the Manufacturer or Concessionaire the benefit of any warranty or guarantee given by him to the Seller or to the Purchaser in respect of the goods and, save in the case of consumer sales (as defined by the Sale of Goods (Implied Terms) Act 1979) all statements conditions or warranties as to the quality of the goods or their fitness for any particular purpose whether express or implied by law or otherwise are hereby expressly excluded.

    (c) notwithstanding the sum for Car Tax specified in the order, the sum payable by the purchaser in respect thereof shall be such sum as the Seller has legally had to pay or becomes legally bound to pay for Car Tax in respect of the goods and notwithstanding also the sum for Value Added Tax specified in the order, the sum payable by the Purchaser in respect thereof shall be such sum as the Seller becomes legally liable for at the time the taxable supply occurs;

    (d) if after the date of this order and before delivery of the goods to the Purchaser the Manufacturer's or Concessionaire's recommended price for any of the goods shall be altered, the Seller shall give notice of any such alteration to the Purchaser, and

        (i) in the event of the Manufacturer's or Concessionaire's recommended price for the goods being increased the amount of such increase which the Seller intends to pass to the Purchaser shall be notified to the Purchaser. The Purchaser shall have the right to cancel the contract within 14 days of the receipt of such notice. If the Purchaser does not give such notice as aforesaid the increase in price shall be added to and become part of the contract price;

        (ii) in the event of the recommended price being reduced the amount of such reduction, if any, which the Seller intends to allow to the Purchaser shall be notified to the Purchaser. If the amount allowed is not the same as the reduction of the recommended price the Purchaser shall have the right to cancel the contract within 14 days of the receipt of such notice;

    (e) in the event of the Manufacturer of the goods described in the order ceasing to make goods of that type, the Seller may (whether the estimated delivery date has arrived or not) by notice in writing to the Purchaser, cancel the contract.
11. (a) If a used vehicle is supplied as roadworthy at the date of delivery and, in the case of consumer sales (as defined by the Supply of Goods (ImpliedTerms) Act 1979);

        (i) is sold subject to any conditions or warranties that are implied by the Sale of Goods Act 1979 or any amending statute;

        (ii) prior to signing this order form the Purchaser shall examine the vehicle and the items set out in the Purchaser's Certificate of Examination overleaf and the Purchaser is reminded that the condition of merchantable quality implied by Section 14(2) of the Sale of Goods Act 1979 does not operate in relation to such defects which that examination ought to reveal. Should the goods be sold also subject to defects notified by the dealer to the Purchaser before signing the agreement, the condition of merchantable quality above referred to does not operate in relation to those defects.

    (b) Save in the case of consumer sales (as defined) all statements, conditions or warranties as to the quality of the goods or their fitness for any purpose whether expressed or implied by law or otherwise are hereby expressly excluded.

6. Catesby

Catesby Financial Services plc is a company offering personal loan, mortgage and insurance facilities to the public. Its insurance department has grown steadily, and the company advertised for junior clerical staff at its main office in Leicester (Document A). There were five vacancies, and among those who applied were Andrew Partington and Comfort Egbeolu. They are friends who left the same local comprehensive school with good references in the summer of 1987: Andrew with five O levels, Comfort with seven; both passed English and Maths. Andrew's father is a cashier at a local branch of a bank; his mother has a part-time job at a nearby supermarket. Comfort's Nigerian father is a doctor who qualified in London, met and married Comfort's mother, an English nurse, and later moved to Leicester, where he has built up a thriving general practice, and where Comfort was born and brought up.

As a result of their applications, Andrew and Comfort were called to preliminary interviews, after which they received the letters reproduced as Documents B and C, which they showed to each other. Comfort and her parents are furious.

As Catesby's insurance department expanded, the accounts department contracted, owing to the computerisation of the accounts work. This led to a decision on the part of the management to cut the work force, and as a result Jim Waite received a letter (Document D). Nine other members of the accounts staff received similar letters, but Jim Waite and Heather Norton were the only ones to take up the offer of a move to Northampton. For three weeks they commuted, but Jim, who is fifty-eight, and has worked for Catesby's in Leicester for thirty-two years, found it too much of a strain, and reluctantly gave in his notice. Heather, on the other hand, decided to go on, hoping that she would soon be upgraded from senior to principal clerical officer, and that the resulting salary increase would help to defray the additional expense of commuting, and later moving. She has now discovered that under the company's rules the principal clerical officer grade is only open to staff with at least twelve years' continuous service. She joined the company in 1970, but left to have a baby in 1978, and rejoined in 1982 when her son started at nursery school.

Diane Edwards, the Personnel Manager, has heard from Comfort Egbeolu's mother, Jim Waite, and Heather Norton, and seeks advice (Document E).

Suggested activities

As assistant to the General Manager in the head office of Catesby Financial Services plc:

(a) **WRITE A BRIEFING DOCUMENT** for him to send to the Personnel Manager to enable her to deal with the points raised in her memo (Document E).

(b) Divide into three groups, each group to **MAKE A PRESENTATION** to the others, representing the company's Personnel Department, to explain the law and make recommendations as to company policy with respect to:
   (i) advertising for staff
   (ii) promotion and training
   (iii) redundancy and redeployment.

CFS

A Career With Prospects?

CATESBY FINANCIAL SERVICES PLC

has vacancies for junior clerical staff

Applicants must have GCE O level in four subjects including English and Mathematics and be well spoken and of smart appearance

Starting salary £3500 plus Luncheon Vouchers
Pension scheme
Sports and social facilities
Training given for professional qualifications

Apply in writing with names of two referees to:
The Personnel Manager,
Catesby Financial Services plc, Catesby House, 246 Granby Road, Leicester LE3 5NQ,
quoting reference INS 708

CFS

Catesby Financial Services plc
Catesby House 246 Granby Road Leicester LE3 5NQ
Telephone (0533) 80808

Our ref: INS7088
Your ref:
Date: 12 Oct 87

Miss Comfort Egbeolu
13 Haley Gardens
Leicester LE12 6XS

Dear Miss Egbeolu,

Thank you for your recent application for the post of junior clerical assistant, and for attending our preliminary interview on 8th October.

All the vacancies have now been filled, and I am afraid that your application has therefore been unsuccessful. Thank you for your interest in the company.

Yours sincerely

Diane Edwards

Diane Edwards
Personnel Manager

Reg. No. 2746824 VAT Reg. No. 339 4821 01

CFS

Catesby Financial Services plc

Catesby House 246 Granby Road Leicester LE3 5NQ
Telephone (0533) 80808

Our ref: INS7084
Your ref:
Date: 16 Oct 87

Mr Andrew Partington
124 Ballard Road
Leicester LE5 5AH

Dear Mr Partington,

Thank you for your recent application for the post of junior clerical assistant, and for attending our preliminary interview on 8 October.

I am pleased to invite you for a further interview on Wednesday 21st October at 10.30 a.m.

Yours sincerely

Diane Edwards
Personnel Manager

Reg. No. 2746824 VAT Reg. No. 339 4821 01

CFS

Catesby Financial Services plc
Catesby House 246 Granby Road Leicester LE3 5NQ
Telephone (0533) 80808

Our ref: AC6551
Your ref:
Date: 21 July 87

Mr J.C.Waite
Accounts

Dear Mr Waite,

The contractors will make the final adjustments and tests on the new computer equipment over the Bank Holiday weekend, and the Accounts Department will move over to the new system on Tuesday 1st September.

As I have already explained, the new arrangements will require only four specialist computer staff to operate the system, and the existing accounts staff will no longer be required with effect from Friday 28th August. I realise that this will cause difficulties for you, but I am pleased to say that I have been able to arrange for transfer of all those staff who wish it to the accounts section of the Loans Department at Northampton, which will for the present continue with the old system.

Yours sincerely

Diane Edwards
Personnel Manager

Reg. No. 2746824 VAT Reg. No. 339 4821 01

CFS

From: Diane Edwards, Personnel
To: General Manager
Date: 19.10.87

Please advise on the following (copies of all relevant documents attached):

1. Miss C. Egbeolu
Was turned down for a job as junior clerical officer. Her mother has telephoned to complain. Surely we have no obligation to take her?

2. Mr J.C. Waite (Accounts)
Was made redundant from the accounts office in August. I take it that since we offered him the Northampton post we have done all that is necessary.

3. Mrs H. Norton (Accounts)
Seems to be upset because she is not qualified to apply for upgrading to PCO, but I don't see that this is our fault.

DE.

7. Gladglaze

Gladglaze Ltd is a small company in Skipton specialising in mainly domestic window installation. Its managing director, Harry Ashworth, was pleased to get the contract for putting in the windows in a new office block being built in Ilkley. His own rather limited equipment was not adequate for work on such a high building, so he telephoned an acquaintance in Ilkley, Gerry Downton, who ran a plant hire firm, and asked if he could supply a suitable crane and driver, and what the cost would be for the five days he estimated the job would take. Downton quoted a rate for the job, and after some discussion about the timing and detailed arrangements, Ashworth agreed to hire the crane and driver from Downton at the rate specified, and to call at Downton's office at the beginning of the first day of hiring to sign the hire form and pay a deposit.

On day one, Ashworth arrived at Downton's office in Ilkley as agreed, and signed the hire form. On day two, the crane driver accidentally reversed the crane into the porch of the new office block, demolishing part of it, and causing damage to the main front wall of the building. Ashworth later received a bill running into five figures from the owners of the building. When he reported the accident to Downton, he alleged that the crane driver had been negligent, refused to pay the hire charge, and demanded compensation and his deposit back. Downton denied responsibility, and pointed out that Ashworth had signed a hire form with conditions printed on the back which relieved him (Downton) of all liability. It was not his fault if Ashworth had not read them. The conditions are reproduced in Document A.

Suggested activities

(a) As Harry Ashworth, **DRAFT A LETTER** to send to Gerry Downton, making the best case you can in defence of your position.

(b) Divide the group into four: one advising Ashworth, one Downton, one the crane driver, and one the owner of the office building. **PREPARE AND ARGUE YOUR CASES** before the lecturer acting as arbitrator appointed under the procedure described in clause 36 of the Model Conditions.

These revised general conditions for the hiring of plant ("Model Conditions") are the result of several years' negotiations between the Contractors' Plant Association representing the plant hire industry, the Federation of Civil Engineering Contractors representing the main client industry of civil engineering and the Office of Fair Trading, and having regard to the provisions of the Restrictive Trade Practices Acts and latterly of the Unfair Contract Terms Act 1977.

The revised conditions have been approved by the Contractors' Plant Association and the Federation of Civil Engineering Contractors for use in their unaltered (i.e. "Model Conditions") form.

The Department of Prices and Consumer Protection and the Office of Fair Trading have agreed for the purposes of Section 21 (2) of the Restrictive Trade Practices Act 1976 that the recommendation of these revised conditions ("Model Conditions") is not to be regarded as warranting investigation by the Restrictive Practices Court.

If any amendments are made to these Model Conditions by the contracting parties, they will cease to be the Model Conditions mentioned above and must ***not*** *be referred to as such.*

See also Footnote at end of Model Conditions.

MODEL CONDITIONS FOR THE HIRING OF PLANT (WITH EFFECT FROM SEPTEMBER 1979)

1. DEFINITIONS

(a) The "Owner" is the Company, firm or person letting the plant on hire and includes their successors, assigns or personal representatives.

(b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the Owner's plant on hire and includes their successors or personal representatives.

(c) "Plant" covers all classes of plant, machinery, equipment and accessories therefor which the Owner agrees to hire to the Hirer.

(d) A "day" shall be 8 hours unless otherwise specified in the Contract.

(e) A "week" shall be seven consecutive days.

(f) A "working week" covers the period from starting time on Monday to finishing time on Friday.

(g) The hire period shall commence from the time when the plant leaves the Owner's depot or place where last employed and shall continue until the plant is received back at the Owner's named depot or equal.

2. EXTENT OF CONTRACT

No conditions other than specifically set forth in the Offer and Acceptance and herein shall be deemed to be incorporated in or to form part of the Contract.

3. ACCEPTANCE OF PLANT

Acceptance of the plant on site implies acceptance of all terms and conditions herein unless otherwise agreed.

4. UNLOADING AND LOADING

The Hirer shall be responsible for unloading and loading the plant at site, and any personnel supplied by the Owner shall be deemed to be under the Hirer's control and shall comply with all directions of the Hirer.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

(a) Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of plant supplied with an operator within four working days, and in the case of plant supplied without an operator within three working days, of the plant being delivered to the site, the plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with the terms of the Contract and to the Hirer's satisfaction, provided that where plant requires to be erected on site, the periods above stated shall be calculated from date of completed erection of plant. The Hirer shall be responsible for its safekeeping, use in a workmanlike manner within the Manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted).

(b) The Hirer shall when hiring plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the plant. If such plant be continued at work or in use in an unsafe and unsatisfactory state, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.

(c) The current Inspection Report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of hire.

6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his Agents or his Insurers to have access to the plant to inspect, test, adjust, repair or replace the same. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

7. TIMBER MATS OR EQUIVALENTS

If the ground is soft or unsuitable for the plant to work on or travel over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the plant to travel over or work on.

8. HANDLING OF PLANT

When a driver or operator is supplied by the Owner with the plant, the Owner shall supply a person competent in operating the plant and such person shall be under the direction and control of the Hirer. Such drivers or operators shall for all purposes in connection with their employment in the working of the plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims arising in connection with the operation of the plant by the said drivers or operators. The Hirer shall not allow any other person to operate such plant without the Owner's previous consent to be confirmed in writing.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

(a) When the plant is hired without the Owner's driver or operator any breakdown or the unsatisfactory working of any part of the plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.

(b) Full allowance will be made to the Hirer for any stoppage due to breakdown of plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.

(c) The Hirer shall not, except for punctures, repair the plant without the written authority of the Owner. Punctures are however the responsibility of the Hirer. Allowance for hire charges and for the reasonable cost of repairs will be made by the Owner to the Hirer where repairs have been authorised.

(d) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or his servants, and for the payment of hire at the appropriate idle time rate during the period the plant is necessarily idle due to such breakdown or damage. The Owner will be responsible for the cost of repairs to the plant involved in breakdowns from all other causes and will bear the cost of providing spare parts.

10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" or for "Idle Time", as herein provided), for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any plant from soft ground.

11. LOSS OF USE OF OTHER PLANT DUE TO BREAKDOWN

Each item of plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of plant working in conjunction therewith, provided that where two or more items of plant are hired together as a unit, such item shall be deemed a unit for the purpose of breakdown.

12. CONSEQUENTIAL LOSSES

Save in respect of the Owner's liability if any under Clauses 5, 8 and 9, the Owner accepts no liability nor responsibility for any consequential loss or damage due to or arising through any cause beyond his control.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

(a) For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of Clauses 5, 8 and 9 of this Agreement.

(b) During the continuance of the hire period the Hirer shall subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to the plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Clause 9 herein, and shall also fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the use of the plant and in respect of all costs and charges in connection therewith whether arising under statute or common law. In the event of loss of or damage to the plant, hire charges shall be continued at idle time rates until settlement has been effected.

(c) Notwithstanding the above the Owner shall accept liability for damage, loss or injury due to or arising

(i) prior to delivery of any plant to the site of the Hirer where the plant is in transit by transport of the Owner or as otherwise arranged by the Owner,

(ii) during the erection of any plant, where such plant requires to be completely erected on the site, always provided that such erection is under the exclusive control of the Owner or his Agent.

(iii) during the dismantling of any plant, where plant requires to be dismantled after use prior to removal from site, always provided that such dismantling is under the exclusive control of the Owner or his Agent.

(iv) after the plant has been removed from the site and is in transit on to the Owner by transport of the Owner or as otherwise arranged by the Owner,

(v) where plant is travelling to or from a site under its own power with a driver supplied by the Owner.

14. NOTICE OF ACCIDENTS

If the plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office, and in respect of any claim not within the Hirer's agreement, for indemnity, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

36. ARBITRATION

If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between the Owner and the Hirer in regard to the Contract or the construction of these Conditions or anything therein contained or the rights or liabilities of the Owner or the Hirer such dispute, difference or question shall be referred pursuant to the Arbitration Act 1950, or the Arbitration (Scotland) Act 1894 as the case may be or any Statutory modification thereof, to a Sole Arbitrator to be agreed upon by the Owner and the Hirer and failing agreement to be appointed at the request of either the Owner or the Hirer by the President for the time being of the Institution of Mechancial Engineers.

8. Gradgrind

Under a contract negotiated in Hamburg and signed there on 1 May 1987 (Document A), Gradgrind Ltd agreed to buy four computer-controlled lathes from a German company, Heinz Kessl Technik GmbH, to be delivered one by one at monthly intervals from 1 December 1987 to 1 March 1988. Each machine was to be invoiced and paid for separately.

The first lathe arrived without incident and was installed by the Heinz Kessl engineer in Gradgrind's factory. It was linked to Gradgrind's Megamaster computer, tested and commissioned on 12 December 1987. The invoice was paid on 11 January 1988. Meanwhile, when the second machine arrived, the German engineer had found that the Gradgrind factory was closed not merely on 1 and 2 January (Friday and Saturday), but for the whole of the following week because of an extended Christmas and New Year holiday. When the engineer finally obtained access, he discovered that there was no power source within thirty feet of the space allocated to the machine. He returned to Germany. Following hurried installation of a new conduit by Gradgrind's electrical contractor, the lathe was eventually commissioned on 19 February by another engineer flown over for the purpose. By this time the third lathe had still not arrived. This was because the ship on which it had been despatched had been in a collision as the result of the negligence of the navigating officer, and had had to put into Rotterdam for repairs, during which it was discovered that the collision had caused some plates to spring below the water line, allowing sea water to enter the hold. The lathe destined for Gradgrind Ltd. was among the cargo damaged. It also transpired that, owing to an error in the Heinz Kessl Office, the cargo was not insured. Gradgrind forthwith cancelled the order for the fourth lathe, and Heinz Kessl Technik are threatening to sue them.

As if these misfortunes were not enough, another problem quickly followed. On 24 February, Gradgrind was served with a writ by Solicitors acting for Takashi Machine Tools Inc, a Japanese company, who claimed that the control mechanism on the Kessl lathes was a copy of their own device, which they had patented in 1984. The writ was accompanied by an interim injunction restraining Gradgrind from using the machines until the hearing of the action.

Suggested activities

(a) As assistant to the managing director of Gradgrind Ltd, **WRITE A REPORT** setting out the company's rights and liabilities with respect to the four lathes ordered from Heinz Kessl Technik GmbH.

(b) Divide into three groups, each group to **RESEARCH AND MAKE A PRESENTATION** to the others on one of the following topics in relation to the events described above:
   (i) the significance of clause 2(4) of the contract
   (ii) the significance of clause 6 of the contract
   (iii) the effect of the navigating officer's negligence.

PURCHASING AND SUPPLY CONTRACT

Agreement for sale of technical equipment

THIS AGREEMENT made the FIRST day of MAY 1987 BETWEEN HEINZ KESSL TECHNIK GESELLSCHAFT MIT BESCHRANKTER HAFTUNG having its registered office at Römerstrasse 97 Hamburg Federal Republic of Germany (hereinafter called the seller) of the one part and GRADGRIND LIMITED having its registered office at Tolley's Wharf Middlesborough Cleveland England (hereinafter called the buyer which expression includes the buyer's employees and agents) of the other part WITNESSETH as follows:

1. The seller agrees to sell to the buyer and the buyer agrees to buy the equipment specified in the schedule hereto (hereinafter called the equipment) together with the relevant manuals on maintenance, operation and instruction at the prices listed in the schedule hereto and upon the terms and conditions hereinafter set out.

2. (1) Subject to the following clauses of this agreement the seller will deliver the equipment to the address specified in the schedule hereto. Subject to sub-clause(s) (2) and (3) hereof the date for the delivery of the first item of the equipment will be the first day of December 1987, and the dates for delivery of the second third and fourth items of the equipment will be the first day of each month following, delivery of the fourth item of the equipment taking place on the first day of March 1988.

(2) If for reasons beyond the buyer's control the place in which the buyer proposes to house the equipment shall not be ready by the day of delivery and provided that the buyer shall have given written notice to the seller to this effect not later than the first day of the preceding month the date for delivery shall be a date before the first day of July 1988 nominated by the buyer in a written notice to the seller given not less than three months before such mentioned date.

(3) The seller shall not be liable for any delay or for any consequence of any delay in the production delivery or commissioning of any of the equipment if such delay shall be due to fire strike lockout dispute with workmen flood accident delay in transport shortage of fuel default of any subcontractor inability to obtain material embargo act or demand or requirement of any government or any government department or local authority or as a consequence of war or of hostilities (whether war be declared or not) or to any other cause whatsoever beyond the seller's reasonable control. If any such delay occurs then (unless the cause thereof shall frustrate or render impossible or illegal the performance of this contract or shall otherwise discharge the same) the seller's period for performing its obligations shall be extended by such period (not limited to the length of the delay) as the seller may reasonably require to complete the performance of its obligations.

(4) The title to all the equipment shall remain vested in the seller until the full purchase price thereof shall have been paid to the seller.

3. (1) All prices quoted are ex works from the seller at Heinz Kessl Fabrik Hamburg Federal Republic of Germany. Charges for all transport from Heinz Kessl Fabrik aforesaid are to be paid by the buyer.

(2) The buyer shall accept risk in respect of any of the equipment from the date of the seller's delivery of it at Heinz Kessl Fabrik aforesaid to a carrier for carriage to the buyer. The buyer shall reimburse the seller for the cost of any insurance which the seller at its sole discretion shall arrange in respect of such equipment from the said date of such delivery.

(3) The buyer shall at its own expense not later than four weeks before the date fixed by the seller for the delivery of the equipment ensure that the site is ready to receive the equipment and that all the installation facilities recommended by the seller have been provided. Such facilities shall include the provision of space electrical power electrical installation and fittings voltage regulator service the provision and installation of air conditioning and other plant fittings and furnishings not already provided in the seller's quotation details of which are contained in the brochure already supplied to the buyer. The seller will provide without charge advice by qualified supervisors concerning the preparation of the site.

(4) After the buyer has completed the work referred to in sub-clause (3) the seller will undertake all work necessary for putting the equipment into proper condition for operating.

(5) Operating supplies including all accessories for use with the equipment are to be provided by the buyer at its expense.

(6)(a) The buyer will reimburse the seller for any expenses and costs (including the cost of the storage of any equipment) to the seller arising from any non-compliance by the buyer with the terms of either or both sub-clause (3) of clause 3 and clause 9.

(b) the amount of any and all tax or other government charge or duty in respect of the equipment (whether upon its production dispatch installation sale purchase or otherwise) and the cost to the seller of conforming with any other legal requirement (including any Act of the Parliament of the United Kingdom or Act of the Bundestag of the Federal Republic of Germany and any order or regulation made by any governmental body or department) imposed or coming into force after the date of this agreement shall be added to the price and paid by the buyer.

4. Each invoice for any item of the equipment shall be paid in full by the buyer within thirty days of the later of the date of the invoice or the date of a seller's certificate (in this agreement called the seller's certificate) that such item of equipment either is or but for the buyer's non-compliance with clause 3 would have been put first into order for operating and ready for use. Each invoice for such of the additional charges referred to in clause 3 as apply to this sale shall be paid in full by the buyer within thirty days of the date of the invoice.

5. The seller warrants all apparatus manufactured by it and bearing its name-plate to be free from defects in workmanship and material under normal use and service but the seller's entire liability under this warranty is to repair or replace free of charge any of that apparatus which during whichever of these two periods shall be the shorter namely the twelve months immediately following the date of the seller's certificate that the equipment is in proper operating order or the currency of the agreement for equipment maintenance service (which agreement is herein called the maintenance agreement) is found by the seller's inspection at the site of installation to be defective in workmanship or material. This warranty is subject to the following limitations:

(1) Mechanical or electrical items which are of an expendable nature are excluded from this warranty.

(2) The benefit of this warranty shall apply only to the buyer.

(3) During the period referred to above the buyer shall at the end of each week report to the seller the total period for which the equipment or any item thereof has during that week been switched on. In calculating that period (i) any period for which the equipment is switched on only for maintenance purposes by the seller's staff shall be ignored and (ii) any period of less than two hours shall be deemed to be two hours. This warranty will terminate if the sum of those total periods shall exceed sixty-two hours.

(4) If the buyer fails to comply with any obligation of clause 9 this warranty shall cease immediately to be applicable.

6. (1) If any action or proceeding is brought against the buyer for alleged infringement of any United Kingdom letters patent by the equipment or any part thereof made to the seller's design and supplied hereunder or any allegation of such infringement is made and if the buyer gives the seller immediate notice in writing of any such allegations or infringement or of the institution of any such action or proceeding and permits the seller to answer the allegation and to defend the action or proceeding and also if the buyer gives the seller (at the seller's expense) all information assistance and authority required for those purposes and does not by any act (including any admission or acknowledgement) or omission prejudice the conduct of such defence then (a) The seller will at his own election either effect any settlement or compromise which it deems reasonable or at its own expense defend any such action or proceeding and

(b) The seller will pay the cost of any settlement or compromise effected by the seller of all damages and costs awarded against the buyer in any such action or proceeding and

(c) If the equipment or any part thereof is in such action or proceeding held to constitute infringement and is the subject of an injunction restraining its use or any order providing for its delivery up or destruction the seller shall at its own election and expense either

(i) procure for the buyer the right to retain and continue to use such equipment or part thereof or

(ii) modify such equipment or part thereof so that it becomes non-infringing or

(iii) remove such equipment or any part thereof which is not essential to the operation of the whole equipment granting the buyer a credit therefore not exceeding the written down value for income tax purposes.

(2) The seller shall not be under any of the obligations specified in sub-clause (1) of clause 6 hereof in either of the following events:

(a) any infringement or allegation thereof based upon the use of the equipment or part thereof in combination with equipment or other devices not made or supplied by the seller or in any manner for which the equipment or part thereof was not designed or

(b) the buyer entering into any compromise or settlement in respect of any such action or proceeding without the seller's prior written consent.

7. The seller shall not under any circumstances

whatsoever be liable for any loss (which expression in this clause includes injury damage or delay) or for any consequence of any such loss arising out of any cause whatsoever beyond the seller's reasonable control or (except as provided in the maintenance agreement)
any malfunctioning of or defect in or failure of any of the equipment or any loss of the use of any item of equipment. In the absence of negligence in manufacture installation or commissioning of the equipment by the seller the seller will not under any circumstances whatsoever be liable for any consequential loss or damage however caused.

8. The seller shall not be liable for and the buyer shall indemnify and hold the seller harmless against any claim by or loss or damage to any person or property directly or indirectly occasioned by or arising from the use or operation (other than by the seller) or possession of any of the equipment and from negligence (including the use of any part of the equipment otherwise than in accordance with the seller's operating instructions and manuals) or default (including any noncompliance with any obligation of this agreement, any delay any wrong information and any lack of required information) or misuse by or on the part of the buyer or any person or persons other than the seller and from any consent given in breach of sub-clause (6) of clause 9. This indemnity shall extend to any costs and expenses incurred by the seller and shall continue in force notwithstanding the termination of this agreement.

9. Until (1) the expiry of the warranty period specified in clause 5 or (2) the date by which the buyer shall have paid in full for all invoices (except in respect of operating supplies not required before the granting of the seller's certificate) referred to in clause 4, whichever be the later

(1) the seller's representative shall have the full and free right of access to the equipment

(2) the buyer shall not permit persons other than authorised representatives of the seller to effect any replacement of parts maintenance adjustments or repairs to the equipment

(3) the buyer shall properly maintain the installation facilities (including those referred to in sub-clause (3) of clause (3) for the equipment in accordance with the seller's recommendations

(4) the buyer shall use with the equipment only such operating supplies (including those referred to in sub-clause (5) of clause (3) as meet the seller's specifications

(5) the buyer shall at its own expense provide on its premises suitable storage space and facilities for the seller's test equipment and for the stocking by the seller of such spare parts and components as the seller deems reasonable and also suitable working space and facilities for the seller's service personnel

(6) the buyer shall not without the prior written consent of the seller:

(a) permit the operation of any item of the equipment by any person other than by operators employed by or under the direct supervision of the buyer or by representatives of the seller or by persons authorised in writing by the seller

(b) permit any alteration addition or attachment to or movement of any item of the equipment

(c) permit any item of the equipment to be operated unless the seller's resident service personnel is in attendance or has been given notice (in accordance with the provisions of the maintenance agreement) of proposed use

(d) assign or transfer any of his interests under this agreement.

10. All boxing crating skidding and shoring used in the dispatch delivery or installation of the equipment shall be the property of the seller and shall at the seller's request be returned by the buyer to the seller's works carriage paid.

11. (1) If before the six months immediately preceding the agreed delivery date of the equipment there is any change in the seller's price list or conditions or practices and if that change affects any matter referred to in this agreement then the seller may from time to time before the said six months give to the buyer written notice of any alteration necessary to bring any charge price condition or practice referred to in this agreement into conformity with the seller's current price list or conditions or practices.

(2) On receipt of the notice referred to in sub-clause (1) hereof the buyer may forthwith cancel this agreement and in that case neither party shall be under any liability whatsoever to the other in respect of any matter referred to in this agreement.

(3) If on receipt of the notice referred to in sub-clause (1) hereof the buyer does not forthwith cancel this agreement the charges prices terms and conditions of this agreement shall be deemed to have been altered in accordance with those stated in that notice.

(4) If before the six months immediately preceding the agreed delivery date of the equipment there is any reduction in the seller's price list or any change in the seller's conditions or practices which change favours the buyer and if that change affects any matter referred to in this

agreement then the seller will give to the buyer written notice of any alteration necessary to bring any charge price condition or practice referred to in this agreement into conformity with the seller's current price list or conditions or practices and thereupon the charges prices terms and conditions of this agreement shall be deemed to have been altered in accordance with those stated in that notice.

12. If during the period of twelve months commencing on the date of the seller's certificate or any anniversary thereof the total of the hours within the principal periods of use defined in clause 5 of the maintenance agreement shall be less than ten hours the seller will for a period equivalent to the difference between the said total and ten hours grant to the buyer further use of the equipment and such use shall take place at times to be mutually agreed and shall be treated as use within the principal period of use.

13. The agreement contained in this document comprises the whole of the agreement between the parties hereto (and supersedes all previous agreements between the parties) with respect to the equipment specified in this agreement and no other terms or conditions (including any written on or attached to any purchase order form document or correspondence) shall be included or implied unless agreed upon in writing signed by an authorised officer or representative of each of the parties to this agreement.

14. This agreement shall be subject to and construed in accordance with English law.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first before written

Signed

for Gradgrind Ltd
J. Hennessy
Managing Director

for Heinz Kessl Technik GmbH
H. Guckert
Sales Director

SCHEDULE
Equipment referred to in clause 1 hereof

Quantity	Equipment	Price each
4 (Four)	Heinz Kessl "Panther" PF320 electronic centre lathes, serial numbers: X6T 8751338 to 8751341	£16,720 (Pounds sterling sixteen thousand seven hundred and twenty)

Address for delivery
Tolley's Wharf Middlesborough Cleveland England

9. Hillaby's

Hillaby and Sons Ltd is a rather old-fashioned engineering firm in Manchester making small items such as nuts, bolts, screws and brackets for general engineering and building use. It occupies a shabby building in an industrial area of the city, and employs twenty-seven men working the machines and loading the vans, three women working under a male manager in the office, and another six women checking and packing, again supervised by a male manager. The general manager is fifty-seven-year-old Harold Briginshaw, who treats his staff firmly but on the whole fairly. His philosophy is that people should get on with their job and take the rough with the smooth: he has been heard to say more than once, "I can't stand people who whine." His views on some other aspects of life are summed up in another of his favourite sayings: "Women should stay home, and foreigners should go home."

Usually, things go on rather quietly at Hillaby's: the work is steady, if boring, and the working conditions acceptable, if drab. During 1987, however, things were not harmonious. The heating broke down in February, and although Mr Briginshaw got in some oil stoves, the workers did not consider them adequate, and there was a dispute which culminated on 25 February in the Engineering Workers' Union shop steward, Harry Parkes, taking all the men out on strike: they were joined by the women, led by the General and Municipal steward, Ivy Henderson. This left only Mr Briginshaw and Office Manager, Tony Barthwaite. The firm had to close down until the heating was functioning again, and the staff eventually returned to work on 10 March. On the first day back Mr Briginshaw said to Harry Parkes: "You're a trouble maker, Harry, and next time you step out of line, I'm going to sort you out."

It was about this time that Julie Hendry first complained to Mr Briginshaw about the behaviour of some of the younger men on the shop floor. Julie, an attractive young woman of twenty-three, had joined Hillaby's as an office worker in 1985, and had often been annoyed by the young men's ribaldry. They made suggestive remarks about screws and nuts, asked her what she did in the evenings and what her telephone number was, blew her kisses and pinched her bottom when she walked past. Julie said nothing, but felt increasingly uncomfortable with the continual banter. She would have liked to leave, but was afraid she might not be able to get another job. She became rather depressed, and began to dread running the gauntlet of the shop floor on her way to and from the office. One day in May, Gary Fenton, one of the young men on the machines, called across to her, "C'mon Julie, show us your page threes." This was the last straw. Upset, Julie marched into Mr Briginshaw's office and demanded that he do something to stop the men annoying her. Mr Briginshaw's reply was, "They're only having a bit of fun: can't you take a joke?" Nothing was done: the behaviour continued, and if anything got worse.

On 19 July there was another row, which began in the office. Angela Wharton, a friend of Julie who had joined the firm to work in the office the week before her, came in late. She had no sooner sat at her desk than she said, "I'm sorry Mr Barthwaite, I don't feel very well: I'm going to have to go to the toilet." Julie Hendry, concerned, got up and went with her. They were away for nearly three-quarters of an hour, and when they returned were met at the office door by Mr. Briginshaw. The following conversation ensued:

Briginshaw: Where the hell have you two been? I don't pay you to lounge about in the toilet all day.

Hendry: Give over: can't you see she's poorly? She's pregnant, and it makes her sick in the mornings.

Briginshaw: You bloody women, you're nothing but trouble: sickness, lateness, pregnancy, kids; it's a wonder you do any work at all, and meanwhile I have to pay you to keep a man out of a job.

At this, Angela burst into tears. Julie, furious, shouted:

Hendry: That's not fair! You're a selfish beast: you never treat us girls right!

Briginshaw: Well, if that's what you think, you might as well get out. Take your cards and go, now.

Wharton: If Julie goes, I go too. I've had enough of you, Mr Briginshaw.

Briginshaw: Please yourself. You're not much use to me anyway if you're pregnant.

The whole workshop had stopped to listen. Harry Parkes now joined in:

Parkes: You can't do that. It's not right.

Briginshaw: You keep your meddling nose out of this, Parkes. I'm in charge here, and I'll do as I think fit. I warned you after you caused all that trouble back in March: don't stir it now.

Parkes: Are you threatening me?

Briginshaw: Yes I am. I'm fed up with you, you bloody Bolshie agitator. Get back to your work!

Parkes: Don't you swear at me, you fascist exploiter!

Briginshaw: That's it: that's enough! You're sacked for insolence, and causing disruption. Get out, and take these two moaning minnies with you.

Suggested activities

(a) As a trade union official advising Harry Parkes, Angela Wharton and Julie Hendry, and bearing in mind Documents A, B and C, **WRITE A REPORT** advising them to what extent they have grounds for complaint to an Industrial Tribunal.

(b) **HOLD A HEARING** of the Industrial Tribunal to consider the three cases, with students taking the role of the complainants, Mr Briginshaw, their respective advisers, and the two lay members of the Tribunal, the lecturer acting as Tribunal chairman.

Particulars of Employment

Employment Protection (Consolidation) Act 1978 section 1

Name of employer	Hillaby & Sons Ltd, Albion Works, Cleaver Street, Manchester M4 9RN
Name of employee	Henry John Parkes
Date of commencement of employment	15.11.80
Pay	NJC scales: See staff notice board
Hours of work	8.30 a.m. to 6.00 p.m. Monday to Friday (Lunch 12 noon to 1.00 p.m.)
Holidays with pay	3 weeks per year when factory closed in August, plus public holidays
Sick pay	See staff notice board
Pension rights	The company does not operate a pension scheme
Length of notice	One week
Job title	Centre lathe turner
Disciplinary rules and grievance procedure	See staff notice board
Whether contracted out of state pension scheme	No

Particulars of Employment

Employment Protection (Consolidation) Act 1978 section 1

Name of employer	Hillaby & Sons Ltd, Albion Works, Cleaver Street, Manchester M4 9RN
Name of employee	Angela Mary Wharton
Date of commencement of employment	8.7.85
Pay	NJC scales: See staff notice board
Hours of work	9.00 a.m. to 5.30 p.m. Monday to Friday (Lunch 12 noon to 1.00 p.m.)
Holidays with pay	3 weeks per year when factory closed in August, plus public holidays
Sick pay	See staff notice board
Pension rights	The company does not operate a pension scheme
Length of notice	One week
Job title	Clerk
Disciplinary rules and grievance procedure	See staff notice board
Whether contracted out of state pension scheme	No

Particulars of Employment

Employment Protection (Consolidation) Act 1978 section 1

Name of employer	Hillaby & Sons Ltd, Albion Works, Cleaver Street, Manchester M4 9RN
Name of employee	Julie Elizabeth Hendry
Date of commencement of employment	15.7.85
Pay	NJC scales: See staff notice board
Hours of work	9.00 a.m. to 5.30 p.m. Monday to Friday (Lunch 12 noon to 1.00 p.m.)
Holidays with pay	3 weeks per year when factory closed in August, plus public holidays
Sick pay	See staff notice board
Pension rights	The company does not operate a pension scheme
Length of notice	One week
Job title	Clerk
Disciplinary rules and grievance procedure	See staff notice board
Whether contracted out of state pension scheme	No

10. Jane Perry Antiques

Jane Perry Antiques is a successful business catering to the top end of the market. Jane has a shop in Maidstone, with a workshop employing three expert restorers, and another, smaller shop in Kensington. She knows a lot about antiques and their restoration, and travels widely in the British Isles and on the continent, doing most of her own buying (her partner, Kit Ward, does some of the more routine rounds of provincial auctions). The business does quite a lot of trade with customers in the Middle East and North America, as well as in London and the Home Counties, and a lot of material passes through its hands. As well as buying and selling on its own account, the firm buys and sells antiques on behalf of clients, and also does restoration work for them and for other dealers.

To deal with the day to day work, Jane employs a manager and an assistant in her London shop, a manager and two assistants in her larger Maidstone shop. The second Maidstone assistant is Debbie Hart, who is a personable young woman of 19. She recently left a well-known girls' school with a rather limited set of O levels, and an A level in Art, and her ambition was to get some kind of 'artistic' job: she was delighted when her reply to Jane's advertisement for an assistant led to an offer of a job, and she accepted at once. Unfortunately for Debbie, however, things have gone wrong for her this last week, and Jane Perry was not pleased when she came back from Stuttgart.

What happened was this. Debbie had been working in the shop, and had dealt with a number of customers and enquirers. Some of the time, she had been on her own, and had been keen to use her initiative and show Jane that she could take responsibility. Unfortunately, her enthusiasm outran her expertise, and five of her transactions are now causing Jane some embarrassment:

1. 'Peace at Evening', a landscape by Hetherington, a Victorian painter whose work was increasingly attracting the interest of collectors. The painting had not been hung in the showroom, but a customer saw it standing against the wall in the corridor and Debbie sold it to him for £170, the price on a label stuck on the frame. The label was an old one, and the picture, which was the property of a long-established customer called Wilson Daintry, was not for sale at all, as Document A makes clear.
2. A Georgian inlaid rosewood tea caddy, also mentioned in Document A, which had just been restored in the workshop. Jane had said before she went away that when the work had been done the piece would be worth at least £120, so Debbie was rather pleased with herself when she got £145 for it from another customer.
3. A Victorian stained walnut glass-fronted bookcase. Debbie sold it to a woman who said she was Lady Beatrice Camberley, an old customer of Jane. Debbie knew that Lady Camberley was one of Jane's customers, but had never actually met her. The customer wrote a cheque for the full price of £600, drawn on the Tonbridge branch of the London and Home Counties Bank, and at her request, Debbie got two of the men from the workshop to dismantle the bookcase and load it into the back of her Range Rover. She then drove off with it. The London and Home Counties Bank has now written to say that it will not pay the cheque because it had been stolen, and Lady Camberley's signature was forged. Lady Camberley has since been into the shop to see Jane about the matter: she is clearly not the person to whom Debbie sold the bookcase. As soon as Jane learnt what had happened, she alerted the Police, but there is as yet no trace of the bogus Lady Camberley or the bookcase.
4. An Edwardian pedestal desk with a green leather top. This was a piece in

exceptionally good condition, and was priced at £950. Debbie sold it to John Walker, who paid cash and took the desk with him in his van. The next day, another customer, Miriam Watson, came in, also with £950 in cash, and asked for the desk. It transpired that, unknown to Debbie, Martin Fellowes, the shop manager, had sold the desk to Mrs Watson two days earlier, but at her request had kept it in the showroom until she had arranged to withdraw the money from her Building Society account. Mrs Watson is extremely upset: the desk was to be a twenty-first birthday present for her son. She and Mr Walker are both old customers of Jane.

5. A Regency mahogany extensible dining table with a matching set of twelve chairs, the subject of Document B. It had a notice on it saying "The owner will consider offers in excess of £4500 for this superb example of Regency furniture. Please see the manager." Philip Whitehead had been in to look at it several times, but when he finally made up his mind, the manager, Martin Fellowes, was out. Philip told Debbie that he was prepared to offer £5000 for the table and chairs, and would she please pass the message on? Debbie did not see the manager again that day; when she did see him, he immediately launched into a lot of details about a van load of furniture that was coming in at any minute, and Debbie quite forgot to tell him about Mr Whitehead's offer. On the following day, Document C arrived in the Office: Martin Fellowes telephoned Mr Yardley, who agreed to sell. When Philip Whitehead called in later that day, he met the men from the workshop loading the table and chairs into a lorry for delivery to Mr Hardcastle. There was a row.

Suggested activities

(a) As Jane Perry, **WRITE A SET OF NOTES** summarising your legal position; then **WRITE LETTERS** to the customers concerned.

(b) **HOLD A MEETING** (or a series of meetings) between Jane Perry, appropriate members of her staff and the customers concerned (with or without their advisers), to discuss and try to resolve the problems that have arisen.

Balcombe Lea House
Alfriston
Sussex

12th June

Dear Ms Perry

Following our telephone conversation the other day, I should be glad if you would take the Hetherington and get your people to see if they can get a decent offer for it for me: I will then decide whether to let it go.

Since we spoke, I have taken it in to Sotheby's, where I saw Goldstone: he thinks it would go for between £500 and £750. I will bring it in tomorrow. As far as the caddy is concerned, I am reassured by your advice that it was not seriously damaged when my daughter dropped it, and I am happy to leave it with you for your man to repair the foot and clean it up. I don't think it is worth all that much, but it has sentimental value for us: it was a wedding present to my grandmother from her sister.

Yours sincerely

Wilson Daintry

Wilson Daintry

12 BRIGSTOCK GARDENS
SEVENOAKS
KENT

28th June

Jane Perry Antiques
22 Benenden Road
Maidstone
ME2 5NT

Dear Miss Perry,

I have arranged for Millhouse & Son to bring the Regency table and chairs, about which I saw you last week, round to your Maidstone showroom next Monday afternoon. I should be most grateful if you would, as agreed, display them and solicit offers.

Your view of the price agrees with what I have been told elsewhere, and I think we should ask a minimum of £4500. Please let me know what transpires. If nothing has happened within a month or six weeks, we will discuss the matter again, and perhaps consider whether to try your Kensington showroom; though I take your point that there is not a lot of display space there.

Yours sincerely

Michael Yardley

Michael Yardley

21a Villiers Gate
Earls Court
London SW5 2JA

16th July

Dear Sirs,

I am writing to confirm my verbal offer to your manager earlier today to purchase the Regency table and twelve dining chairs, currently on display in your Maidstone showroom, for the sum of £4650 (Four thousand six hundred and fifty pounds). This offer remains open until 5.00pm on 17th July, and is withdrawn if not accepted by that time.

Yours faithfully

A. Hardcastle

A. HARDCASTLE

Jane Perry Antiques
22 Benenden Road
Maidstone
ME2 5NT.

11. John Silver Engineering

John Silver is a big manufacturer of agricultural and horticultural machinery which supplies farms, garden centres and the public, and has a thriving export trade. The company sets a high standard of engineering and has a good reputation for the quality of both its products and its service. However, things can go wrong even in the best companies, and John Silver's Sales Manager has some problems, as revealed by Documents A to D.

Suggested activities

(a) As assistant to the Sales Manager, **WRITE A REPORT** in reply to his memo (Document D).
(b) The company is clearly having problems with its salesman, Mr Stevenson. There may be others. As assistant to the Sales Manager, **MAKE A PRESENTATION** to the company's sales staff, explaining its legal obligations in respect of prices and goods which do not fulfil the salesman's claims.

CAMBRIAN GARDEN CENTRE
Llanfihangel
Dyfed SA32 4NS
Telephone (0874) 89217

Our ref: M272W
Your ref: Sales/BP/142T/87

2nd June 1987

Dear Sir,

I am sorry to have to say that four of the Cutlass E500 mowers which arrived yesterday in the second delivery due under our order of 2nd February 1987 are defective.

In each case the cover of the motor is bent and fouling the blades, which are damaged. You will appreciate that at this point in the season it is essential to our business that we have a satisfactory supply of good quality mowers available, and since your supply is clearly unreliable, I have no option but to cancel the remainder of our order forthwith.

I have instructed our bankers to stop the cheque sent to you yesterday in payment for this faulty consignment, which you are at liberty to collect at any time during normal working hours.

Yours faithfully,

B. Williams

B. WILLIAMS
Manager

JSE
John Silver Engineering Ltd
Unit 12 Eynsbury Trading Estate
Beeston Notts NG5 6QT
Telephone (0602) 805212

Mrs. Blodwen Williams
Cambrian Garden Centre
Llanfihangel
Dyfed SA32 4NS

Our ref: Sales/BP/142T/83
Your ref: Telephone
Date: 2nd February 1987

Dear Madam,

I write to confirm our acceptance of your telephone order today for 60 of our Cutlass E500 electric lawn mowers, to be sent by rail in six consignments of 10 machines each, to be delivered by us to British Rail, Nottingham for onward transmission to you not later than the 25th of each month from March to August 1987 inclusive.

Delivery notes will be sent to you direct. Payment for each consignment is due within fourteen days of the dates shown on the relevant delivery notes. The agreed price is £108.00 for each machine: this represents a discount of 10% on our normal trade price.

Yours faithfully,

B. Pew

B. Pew, Sales Manager.

Reg. No. 3834121 VAT Reg. No. 812 5841 02

29 Hill Road
Beckenham
Kent
BR6 0LT
Tel: (01) 460 8065

3rd June 1987

Dear Sir,

I bought one of your Sabre E750 Mowers from the John Silver shop in Bromley on 30th May. I have three serious complaints:

1. The shop displayed a prominent notice advertising the mower, which said "Elsewhere £195: Our Price £175". Your salesman, Mr Stevenson, assured me repeatedly that I would not find this machine at such an advantageous price elsewhere. I have since discovered that these machines are available from several suppliers in the area at prices as low as £150.

2. I bought in good faith, not only because of the apparently favourable price, but also on the strength of Mr Stevenson's assurance that the machine was safe and reliable, and would adequately cut the grass on the rough ground at the end of my garden. The first time I used it (yesterday) it proved useless, and a piece flew off one of the blades and injured my wife's pedigree dog. As a consequence she will not be able to use this dog for commercial breeding purposes this season.

3. When I complained about these matters to Mr Stevenson this morning, and asked for my deposit back, he said that since I had signed a credit sale agreement with your Finance Division to pay in twelve monthly instalments, it was not possible to cancel, although he was willing to have the machine repaired.

If I do not hear from you by return of post with a refund of my £20 deposit and an undertaking to compensate myself and my wife for the damage and inconvenience you have caused, I shall take legal action.

Yours faithfully,

James Parrott

James Parrott

JSE Internal memorandum

To: Assistant
From: Sales Manager
Date: 4th June 1987

Two urgent problems: I want your report on my desk by 1.00 pm. today.

1. Mrs. Williams: See her letter of 2nd June 1987 and copy of our letter of 2nd February 1987 (A and B attached).

Are we liable? Can she cancel? Can we do anything about her cheque?

2. Mr. Parrott: See his letter of 3rd June 1987 (C attached).

Stevenson is over-enthusiastic (we have had trouble from him before). He has been specifically instructed not to make extravagant claims for the E750, which is not suitable for rough ground. He has also been told not to mount one-man promotions and cut prices without authority. Can we get out of liability to Parrott? What is the position?

B. P.

12. Kidditoys

Albert Webster runs an import and wholesale business through a company called Kidditoys Ltd. The company specialises in children's toys and games at the lower end of the market, and of course Christmas is always a busy and profitable time of the year. Things sometimes go wrong, however, and last Christmas Albert had a problem. He had ordered a consignment of 1000 teddy bears from Glenwood Toys, a manufacturer in Coleraine, Northern Ireland. The teddy bears were priced at £3.00 each, and delivery was scheduled for 10 November. Glenwood knew that Albert was buying for the Christmas trade, and he had made it absolutely clear in the negotiations that 10 November was the last date on which he was prepared to accept delivery. He collected orders from retailers for the whole consignment at £5.00 each: but on 10 November no lorry arrived from Coleraine. Memos began to fly backwards and forwards between Albert and his assistant, Les Duncombe, as things developed over the next two weeks: the relevant ones appear as Documents A to E.

Suggested activities

As Les Duncombe:

(a) **WRITE A REPORT** for Albert Webster setting out the legal position of the company as you see it, with respect to (i) Glenwood Toys, (ii) the retailers whom Kidditoys Ltd cannot now supply.

(b) **MAKE A PRESENTATION** to the board of directors of Kidditoys Ltd explaining the legal principles on which the courts will award damages for breach of contract involving non-delivery of goods.

KIDDITOYS LTD

INTERNAL MEMO

From: AW
To: LD
Date: 10th November
Subject: Bears

I've spoken to Kiernan at Glenwood. He grovelled, but couldn't say when he can get the bears to us: apparently they've had some technical hitch on the production line which produced a whole defective batch - they would be ours, of course! Get moving and see what you can find for me - we've orders worth £5000 hanging on this.

KIDDITOYS LTD

INTERNAL MEMO

From: LD
To: AW
Date: 10th November
Subject: Bears

I've spent the whole afternoon on the phone. The best we can do is Willingtons: they can do us the full 1000 by end of the month; but at £4.50 each.

All the rest either can't do enough or are charging even more; most of them don't want to know at all. What do you want me to do?

KIDDITOYS LTD

INTERNAL MEMO

From: AW
To: LD
Date: 11th November
Subject: Bears

Stall Willingtons and keep trying:

I'll work on Kiernan. Keep me posted.

What about foreign suppliers?

KIDDITOYS LTD

INTERNAL MEMO

From: LD
To: AW
Date: 17th November
Subject: Bears

Still no joy - I've tried every manufacturer in the country, I think, and most of the importers too. I did get wind of two other possibilities today and will try this afternoon and let you know.

(3.45 pm) - That Chinese fellow you met from Cheung and Sons says he can do 700 for us, and undercut Glenwood - he's got a consignment of toys due in at Southampton from Taiwan on Saturday, including teddies at £2.50 which should be as good as the Glenwood ones. Shall I order?

KIDDITOYS LTD

INTERNAL MEMO

From: AW
To: LD
Date: 18th November
Subject: Bears

Yes, order from Cheungs. Kiernan has just rung to say their lorry has left, but I told him to get lost - he's too late. He's let us down and we're going Chinese this year.

Get on to Brisley at the solicitors and find out how much we can do Glenwood for.

13. Merritons

Merritons is a large national department store chain. Recently the management have launched a charge card, which they are promoting heavily. A standard letter (Document A) has been designed by the Exeter manager to follow up potential customers for the new card, but the local Trading Standards Officer has received a complaint from a Merritons customer about it (Document B), and has sent the store manager a copy for comment. The store manager has asked head office for advice.

Suggested activities

(a) As assistant to the General Manager in the head office of Merritons, **DRAFT A CIRCULAR** to go to all store managers, advising them on their legal position with respect to promotion (especially by direct mail advertising) of the 'Merricharge' card.

(b) **HOLD A SALES PROMOTION CONFERENCE** at Merritons head office to agree a campaign promoting the 'Merricharge' card which will not give rise to any legal problems.

Merritons

Poundbury Street Exeter EX1 2QF

Mrs N. B. Trestrail
13 Wansford Road
Topsham

21st March 1986

Dear Mrs Trestrail,

YOUR SPENDING POWER AT MERRITONS HAS BEEN INCREASED TO **£750**!

Thank you for shopping recently at Merritons. I hope you were satisfied with your visit. I notice, however, that you paid by cheque. Did you know that there is an even more convenient way to shop with us? It's our own **"Merricharge"** card. You'll find full details of the many benefits of **"Merricharge"**, and exactly how it works, in the enclosed leaflet. Just some of the advantages are:

* Additional spending power at Merritons
* Ease and convenience - no cash needed, just sign
* No deposit needed
* Easy payments which you can extend if you wish (see leaflet)
* Sale previews and other privileges
* A welcome at 59 Merritons stores all over Britain.

Because Merritons already know you and value your custom, I HAVE ARRANGED FOR A **"MERRICHARGE"** CARD TO BE PREPARED IN YOUR NAME, GIVING YOU AN EXTRA £750 SPENDING POWER AT MERRITONS NOW! All you have to do is sign and date the form at the foot of this letter and post it to me today in the prepaid envelope provided. YOUR EXTRA SPENDING POWER IS GUARANTEED, so you will receive your **"MERRICHARGE"** card within a week.

I look forward to seeing you again soon at our Exeter store.

Yours sincerely,

E R Marshall

for F T Greenham
Store Manager

PS Your **"MERRICHARGE"** card is guaranteed, so post the form today!

.....

MERRITONS
CHARGE ACCOUNT ACCEPTANCE

Your spending limit: £750

I wish to open a charge account at Merritons with £750 spending power. Please send my card immediately. I am over 18.

Mrs N B Trestrail
13 Wansford Road
Topsham

Date:.....

Signature:.....

13 Wansford Road
Topsham

Dear Sir,

I enclose a letter which I have received, entirely unsolicited, from Merritons store in Exeter. I object strongly to such attempts to persuade people, by high pressure sales techniques, to spend money they have not got on things they do not want.

Surely there is a law against it? If not, there certainly should be. Please take immediate action to make sure that this does not happen again.

Yours faithfully,

Norah B Trestrail

Norah B Trestrail (Mrs)

The Trading Standards Officer
Bleak House
22-26 Hardy Street
Exeter

14. Osgood Finance

Norman Dransfield is a welder employed by Bastable Metals Ltd, a firm in Cardiff making metal shelving, display units and window frames for the commercial market. The company has been doing quite well, and Norman has for the last three years earned regular overtime. Anxious to do well by his wife Pauline and their two young children, Norman has been taking advantage of his fatter pay packets to improve the amenities of their home. The centrepiece of the improvement programme is something Pauline has been wanting for years: a new, fully fitted kitchen. Norman bought the units and fitted them himself over a period of several months. As each stage was completed, the appropriate equipment was installed: first a new split-level, fan-assisted cooker (£400), then a washing machine (£320), then a new fridge (£250). Even working all the overtime he could get, Norman's budget could not cover all this, so he turned to Osgood Finance Ltd, a local finance company with a reputation for not checking too rigorously on the financial soundness of its customers, and for not being very sympathetic when they get into difficulties.

Norman has now got into difficulties. Last week his pay packet contained a bombshell from the managing director (Document A), as a result of which he wrote a letter to Osgood Finance (Document B). The situation with respect to the three items of kitchen equipment, all of which Norman has taken on hire purchase from Osgood Finance under the terms of their standard form contract (Document C) is as follows:

Item	*Total HP price*	*Total paid to date*
Cooker	£630	£182.72
Washing machine	£505	£183.37
Fridge	£375	£100.00

Suggested activities

(a) As assistant in the head office of Osgood Finance Ltd, **WRITE A REPORT** for the Credit Manager explaining the legal position with respect to Norman Dransfield's three contracts.

(b) Assuming that Osgood Finance want to repossess the goods and/or claim compensation, and that Norman Dransfield wants to keep the goods and pay as little as possible, **PREPARE AND ARGUE THE CASES** of the two sides in a hearing before the lecturer acting as judge.

Bastable Metals Ltd

Handford Works St Stephens Way
Cardiff CF12 5TT
Telephone (0222) 80887

From the Managing Director to all staff

I am sorry to have to tell you all that the company is experiencing some difficulties as the result of the cancellation of a large shelving contract with the Ministry of Defence, and the lack of new orders in the last few weeks.

This means that production will have to be severely cut back from next week, and in order to prevent possible lay-offs the board has instructed me to cut out all overtime until further notice. The management is of course actively working to secure further orders and thus the future of the company, in which we all have great confidence.

I am sure that we can rely on all of you to understand the position and support us through this difficult time.

George Bicknell

George Bicknell
Managing Director

Regd in England No. 3844673 VAT Reg No 322 5128 23

92 Islwyn Road
Cardiff
CF9 3ER

To Osgood Finance Ltd

Dear Sirs,

My firm has just told me and all the other workers that there will be no more overtime until further notice. Under the circumstances I do not see how I can continue with the payments due on our fridge and washing machine, though I hope to be able to continue with the cooker.

This months payments are due at the end of this week, totalling £52·01, but I can only afford £30 at the moment.

Hoping you will treat my case sympathetically,

Yours faithfully,

N. Dransfield

N. DRANSFIELD

OSGOOD FINANCE LIMITED

HIRE PURCHASE AGREEMENT

This Hire Purchase Agreement is made between Osgood Finance Limited of Osgood House, Llanandras Rd, Cardiff, CF3 4HL (hereinafter called "the Owner") and the the Hirer named overleaf whereby the Owner agrees to let and the Hirer agrees to hire the goods specified in the schedule overleaf (hereinafter called "the goods" which expression shall also include any accessories replacements renewals or additions thereto) for the period stated in the said schedule and on the terms set out below.

1. The hiring shall commence on the date the agreement is signed on behalf of the Owner such date being regarded as the date of this agreement. The Hirer shall thereupon pay to the Owner the first payment specified in the schedule overleaf in consideration of the option to purchase granted by Clause 3 hereof, and thereafter shall pay the rentals set out in the said schedule so long as the hiring shall continue, such payments to be made to the Owner at Osgood House, Llanandras Road, Cardiff, CF3 4HL. In default of punctual payment (but without prejudice to the Owner's rights hereunder) the Hirer shall on demand pay interest on any overdue rentals or other payments at the rate of 22 per cent. per annum.

2. The Hirer shall

(a) keep the goods in good order repair and condition and be responsible for all risks of whatsoever kind fire included. Any repairs that are required shall be carried out at the Hirer's expense provided that the Hirer shall have no authority to pledge the Owner's credit for the repair of the goods

(b) pay any licence duties fees insurance premiums and registration charges payable in respect of the goods and if any such shall be paid by the Owner (the Owner being hereby authorised to pay the same on behalf of the Hirer) the Hirer shall repay the same to the Owner forthwith

(c) neither use nor permit the goods to be used for any purpose for which they are not designed or reasonably suitable nor use or permit them to be used in contravention of any statute or statutory regulations for the time being in force, nor do nor allow to be done anything which will tend prejudicially to affect the ownership of the Owner

(d) allow the Owner or its representative at all times to have access to the goods to inspect the condition thereof

(e) repay to the Owner on demand all expenses incurred in ascertaining the whereabouts of the Hirer or the goods or in recovering or endeavouring to recover possession of the goods from the Hirer or any other person

(f) on demand from the Owner or its representative produce for inspection records relating to the payment of rent of any premises at which the goods may be housed or sheltered

(g) forthwith (unless otherwise agreed in writing by the Owner) insure the goods and during the currency of this agreement keep them insured in their full replacement value against all insurable risks and without any excess or restrictions (unless otherwise agreed by the Owner) under a policy issued by an insurer approved by the Owner such approval not to be unreasonably withheld and notify the insurer of the interest of the Owner in the goods and produce such policy to the Owner upon demand. The Hirer shall forthwith notify the Owner of any occurrence which shall or may give rise to a claim under such policy of insurance and shall not agree the settlement of any such claim without the concurrence of the Owner. Any moneys received by the Hirer under any such insurance shall be applied by the Hirer in making good any damage to the goods.

3. If the Hirer shall duly make the said payments and observe and perform all the terms and conditions on his part herein contained he shall thereupon have the option of purchasing the goods for the sum of three pounds.

4. If the Hirer shall

(a) default in punctually paying the first

payment or any of the rentals
or

(b) commit any act of bankruptcy or have a receiving order made against him or if a trustee shall be appointed on any portion of his estate or effects, or if he shall convene any meeting of creditors or make a deed of assignment or arrangement or compound with his creditors or have any execution or distress levied or allow the goods to be seized under any distress execution or other process
or

(c) fail to observe and perform any of the terms and conditions on his part herein contained
or

(d) do any act or thing which in the Owner's opinion may prejudice or jeopardise its rights of ownership of the goods

then it shall be lawful for the Owner (but without prejudice to any other rights it may have hereunder) either to put an end to the hiring immediately or alternatively forthwith to determine this agreement and thereupon any consent by the Owner to possession of the goods by the Hirer shall forthwith cease. A demand by the Owner for the return of the goods or a notice by it terminating this agreement or the hiring hereunder shall be sufficiently made if left at or sent by prepaid post addressed to the Hirer's last known address.

5. In addition to his rights under the statutory notice overleaf (which shall be deemed to be part of this agreement) the Hirer may at any time determine the hiring by returning the goods to the Owner at his own cost.

6. In the event of the hiring being terminated then the Owner may with the consent of the Hirer or without such consent if one-third of the hire-purchase price has not been paid, retake possession of the goods.

7. Should the hiring be terminated by the Hirer or the Owner, then the Hirer shall remain liable to pay to the Owner

(i) all arrears of rental

(ii) such further sum by way of agreed compensation as will bring the total of the sums due to seventy-five per cent of the total hire purchase price

(iii) any sum payable by the Hirer under the provisions of clauses 2(b) and 2(e) hereof.

8. The Owner does not let the goods subject to any condition or warranty, express or implied, other than the condition and warranties implied by Section 8 of the Supply of Goods (Implied Terms) Act 1973 and (if the Hirer "deals as consumer" as defined by Section 12 of the Unfair Contract Terms Act 1977) the conditions implied by Sections 9 to 11.

This clause does not affect the statutory rights of a consumer.

15. Pentangle

Priscilla is the proprietor of 'Pentangle', a West Country shop specialising in souvenirs, charms and occult books. She has a long-standing business relationship with a number of suppliers, including Cornish Piskies Ltd, a manufacturer of charms and souvenirs, and Huxtable and Morris Ltd, publishers.

Until recently, Priscilla employed Alison as her assistant and shop manager. Priscilla looked after the finances and made the policy decisions, but left all the detail of running the business to Alison. They got on well together, and the shop flourished. However, two months ago, when Priscilla was doing the accounts, she noticed apparent discrepancies in recent invoices from Cornish Piskies Ltd. When she asked about them, Alison became evasive and tried to distract Priscilla from her line of questioning. Suspicious, Priscilla telephoned Cornish Piskies Ltd, and it eventually emerged that one of their directors, unknown to the others, had agreed with Alison to overcharge Pentangle by 15% and divide the surplus with her: Alison in return placed extra unnecessary orders on behalf of the shop. This had been going on for some months. As soon as she discovered what had happened, Priscilla wrote and personally handed to Alison a letter dismissing her (Document A); Alison lost her temper, accusing Priscilla of being an (expletive deleted) selfish, stuck-up female dog who had exploited, underpaid and generally made use of her. She (Alison) would be delighted to leave as soon as possible, and would forthwith ask Megan Brearley, a hated rival of Priscilla, to cast a spell on Priscilla and the business. An hour later, having collected her things and made two telephone calls, Alison swept out.

Ten days later, a van driver delivered several huge parcels to the shop, together with brown envelopes containing Documents B and C. Priscilla has never heard of A. C. Laxton. The following day, the postman delivered Document D.

Suggested activities

(a) As Priscilla, **WRITE A SUMMARY** setting out your view of your rights and liabilities with respect to:
   (i) Cornish Piskies Ltd
   (ii) Huxtable and Morris Ltd
   (iii) A. C. Laxton
   (iv) Alison Heddle.

   Use your summary to **WRITE LETTERS** to the three suppliers and to Messrs Henning and Weaver, dealing with the points raised by the documents.

(b) Divide into small groups. Each group represents one of the five parties, i.e. Priscilla, Alison and the three suppliers. **PREPARE AND ARGUE YOUR CASES** in small claims actions before the lecturer or other arbitrator.

PENTANGLE
32 High Street
Broad Whinny
Devon

24 April 1987

Ms Alison Heddle

Alison -

When you were unwilling to explain the apparently incorrect price on the Cornish Piskie invoices, I contacted the company. As a result of their and my enquiries, it appears that you and their Mr Hallam have colluded to overcharge me and divide the surplus between you.

I am shocked and upset at this dishonesty, which has quite destroyed the trust I have placed in you. I have no alternative but to ask you to leave my employment, and this letter is my formal notice to you of immediate dismissal.

Priscilla Foulds

Priscilla Foulds

HUXTABLE & MORRIS LTD 49 HEAD STREET
ARMBOURNE
DERBYSHIRE
S16 5JJ

Tel: Armbourne 5433

DELIVERY NOTE AND INVOICE

Our ref: 94/4338
Your ref: Phone 24.4 - Miss Heddle

TO: Pentangle
32 High Street
Broad Whinny
Devon

DATE: 4 May 1987

Code	Qty	AUTHOR, Title	ISBN	Price	Total
				£	£
6D33	50	BREARLEY "I was a Test Pilot in a Broom Factory"	0626 399 486X	12.95	647.50
			INVOICE TOTAL:		£647.50

Terms: 28 days

VAT Reg. No. 675 2311 56

A. C. LAXTON

Souvenir Manufacturers
The Old Mill, Tresoddit, Cornwall
Telephone Tresoddit 3278

Our ref: JC/4/MLR
Your ref: Telephoned, 24 April
(Miss Heddle)

INVOICE

Quantity	Item	Price	Total
200	Lucky Pig	2.50	£500.00
200	Rude Gnome	£3.50	£700.00
		Subtotal :	£1200.00
		VAT @ 15%:	£ 180.00
		Total :	£1380.00

Terms net 30 days VAT Reg. No. 598 5196 62

HENNING and WEAVER

Solicitors J.G. Weaver L.S. Higden
16 Broad Street Marlbury Dorset
Telephone Marlbury 5935

Your ref:
Our ref: SKW/1432/Hed

5th May 1987

Dear Madam,

We are instructed by our client, Miss Alison Heddle, that she has been employed by you since 1st April 1981 as manageress of your shop, "Pentangle", at 32 High Street, Broad Whinny, Devon, from which post you summarily dismissed her on 24th April last.

Our client claims that this dismissal was unfair, and amounts to a breach of her contract with you, and we are further instructed that unless we receive from you by 31st May 1987 satisfactory proposals for Miss Heddle's reinstatement and/or compensation, we are to commmence legal proceedings against you in the County Court.

Yours faithfully,

Henning and Weaver

Miss Priscilla Foulds
"Pentangle"
32 High Street
Broad Whinny
Devon

16. Trendmaker

Stuart Simmons, an ambitious, forceful and articulate young man, was a successful salesman with a fast growing company in the home improvement business. The directors, impressed with his performance, promoted him to an executive position in the sales department at a generous salary. To celebrate his promotion, he and his equally ambitious wife, Nadine, bought a house on a smart new estate in Brighton. A particularly attractive feature of the new house was the garden, which had, as well as the usual shrubs and flowerbeds, two or three mature trees, a capacious garden shed, and a small stream separating it on one side from the garden next door. Stuart and Nadine set about furnishing and redecorating their new home with enthusiasm. In the course of doing so, they visited the recently opened Brighton store of Trendmaker, a fashionable supplier of furniture and furnishing materials. Succeeding events unfolded in the manner revealed by the correspondence in Documents A to G.

Suggested activities

(a) As assistant in the head office of the Trendmaker Group in London, **WRITE A REPORT** advising the Brighton store manager on the legal position with regard to the goods ordered by the Simmonses; include in your report a **DRAFT LETTER** for the manager to send to Stuart Simmons in reply to Document G.

(b) **STAGE A MEETING** between the store manager, the sales staff who sold the goods, and Mr and Mrs Simmons.

"DOWNSVIEW"
14 DRAYTON CLOSE
BRIGHTON
BN16 7WW

Miss Wilkins
Furniture Department
Trendmaker
89 Folkestone Road
Brighton

3rd July 1987

Dear Miss Wilkins,

I am writing about the nest of tables which my wife and I saw and discussed with you yesterday, and which you said you would keep for us until the end of Monday.

We have decided that we would definitely like to have them, so this is to confirm our order. Please deliver them as soon as possible and charge to our account.

Yours sincerely,

Stuart Simmons

"DOWNSVIEW"
14 DRAYTON CLOSE
BRIGHTON
BN16 7WW

6th July 1987

The Manager
Carpets Department
Trendmaker
89 Folkestone Road
Brighton

Dear Sir,

When my husband and I visited your store on Saturday and looked at carpets, you advised carpet tiles for our hall, dining room and lounge. We have gone through the catalogues you gave us and measured the rooms as per the instructions in the catalogue. We would like to order 84 "Mandrake" grade A tiles in Forest Green. Please arrange for your fitter to come and lay them as soon as possible. I am in most days, but it would be best to ring before coming. Please charge the tiles and fitting to our account.

Yours faithfully,

Nadine Simmons (Mrs)

(Mrs) Nadine Simmons.

TRENDMAKER

89 FOLKESTONE ROAD BRIGHTON BN9 6QT Telephone: Brighton 804476

Mrs H Simmons
"Downsview"
14 Drayton Close
Brighton
BN16 7WW

10 July 1987

Dear Madam,

I am writing to confirm the arrangement made in our telephone conversation yesterday for our fitter to call at your house on Friday 17th July to fit the carpet tiles which you recently ordered, and which will be delivered to you on the previous day, Thursday 16th July, together with the nest of tables recently ordered by Mr Simmons.

When we spoke on the telephone you also asked me about loose covers for your two armchairs. We have just taken delivery of some covers of a new type from a well-known manufacturer, and I think you will find them ideal for your purpose. I have therefore arranged for two to be sent to you in the same delivery on seven days free trial, without obligation.

Assuring you of our best attention at all times,

Yours faithfully,

J.K. Galton

J K Galton
Manager

"DOWNSVIEW"
14 DRAYTON CLOSE
BRIGHTON
BN16 7WW

12th July 1987

Mr J K Galton
Manager
Carpets Department
Trendmaker
89 Folkestone Road
Brighton
BN9 6QT

Dear Sir,

Thank you for your letter of 10th July. Unfortunately, I shall not be in for most of next Thursday, when you say you will be delivering the carpet tiles, tables and chair covers. However, I will leave the garden shed open so that your driver can put the things in there. I hope that will be convenient.

Yours faithfully,

Nadine Simmons (Mrs)

(Mrs) Nadine Simmons.

TRENDMAKER

89 FOLKESTONE ROAD BRIGHTON BN9 6QT Telephone: Brighton 804476

Mrs N Simmons
"Downsview"
14 Drayton Close
Brighton
BN16 7WW

20 July 1987

Dear Madam,

I understand from our fitter that he was unable to lay the carpet tiles which we delivered to you last week because they, together with the nest of tables and chair covers which we delivered at the same time, had all been badly damaged as the result of the stream in your garden overflowing following Thursday night's cloudburst. I am sorry to hear of your misfortune, and await your further instructions.

Assuring you of our best attention at all times,

Yours faithfully,

J.K. Galton

J K Galton
Manager

TRENDMAKER

89 FOLKESTONE ROAD BRIGHTON BN9 6QT Telephone: Brighton 804476

In account with
Mr & Mrs S Simmons
"Downsview"
14 Drayton Close
Brighton
BN16 7WW

Account Number
5408977-6

Date
31 July 1987

STATEMENT

Date	Item	Credit £ p	Debit £ p	Balance £ p
010787	brought forward			308 97 DR
090787	Curtains		164 78	473 75 DR
140787	Cheque	200 00		273 75 DR
160787	Tables		225 00	498 75 DR
160787	Carpet tiles		294 00	792 75 DR
160787	Chaircovers		33 90	826 65 DR

In accordance with your agreement with us, a minimum payment of £41.00 is requested by 31 August 1987

"DOWNSVIEW"
14 DRAYTON CLOSE
BRIGHTON
BN16 7WW

The Manager
Carpets Department
Trendmaker
89 Folkestone Road
Brighton
BN9 6QT

1st August 1987

Dear Sir,

My wife and I were extremely upset to receive your statement of account today, in which you purport to charge us for the tables, carpet tiles and chair covers put in the shed by your delivery driver and damaged by flood water on the night of 16 July last. The driver should not have put the goods in the shed, and since the flood was clearly not our fault we are not liable and not prepared to pay for these items. Please delete them forthwith from our account.

Yours faithfully,

S Simmons

17. Wadsworths

Henry Wadsworth took over his father's tool shop in Keswick five years ago when the old man finally retired at the age of 78. It was a modest but quite prosperous little business, and Henry had ideas about expanding it. His father had never insured the business, saying that he did not expect any trouble, and was not prepared to pay premiums for nothing. Henry deplored what he saw as his father's ostrich-like attitude, and the first thing he did in his new role as proprietor was to take out a business policy with Protector Insurance, a well known and reputable company. The policy document began with two pages of general conditions (Document A), and continued with a detailed specification describing the business, its stock and premises. It named Henry Wadsworth as the insured. There followed separate sections dealing with different risks such as burglary, fire, breakage of windows and so on. The premium was a noticeable addition to Henry's overheads, but he felt a glow of virtue at having at last safeguarded the business against the consequences of his father's pig-headedness.

Two years ago, on the advice of his accountant, Henry incorporated the business as a limited company. The company was called Wadsworth and Son Ltd to please the old man, but everybody (including Henry and his father) continued to call the shop 'Wadsworths', and the old name stayed over the shop front. The company was part of a general plan to expand the business, which also involved an extension to the shop, and the addition to the stock of a range of painting and decorating materials which Henry and his father had not carried before. Henry's plans seemed to be developing well when disaster struck. One day recently his father, who still took an interest in the business which rather irritated Henry, who regarded it as interference, was sitting at the desk checking some invoices, and absentmindedly knocked out his pipe into the waste paper basket. A fragment of tobacco was still alight, and after a few minutes the paper in the waste basket began to smoulder. Nobody noticed, because it was closing time, and Henry and his father shut up shop and went home. It was some hours later that a passer-by saw smoke coming under the front door into the street and called the fire brigade; by then the fire had taken a strong hold in the office and storage area at the back where old Mr Wadsworth had been working, and had spread to the stock of paint and white spirit. The resulting inferno took the firemen over four hours to get under control, and by the time it was finally out, most of the stock had been destroyed and extensive damage done to the building.

When he had recovered from the immediate shock, Henry wrote at once to Protector Insurance and sent back by return of post the claim form which they sent him, claiming £117,500 for loss and damage to stock and premises. Apart from payment of the annual premiums, this was the first communication Protector Insurance had received from Wadsworths, since the insurance was first taken out five years ago.

Suggested activities

(a) As assistant in the office of Protector Insurance, **WRITE A REPORT** to the manager outlining the legal position of the company with respect to Wadsworths; include a **DRAFT LETTER** for the manager to send to Henry Wadsworth in reply to his claim.

(b) As public relations officer for Protector Insurance, and bearing in mind Henry Wadsworth's unfortunate experience, **MAKE A PRESENTATION** to the local Chamber of Commerce explaining the important legal points involved in insurance contracts which may affect them.

General Conditions

1 Identification

The policy, specification, appendices and schedules shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, specification, appendices or schedules shall bear the same meaning wherever it may appear.

2 Policy Voidable

This policy shall be voidable in the event of misrepresentation misdescription or non-disclosure in any material particular.

3 Alteration

This policy shall be avoided with respect to any part thereof in regard to which there be any alteration after the commencement of this insurance

(a) by removal or

(b) whereby the risk of loss or destruction or damage is increased or

(c) whereby the interest of the Insured ceases except by will or operation of law

unless such alteration be admitted by memorandum signed by or on behalf of the Corporation.

4 Warranties

Every warranty shall from the time that the warranty attaches apply and continue to be in force during the whole currency of this policy and non-compliance with any such warranty whether it increases the risk or not shall be a bar to any claim provided that whenever this policy is renewed a claim occurring during the renewal period shall not be barred by reason of a warranty not having been complied with at any time before the commencement of such period.

5 Claims Conditions

Action by the Insured

(a) On the happening of any loss or destruction or damage or any accident or bodily injury which may give rise to a claim the Insured shall give immediate notice thereof in writing to the Corporation

(b) In respect of loss or destruction or damage caused by malicious persons or by burglary it is a condition precedent to any claim that immediate notice of the loss or destruction or damage shall have been given by the Insured to the Police authority

(c) The Insured shall within 30 days after such loss destruction or damage accident or bodily injury (7 days in the case of loss destruction or damage caused by riot civil commotion strikers locked out workers or persons taking part in labour disturbances or malicious persons) or such further time as the Corporation may in writing allow at the expense of the Insured deliver to the Corporation a claim in writing containing as particular an account as may be reasonably practicable of the accident bodily injury or any articles or portions of property lost destroyed or damaged and of the amount of damage thereto together with details of any other insurances on any property hereby insured. The Insured shall also give to the Corporation all such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition have been complied with

(d) The Insured shall send to the Corporation immediately on receipt any writ summons or other legal process issued or commenced against the Insured

(e) The Insured shall not negotiate, pay, settle, admit or repudiate any claim without the written consent of the Corporation

6 Fraud

If any claim made by the Insured or anyone acting on behalf of the Insured to obtain any policy benefit shall be fraudulent or intentionally exaggerated or if any false declaration or statement shall be made in support thereof no compensation shall be payable hereunder.

7 Reinstatement

If the Corporation elects or becomes bound to reinstate or replace any property the Insured shall at the expense of the Insured produce and give to the Corporation all such plans documents books and information as the Corporation may reasonably require. The Corporation shall not be bound to reinstate exactly or completely but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend in respect of any one item of the items insured more than the sum insured thereon.

8 Average

Wherever a sum insured is said to be Subject to Average if at the time of any loss or destruction or damage, such sum insured on any item/column of the property insured is less than the total value of such property, the Insured shall be considered as being his own Insurer for the difference and shall bear a rateable share of the loss accordingly.

9 Contribution

If at the time of the happening of any loss or destruction or damage or liability covered by this policy there shall be in existence any other insurance of any nature providing indemnity to the Insured for such loss or destruction or damage or liability whether effected by the Insured or not then the liability of the Corporation shall be limited to its rateable proportion thereof

If any such other insurance shall be subject to any condition of average this policy if not already subject to any condition of average shall be subject to average in like manner. If any other insurance effected by or on behalf of the Insured is expressed to cover any of the property hereby insured but is subject to any provision whereby it is excluded from ranking concurrently with this policy either in whole or in part or from contributing rateably to the loss or destruction or damage the liability of the Corporation hereunder shall be limited to such proportion of the loss or destruction or damage as the sum hereby insured bears to the value of the property.

10 Rights of the Corporation

On the happening of any loss or destruction of or damage in respect of which a claim is or may be made under this policy the Corporation and every person authorised by the Corporation may without thereby incurring any liability and without diminishing the right of the Corporation to rely upon any conditions of this policy enter take or keep possession of the building or premises where the loss destruction or damage has happened and may take possession of or require to be delivered to them any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the Insured to the Corporation so to do. If the Insured or anyone acting on behalf of the Insured shall not comply with the requirements of the Corporation or shall hinder or obstruct the Corporation in doing any of the above-mentioned acts then all benefit under this policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Corporation whether taken possession of by the Corporation or not.

(Continued)

11 Subrogation

Any claimant under this policy shall at the request and at the expense of the Corporation do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Corporation for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Corporation shall be or would become entitled or subrogated upon its paying for or making good any loss or destruction or damage accident or injury under this policy whether such acts and things shall be or become necessary or required before or after indemnification by the Corporation.

12 Discharge of Liability

The Corporation may at any time pay the Limit of Indemnity or the sum insured (after the deduction of any sum already paid) or any less amount for which a claim can be settled and shall be under no further liability except for the payment of costs and expenses incurred prior to the date of payment.

13 Arbitration

If any difference should arise as to the amount to be paid under this policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with statutory provisions. Where any difference is by this condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Corporation.

14 Statutory requirements, maintenance and reasonable precautions

The Insured shall

(a) maintain the Premises, Machinery, plant and equipment in a satisfactory state of repair

(b) take all reasonable precautions for the safety of the property insured

(c) take all reasonable precautions to prevent loss or destruction or damage accident or bodily injury

(d) comply with all statutory requirements and other safety regulations imposed by any authority

(e) keep books with a complete record of purchases and sales

15 Cancellation

The Corporation may at any time by giving thirty days notice in writing to the Insured at his last known address terminate this policy as from the expiration of such thirty days provided the Corporation shall in that event return to the Insured a proportionate part of the premium for the unexpired time of the policy.

General Exceptions

1 This policy does not cover death or disablement, loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

(b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

(c) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power (except so far as may be necessary to meet the requirements of the Road Traffic Acts).

2 This policy does not cover loss, destruction or damage directly caused by

(a) in Northern Ireland

(i) civil commotion

(ii) any unlawful, wanton or malicious act committed maliciously by a person or persons acting on behalf of or in connection with any unlawful association

Note

'Unlawful association' means any organisation which is engaged in terrorism and includes an organisation which at any relevant time is a proscribed organisation within the meaning of the Northern Ireland (Emergency Provisions) Act 1973. 'Terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.

In any action, suit or other proceedings where the Corporation alleges that by reason of the provisions of this exception any loss, destruction or damage is not covered by this Policy the burden of proving that such loss, destruction or damage is covered shall be upon the Insured.

This overriding exclusion applies to Schedules 1,3,10 and 11 of this policy and to any extensions thereof, whether such extensions be issued before or after this overriding exclusion except only if an extension be issued hereafter which expressly cancels this overriding exclusion.

(b) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

3 This policy does not cover

(a) money credit cards securities of any description jewellery precious stones precious metals bullion bonds furs curiosities rare books or works of art

(b) goods held in trust or on commission documents manuscripts business books computer systems records explosives or video tapes or cassettes for sale or hire

(c) property in transit

unless specifically mentioned

Definitions

applying to all Schedules of this policy

Employee

(a) any person under a contract of service or apprenticeship with the Insured

(b) labour master and persons supplied by a labour master

(c) person employed by labour only sub contractors

(d) self employed person

(e) person hired to or borrowed by the Insured

(f) person undertaking study or work experience

(g) person supplied under any Youth Training or similar government scheme

while working for the Insured in connection with the Business

Money

Coin, bank and currency notes, postal and money orders, bankers' drafts, cheques, giro cheques, crossed warrants, bills of exchange, securities for money, postage, revenue, national insurance and holiday with pay stamps, stamped national insurance and holiday with pay cards, national savings certificates, war bonds, premium savings bonds, franking machine impressions, credit company sales vouchers, luncheon vouchers, trading stamps and VAT invoices.

18. Wendy's

Wendy Barnes ran a wholefood restaurant in Lancaster, called 'Wendy's'. The cooking was good, the decor lively, the service efficient and friendly: the business prospered. Wendy asked her friend Jennifer Langdon to join her as a partner: partly to cope with the increased trade, partly with the aim of expanding the business to include outside catering. Together, the partners bought the freehold of the restaurant premises and insured it with Protector Insurance plc. This is the same company as that used by Henry Wadsworth, and the policy is subject to the same general conditions as his (see the preceding case study 'Wadsworths', Document A). The details of the insurance of 'Wendy's' are set out in the specification (Document A), Schedule 1A (Fire and special perils — Document B), and three other schedules, not included here, covering burglary, employers' liability, and public and product liability.

On 15 April 1988, David and Jean Prentice and their small son Barry, age four, had just finished lunch in the restaurant, and were standing on the pavement outside, when Barry slipped his mother's hand and ran into the road after a feather drifting in the wind. James Reade was driving his car past at that moment and, swerving in an attempt to avoid the child, lost control. The car mounted the pavement and crashed into the front of the restaurant. Mercifully, no-one was badly hurt, but the damage to the restaurant was considerable, and it has had to be closed for several weeks until repairs estimated at £6,000 are completed. It has been established that Reade's comprehensive motor insurance covers him against liability for damage to persons or property, and that the restaurant premises are currently valued at £55,000. Barnes and Langdon have submitted a claim to Protector Insurance.

Suggested activities

(a) As assistant to William Ladgrove, claims manager for Protector Insurance, **WRITE A REPORT** setting out the basis on which the claim by the restaurant owners should be dealt with.

(b) **HOLD A MEETING** between Wendy Barnes, Jennifer Langdon, Mr and Mrs Prentice, Mr Ladgrove and his assistant, James Reade and his insurers to discuss the situation.

Small Business Insurance — Specification

Branch Lancaster
Br/Ag Code LDB

Policy No BUS/1492802
Agency Lune & Derwent BS

Date of Proposal 12 May 1985

Renewable 20 May

First Premium £352.00

Annual Premium £352.00

The Insured Wendy Marie Barnes and Jennifer Rachel Langdon (hereinafter called 'The Insured')

Address 42 Bennett Street, Lancaster (hereinafter called 'The Premises')

Business "Wendy's" Restaurant - Catering (hereinafter called 'The Business')

Period of Insurance From 21 May 1987 until midnight on the 20 May 1988

Special Endorsements:

The following pages of this specification should be read in conjunction with the appropriately numbered schedule.

Small Business Insurance — Specification *(continued)* **CB**

Schedule 1A Property Damage **Fire and Special Perils**

Contingencies applicable — 1-2-3-5-9-10-11-12-13

Situation A Restaurant

Situation B Kitchen and Store

Situation C x

The plan references (if any) refer to plans lodged with the Corporation		**Situation A**	**Situation B**	**Situation C**
Item No.	Property Insured	Sum Insured	Sum Insured	Sum Insured
	***Note:** Each item excludes property which is more specifically described in any other item and each item excludes property more specifically insured*	£	£	£
1	Building including landlords fixtures and fittings therein and thereon including small outside buildings, extensions and annexes adjoining or communicating with the building to which the item relates	40,000		nil
2	Machinery, plant and All Other Contents therein and thereon the property of the Insured or held by them in trust for which they are responsible	5,000	10,000	nil
3	Stock and materials in trade the property of the Insured or held by them in trust or on commission for which they are responsible	500	1,200	nil
4	Stock in Trade consisting of tobacco, cigars and cigarettes	400	nil	nil
5	Stock in Trade consisting of wines and spirits	nil	1,000	nil
6	Stock in Trade consisting of radio, television, audio and video equipment	nil	nil	nil
7	Stock in Trade consisting of video tapes and cassettes	nil	nil	nil
8	Tenants improvements and decorations the property of the Insured or for which they are responsible.	nil	nil	nil
	TOTAL	£45,900	£12,200	nil

The sum insured under each item (other than those applying solely to fees, rent, removal of debris or private dwellinghouses) is subject to average — see General Condition 8

Total Schedule Sum Insured **£** 58,100

All items subject to average

Fire and Special Perils

Any of the contingencies listed below and stated as applicable in the Specification.

Contingencies

Destruction of or damage to the property described in the Specification by

1 Fire (whether resulting from explosion or otherwise) not occasioned by or happening through
   (a) its own spontaneous fermentation or heating or its undergoing any process involving the application of heat:
   (b) earthquake, riot or civil commotion or subterranean fire

2 Lightning

3 Explosion not occasioned by or happening through any of the contingencies specified in 1(b) above
   (a) Of boilers used for domestic purposes only:
   (b) In a building not being part of any gas works, of gas used for domestic purposes or used for lighting or heating the building:

Destruction of or damage (by fire or otherwise) to the property described in the specification directly caused by

4 Explosion but excluding
   (a) destruction or damage (other than destruction or damage by fire resulting from explosion) occasioned by the bursting of a boiler (not being a boiler used for domestic purposes only), economiser or other vessel, machine or apparatus in which internal pressure is due to steam only and belonging to or under the control of the Insured.
   (b) damage to or destruction of vessels, machinery or apparatus or their contents resulting from the explosion thereof.

   For the purpose of this Contingency
      (i) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds shall not be deemed explosion
      (ii) Destruction or damage directly caused by riot or civil commotion is excluded

5 Aircraft and other aerial devices or articles dropped therefrom excluding destruction or damage occasioned by pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

6 Earthquake

7 Riot civil commotion strikers locked-out workers or persons taking part in labour disturbances or malicious persons acting on behalf of or in connection with any political organisation excluding
   (a) loss or damage occasioned by or happening through confiscation or destruction or requisition by order of the Government or any Public Authority
   (b) loss or damage resulting from cessation of work

8 Riot, civil commotion, strikers, locked-out workers or persons taking part in labour disturbances or malicious persons excluding
   (a) loss or damage occasioned by or happening through confiscation or destruction or requisition by order of the Government or any Public Authority
   (b) loss or damage resulting from cessation of work

   and excluding as regards destruction or damage (other than by fire or explosion) directly caused by malicious persons not acting on behalf of or in connection with any Political Organisation:
      (i) destruction or damage by Theft and
      (ii) the first £100 of each and every loss as ascertained after the application of the Condition of Average.

Destruction of or damage (other than by fire) to the property described in the Specification directly caused by

9 Storm and tempest but excluding
   (a) Destruction or damage by:
      (i) the escape of water from the normal confines of any natural or artificial water course (other than water tanks, apparatus or pipes) or lake, reservoir, canal or dam,
      (ii) inundation from the sea

      whether resulting from storm or tempest or otherwise,
   (b) destruction or damage by frost, subsidence or landslip,
   (c) destruction of or damage to fences, gates and moveable property in the open.
   (d) the first £100 of each and every loss as ascertained after the application of the Condition of Average.

10 Flood but excluding
   (a) destruction or damage by bursting or overflowing of water tanks, apparatus or pipes,
   (b) destruction or damage by frost, subsidence or landslip,
   (c) destruction of or damage to fences and gates,
   (d) the first £100 of each and every loss as ascertained after the application of the Condition of Average.

11 Bursting or overflowing of water tanks, apparatus or pipes but excluding
   (a) destruction or damage whilst the premises are empty or disused
   (b) destruction or damage by water discharged or leaking from an installation of automatic sprinklers in the premises insured
   (c) the first £100 of each and every loss as ascertained after the application of the Condition of Average.

12 Impact by any road vehicle or animal not belonging to or under the control of the Insured or any member of his family or employees.

13 Impact by any road vehicle or animal but excluding the first £100 of each and every loss as ascertained after the application of the Condition of Average in respect of destruction or damage caused by any road vehicle or animal belonging to or under the control of the Insured or any member of his family or employees.

EXCEPTIONS TO SCHEDULE 1A

1 Destruction of or damage to property which at the time of the happening of such destruction or damage is insured by, or would but for the existence of this Schedule be insured by any marine policy, or policies, except in respect of any excess beyond the amount which would have been payable under the marine policy or policies had this insurance not been effected

2 Consequential loss or damage of any kind or description except loss of rent when included in the cover under the Schedule

Continued overleaf

3 *Destruction of or damage to any dynamo, motor or other portion of electrical installation or appliance caused by self-ignition*

4 *Destruction or damage by explosion whether the explosion be occasioned by fire or otherwise except as stated*

SCHEDULE MEMORANDA

1 **Corporation's liability**

The liability of the Corporation in respect of any one loss or in the aggregate in any one period of insurance shall in no case exceed in respect of each item the sum expressed in the specification to be insured thereon or in the whole the total sum insured or such other sum or sums as may be substituted thereof by memorandum hereon or attached hereto signed by or on behalf of the Corporation.

2. **Construction and Heating of Buildings**

Unless otherwise stated the buildings are constructed of brick, stone or concrete and roofed with slates, tiles, concrete, metal or asbestos cement sheeting and are not artificially heated otherwise than by low pressure hot water or steam (the boiler being outside or in a separate compartment of brick or concrete), oil fired space heaters fed from a fuel tank in the open overhead gas or electric appliances or by gas or electric fires in offices only.

3 **Transfer of Interest**

If at the time of destruction of or damage to any building hereby insured the Insured shall have contracted to sell the interest of the Insured in such building and the purchase shall not have been but shall be thereafter completed the purchaser on the completion of the purchase if and so far as the property is not otherwise insured by or on behalf of the purchaser against such destruction of or damage shall be entitled to the benefit of this Schedule so far as it relates to such destruction of or damage without prejudice to the rights and liabilities of the Insured or the Corporation under this Schedule up to the date of completion.

4 **Designation**

For the purpose of determining where necessary the item heading under which any property is insured, the Corporation agrees to accept the designation under which such property has been entered in the Insured's books.

19. Wundatools

Wundatools Ltd is an old established company with a factory in East Dorset where hand tools are manufactured. It seems to be having problems with one of its lines, judging by Documents A to E.

Suggested activities

(a) As his assistant, **WRITE A REPORT** in reply to the Sales Manager's memo (Document F), explaining the legal position and suggesting appropriate action.
(b) Members of the group assume the roles of the various parties and their legal advisers, and **PREPARE AND PRESENT THEIR CASES** in a hearing under the County Court small claims procedure before the lecturer or other arbitrator.

S.T. GUMBLE LTD

BUILDERS' MERCHANTS

79 South Street, Blankenham, Lincs.
telephone Blankenham 3522

Your Ref. G 118092
Our Ref. STG/EP

26th November 1987

The Sales Manager
Wundatools Ltd
Wildey Avenue
Wallisdown
Dorset

Dear Sir,

I refer to your delivery note and invoice dated 9 October 1987 concerning a consignment of 50 hammers described in your documents as "Zonka type 3S medium weight steel hammers with ash shafts", and wish to say that we are not satisfied with your merchandise. We ordered in good faith on the strength of the sample and literature left with us by your representative last July. The consignment seems to match the sample well enough, but we have had several complaints from customers about broken shafts. We have stopped selling your hammers, and I have instructed our cashiers not to pay your invoice. I am aware that the invoice states that the goods are "warranted only equal to sample" but I do not think it is reasonable to expect my firm to carry out extensive tests before putting your product on sale. In any case, my shop manager tells me that he thinks that the hammer shafts are made of elm wood; if so, this would of course be quite unsuitable.

Yours faithfully,

ST Gumble

S T Gumble

Managing Director

Regd in England No. 3263715 VAT Reg. No. 522 2508 74
Directors: S.T.Gumble L.R.Gumble H.Nolan

harry's hardware

31 MARSH STREET HACKNEY LONDON E.9

27th November, 1987

Sir,

What sort of junk is this you are trying to lumber me with? Your rep sold me a load of Zonka 3S hammers, each one clearly labelled "Ash Shaft" - but they're not ash, Sunshine, they're elm, and they're shattering in pieces all over the East End, and my customers are rubbishing me from here to Walthamstow.

Don't expect any money,or any more orders. Expect a writ.

Harry Green

Harry Green
Proprietor

MANOR FARM
COACH HOUSE
Friars Cackle
Dorset

27th November 1987

Dear Sir,

I bought one of your "Zonka" hammers from your factory shop last week. I explained to your shop manager that I wished to straighten some of the ornamental widgets on a valuable 18th century commode which I had recently purchased. One would not normally consider using a hammer for this work, but your manager strongly recommended the "Zonka 3S" as being suitable, and (somewhat against my own better judgement) I was persuaded to buy one.

The hammer has proved quite unsuitable, possibly because (as I now discover) the wooden handle is cracked. Using it has resulted in two widgets being broken, which has considerably reduced the value of the commode.

I hold your firm liable for the damage, and am taking legal advice.

Yours faithfully,

J F Carruthers

J. F. Carruthers

Lt. Col. (Rtd)

7 Jubilee Cottages
Horsecrap Lane
Little Pidlington
Glos.

Dear Sir, I bought one of your hamers from a shop in Moreton last week to give to my George and it said on it Very Tough Suitable For All Kinds Of Work and the first time he used it the top come off right throw our new colour tely and my George was ever so upset and he says you must pay us for the tely and our money back.

yours truly

Mrs. Mavis Pringle

CAREFREE INSURANCE LTD

Nationwide Personal Cover

Your Ref.
Our Ref. SPS/OR/109/Claims

26 November 1987

Dear Sirs,

Our insured: Ivor Grouse

We are in receipt of a claim by the above in respect of injury sustained to his right eye as a result of impact by the head of one of your "Zonka 3S" hammers, the shaft of which broke while being used. It is not yet known exactly how extensive or permanent our insured's injuries are, and we would ask you at this stage merely to note our interest.

Yours faithfully,

S F Sploans

S F Sploans
District Manager

The Manager
Wundatools Ltd
Wildey Avenue
Wallisdown
Dorset

Lloyds Bank Chambers 66 High Street Grocklehampton Sussex
tel Grocklehampton 665371

INTERNAL MEMO

WUNDATOOLS LTD

FROM: **Sales Manager**

TO: **Assistant**

SUBJECT: **Hammers**

DATE: **30th November 1987**

There seems to be something wrong with our hammers. All these letters have come in during the last three days, and I have had several phone calls as well. Please advise urgently.

PART III

NOTES

Introduction to the Notes

As explained in the introduction to the book, these notes are not fully worked 'model answers', which would be inappropriate in a collection of materials designed to be used flexibly in a variety of ways and at different levels to suit the needs of different courses and groups of students. The aim of the notes is to outline the main legal points which seem to me to emerge from the case studies, in order to provide a general framework within which the studies can be used and discussed.

1. Amberlocks

1. General

Amber Davidson owes a duty of care to visitors and employees. If she breaks that duty, and thereby causes loss or injury, she has been negligent, and may be sued in tort in a personal action for unliquidated damages.

2. Visitors

The duty arises from the Occupier's Liability Act 1957, ss.1,2. It is to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there. Premises include any fixed or moveable structure.

Mrs Barrett and Mr Harrow are both visitors injured by defective equipment on Amber's premises, and operated by her in the course of her business. The accident could have been caused by latent defect, deterioration, faulty maintenance, or by Leslie Harrow poking the cable: all these are questions of fact which we do not have enough information to decide.

Is there a breach of duty by Amber? She employed Johnson and Miller to service and maintain the driers (Document A). Any latent defect should have been put right, and the equipment properly maintained by Johnson and Miller. If they are reputable contractors, and Amber has acted reasonably in entrusting the work to them, she has discharged her duty of care: s.2(4)(b). This seems likely also to be the case if the accident is attributable to deterioration which the contractors could not reasonably have foreseen or guarded against. If they have not in fact done their job properly, they in turn have been negligent and are liable.

If Leslie Harrow's action in poking the cable caused or contributed to the accident, his negligence (or contributory negligence) makes him wholly or partly liable for his own and Mrs Barrett's injuries. Section 2(3)(b) provides that an occupier may expect that a person in the exercise of his calling will appreciate and guard against any special risks ordinarily incidental to it; this strengthens the case against Leslie Harrow, who is himself an electrical contractor (Document B).

Section 2(3)(a) provides that occupiers must be prepared for children to be less careful than adults: should Amber have taken any precautions when letting Yvonne (a trainee, aged 17), use the driers? Or is Yvonne not a child for this purpose?

3. Employees

Apart from the question posed in the preceding paragraph, Amber clearly owes a duty at common law as an employer to take reasonable care to provide Yvonne, her employee, with safe and properly maintained equipment. Purchase of equipment from a reputable source will satisfy this requirement: *Davie* v. *New Merton Board Mills Ltd*

[1959] AC 604; but were Potters (Electrical) Ltd, from whom Amber bought the driers, a reputable source? In any case, even if the accident was caused by a defect in the drier attributable to the supplier, the Employers' Liability (Defective Equipment) Act 1969 has reversed the decision in *Davie* v. *New Merton Board Mills* and provides that Amber as the employer is strictly liable to Yvonne as employee.

Amber also has a duty under the Health and Safety at Work Act 1974 s.3(1) to take reasonable care for the health and safety of employees; liability under this act is criminal only, and of no assistance to Yvonne.

Amber should be insured under the Employers' Liability (Compulsory Insurance) Act 1969 against claims by Yvonne.

4. The position of Johnson and Miller

They owe Amber a common law duty to exercise reasonable care and skill in the provision of a service (i.e. servicing and maintaining the driers); this duty is now given statutory force by the Supply of Goods and Services Act 1982, s.13. If Amber has not acted reasonably in entrusting the work to them, and is consequently liable to her customers, visitors or employees as a result, she may nevertheless get an indemnity from them if they have in turn failed in their duty, and the accident can be attributed to their failure, since Amber can sue them for the loss or damage caused to her by their negligence.

2. Armtwist

Note: (i) Issues of Company Law are not discussed.
(ii) References to section numbers are to the Consumer Credit Act 1974 unless otherwise stated.

1. General

The contracts are debtor–creditor–supplier agreements for personal credit of less than £15,000, and are therefore regulated agreements: s.8. The provisions of the Act thus apply.

There are some general questions about Armtwist Ltd (has it got a licence to offer credit at all? has Mr Fidler been canvassing illegally?) which cannot be answered on the facts given. Similarly, it is not clear whether all the agreements have been validly executed in terms of the formalities required by sections 60–64: if not, they are improperly executed and may be unenforceable. These points cannot be finally resolved, and this note proceeds on the basis that the agreements are validly executed.

2. Jane Willcocks

She has not withdrawn from or cancelled the agreement, which is *prima facie* valid: but she may have a remedy for breach of contract against the supplier, Ripoff Ltd. It is an implied condition of all hire purchase contracts that the goods hired under them will be of merchantable quality (i.e. reasonably fit for their normal purpose): Supply of Goods (Implied Terms) Act 1973 s.10(2). If they are not, the condition is broken and the hirer has the right to repudiate. If the defect in Jane's washing machine is such that it is unmerchantable (a question of fact), she may thus be able to return it and cancel the agreement. If so, she can also cancel the credit agreement: s.75 and *UDT* v. *Taylor* 1980 SLT 28. The other side may argue that she has had the machine too long to be able to claim unmerchantability. Goods must be merchantable on delivery and for a reasonable time thereafter; but there is little authority as to what is a reasonable time where non-perishable goods are concerned. Two months may well be considered short enough to found a claim in respect of a washing machine: and it should be noted that there is no equivalent in hire purchase of s.11(4) of the Sale of Goods Act 1979, so that the creditor cannot claim that a debtor's right to repudiate for breach of condition is lost by her acceptance of the goods unless, which is not the case here, such a term can be shown to be validly included in the contract: see below for a comment on clauses 2 and 7 of Document A.

3. Susan Taylor

We may presume that, unless Fidler said nothing at all when he sold the spin drier

(which is extremely unlikely), oral representations were made by him in the presence of the debtor (i.e. Susan), and that she signed the agreement at home. The conditions of section 67 are thus satisfied, and the agreement is cancellable. Has it been validly cancelled? Section 68 gives the debtor a 'cooling-off' period running from the execution of the agreement by Armtwist to the fifth day following the day on which she receives her second copy of the agreement. We do not know if she received the second copy, but in any case she is well within the time limit, having posted her cancellation two days after Mr Fidler's visit. Section 69 provides that notice of cancellation must be in writing (but not in any particular form), that it can be served on the owner (i.e. Armtwist), and is deemed served when posted. Susan has thus validly cancelled, and is entitled to her deposit back and to be discharged from the agreement: s.70. She must permit Armtwist to collect the drier, and must take reasonable care of it for 21 days from the date of her letter of cancellation. If the owner/creditor (Armtwist) does not collect it within that time, her duty to take care of it ceases: s.72. If she traded in another piece of equipment for the drier, she is entitled to have it back in substantially the same condition as when she relinquished it; if this is not possible, she is entitled to the amount allowed for it in cash: s.73.

4. John Woodison

The Total HP price is £420 + interest at 30% on £320 for two years (£192) = £612. John has paid five instalments of £21.34 = £106.70. This (together with his £100 deposit) is more than one-third of the total HP price: the goods are thus protected by s.90, and Armtwist cannot repossess them against the debtor's wishes without a court order. Nor can it or its agents enter premises without a similar order: s.92. If Armtwist repossesses the goods improperly, John cannot recover the goods; but the agreement terminates without further liability on his part. In addition, he is entitled to recover from Armtwist all sums already paid: s.91. The proper procedure for a creditor wishing to repossess in these circumstances is to seek a return order under section 133; the debtor, on the other hand, may seek a time order under section 129, which gives the court wide discretion to reschedule the payments under the agreement if it seems just.

5. The contract

The contract employs plausible legal jargon; but in several respects it contravenes the Consumer Credit Act 1974: for example, there is no statement of cancellation rights as required by section 64. By section 173, contract clauses in contravention are void; they may also be void under the Unfair Contract Terms Act (UCTA) 1977. Some points to be made about clauses in the Armtwist contract are:

Clause
1 Mostly reasonable; but penal rate of interest contrary to section 93 (see also clause 6)
2 Hirer (= debtor) has the right to terminate under section 99; this cannot be excluded
3 Reasonable, standard
4 Reasonable, standard
5 No repossession of protected goods without court order: s.90; no right of entry on to premises without court order: s.92
6 Penal rate of interest contrary to s.93, and probably void at common law as a penalty (see below, note on Osgood Finance)
7 Void under UCTA 1977 s.6
8 Void: ss.56,75

3. Artmat

1. Formation of the contract

The sequence of correspondence in Documents A to E shows a developing negotiation.

A is an invitation to treat
B is an offer
C is a counter offer
D is a counter offer
E is an acceptance: there is now a contract

The exchange of correspondence gives students and lecturer an opportunity to discuss the general principles of offer and acceptance, and the specific question of the status of telex messages as developed in cases like *Entores* v *Miles* [1955] 2 QB 327 and *Brinkibon Ltd* v *Stahag Stahl und Stahlwarenhandelgesellschaft m.b.H* [1983] 2 AC 34.

2. Breach of contract and frustration

Document F constitutes an anticipatory breach of contract: Artmat can sue immediately: *Frost* v. *Knight* (1872) LR 7 Exch 111. Alternatively, Artmat can wait for the date of performance and then sue; but if they do, they run the risk that the contract will later be frustrated, as happened in *Avery* v. *Bowden* (1855) 5 E&B 714. Rivard can argue that the contract is already frustrated, since it has become impossible to perform through no fault of theirs. If this is so, the contract is discharged without further obligation on either side: c.f. *Taylor* v. *Caldwell* (1863) 3 B&S 826. It is not clear whether time of delivery of the mouldings is of the essence of the contract. This is a matter of construction, and although Document C refers to a delivery date on 22 August, the wording does not indicate that special importance is attached to this by the buyer. If time is not of the essence, the contract will still be frustrated if the subject matter is not available at all, but will only be frustrated by delayed delivery if the delay is such as to make the eventual performance substantially different, as happened in *Jackson* v. *Union Marine Insurance Co. Ltd* (1874) LR 10 CP 125, where an eight month delay in delivery of steel rails, caused by the ship's running aground and having to be repaired, was held to have frustrated the contract. If Rivard deliver late, Artmat may thus only be able to claim damages for breach of warranty.

The measure of damages is governed by the rule in *Hadley* v. *Baxendale* (1854) 9 Exch 341, by which a successful plaintiff can recover loss flowing directly from the breach; indirect loss only if it was in the contemplation of both parties at the time of the contract as the probable result of a breach. Artmat can thus sue for any expense beyond the contract price incurred in replacing from other sources the goods which have not been delivered; and for loss of profit on resale if (which is likely here) Rivard knew that the goods were being bought for resale. This right to damages is subject to the 'market rule' (restated in section 51 of the Sale of Goods Act 1979), whereby the amount of damages is calculated by comparing the contract price with the market price at the date when the goods should have been delivered: *Tai Hing Cotton Mill Ltd* v. *Kamsing Knitting*

Factory [1978] 2 WLR 834, PC: and to the buyer's duty to mitigate his loss, so that Artmat must make reasonable efforts to replace the missing goods.

3. Conflict of laws; jurisdiction and enforcement

Because the acceptance (Document E) was by telex, the contract was made on receipt of the message, that is, in France: *Brinkibon* v. *Stahag, supra*. The same case also confirms that the contract was broken in France when the supplier formed the intention not to deliver the goods ordered. Performance was also to be in France: by the buyer — by paying in Granville in French currency and by the seller, when he delivered the shipping and insurance documents to his bank in order to claim the payment.

General conflict rules thus point to French jurisdiction, and to French law as the proper law of the contract. This is reinforced by the Civil Jurisdiction and Judgments Act 1982, which enacts the 1968 EEC Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. Article 17 allows the parties to nominate a court to have jurisdiction. In default of such agreed nomination, articles 2 and 5 provide respectively that a plaintiff may sue in the courts of the defendant's domicile, or in the place of performance of the contract: that is, in both cases, France. Article 14, which allows a plaintiff to sue in the courts of his own domicile, applies only to consumer contracts, and is not available to Artmat.

A French judgment would bar an English action on the same ground: 1982 Act s.34; but the judgment would be enforceable in England under the reciprocal recognition provisions of the Act (ss.18,19); this may not help Artmat, since Rivard probably has no assets in the UK which would satisfy the judgment.

4. Bookworm

Note: references to section numbers are to the Sale of Goods Act 1979 unless otherwise stated.

1. The faulty copies of Johnson's *Modern Art*

This problem revolves round the related points of merchantability and acceptance of goods.

The Sale of Goods Act 1979 makes it an implied condition of all sales of goods in the course of a business that they are merchantable, i.e. reasonably fit for the purpose(s) for which such goods are commonly bought: s.14(2). This condition cannot be excluded in consumer sales (i.e. in this case sales by Mr Sefton to his customers): Unfair Contract Terms Act 1977 ss.6, 25. An exclusion would be possible, if reasonable, as between Mr Sefton and Haughton Trend Ltd: UCTA 1977 ss.6,11, Schedule 2; but there is no evidence of such an exclusion here.

It is a question of fact whether goods are unmerchantable in a particular case; an art book might well be considered unmerchantable if pictures in it are 'out of focus': hence both Mr Sefton's customers and he himself are victims of a breach of condition. They may reject the copies of Johnson's *Modern Art* and have their money back unless they have lost the right to do so by accepting the books (in which case their claim would be for damages for breach of warranty): s.11(4).

If the goods were examined before the contract is made, section 14 excludes the right to reject for defects which such examination revealed or ought to have revealed: if not, (e.g. perhaps because the books were sold in sealed covers), the buyers have the right to a reasonable time in which to examine them after the sale: s.34. We do not know exactly how long after they had bought the books the customers complained, but on the face of it there has been no unreasonable delay: in any case, Mr Sefton might be well advised to take the books back as a matter of goodwill, regardless of the legal technicalities.

Mr Sefton himself may have lost the right to reject for unmerchantability because he has kept the books too long, and has almost certainly done so in respect of those resold: s.35; though since section 34 takes precedence over section 35, resale might not be an absolute bar if the fault were not detectable until after a customer had opened the packaging. The fact that he has accepted previous deliveries will not defeat his right to reject, since Document A makes it clear that each delivery is to be paid for separately, and is thus a severable contract within section 31(2). Any instalment in respect of which there is a breach of condition by the seller may thus be rejected; but it seems unlikely that the breaches in this case are so extensive or so likely to be repeated that the courts would regard them as founding a right to reject future deliveries as well: *Maple Flock Co* v. *Universal Furniture Products (Wembley) Ltd* [1934] 1 KB 148.

2. The delivery of 31 May

Again, two aspects to the problem:

(a) Damage caused by the delivery driver. This may not be enough to make the books unmerchantable, though it will diminish their value and *prima facie* found an action for damages for breach of warranty; but in the absence of contrary agreement, of which there is no evidence, the seller has fulfilled his contractual liability under section 27 to deliver the goods by handing them to a carrier. Property in the goods and the attendant risk has thus passed to the buyer: s.18 rule 5(2) and s.32(1). Only if (which seems unlikely) the contract of carriage was unsuitable for books can Mr Sefton argue that risk still lies with the seller: s.32(2).

(b) Only six copies of Unsworth were delivered, instead of the twelve ordered (Document A). Section 30(1) applies, and Mr Sefton has the right either to accept the short delivery and pay *pro rata*, or to reject the whole delivery, *including* the damaged copies of Johnson.

3 Late delivery of Baxter's *Famous Houses*

Whether time of delivery is of the essence of the contract, and thus a condition, breach of which gives the other party the right to repudiate, is a question of the construction of the contract: s.10. The position here is unclear: but whether or not time was of the essence originally, there is no doubt that, the time for delivery having passed, the buyer may give notice making time of the essence: *Rickards* v. *Oppenheim* [1950] 1 KB 616. This is what has happened here (Document G), and Haughton Trend are in breach of the condition thereby imposed. Mr Sefton may reject the now unwanted copy of Baxter and claim damages.

Note: where Mr Sefton (or his customers) have the right to reject any of the books, they are not bound to return them: s.36. It is up to the seller to make appropriate arrangements to recover them.

5. Bradsall Motors

1. General

In the real case on which this problem is based (names and other details have been changed), both sides consulted solicitors, and the case was settled on the basis that the motor company kept the customer's deposit; this solution (accepted only with reluctance by the customer's solicitor) leaves a number of questions unanswered.

2. The sale contract

Is there a contract at all, in view of clause 1 of Document A? The seller has not signed the form. On the other hand there is clearly an oral offer and acceptance; does this not put *all* the printed conditions outside the contract, on the analogy of cases like *Olley* v. *Marlborough Court Hotel* [1949] 1 KB 532 and *Dennant* v. *Skinner and Collom* [1948] 2 KB 164? A similar point is raised in the 'Gladglaze' study.

If there is a contract, can Bradsall Motors (a) keep the deposit and/or (b) sue for loss of profit if Linda repudiates? Clause 5 of Document A allows the seller to keep the deposit if the buyer does not take and pay for the car within 14 days. As far as damages are concerned, *Hadley* v. *Baxendale* (1854) 9 Exch 341 laid down the rule that damages for breach of contract should compensate for loss directly flowing from the breach; but for indirect loss only if it was in the contemplation of both parties at the time the contract was made. The measure of such damages is found in the first instance by applying the 'market rule': i.e. the difference between the contract price and the market price at the time of the breach. These rules are restated in the Sale of Goods Act 1979, s.50. The concept of an 'available market' has caused some difficulty in modern times when markets are affected by restrictive practices and government regulation. Problems arising from car sales were considered in *Thompson (W. L.)* v. *Robinson (Gunmakers) Ltd* [1955] Ch 177 and *Charter* v. *Sullivan* [1957] 2 QB 117. In both cases the buyer refused to accept a car contracted for: in the former, demand was slack and the car was difficult to resell; in the latter, brisk demand made resale easy. The court awarded damages for loss of profit in the former case, notwithstanding that there was no difference between contract and market prices, which were fixed by the manufacturer. In the latter case there was no loss of profit, and the plaintiff was awarded only nominal damages. Which of these cases might provide guidance here is of course a matter of fact; we are told that the car rejected by Linda had been on the forecourt for some time; *Thompson* v. *Robinson* might be helpful to Bradsall Motors. If damages were awarded, the deposit retained by the seller would be set off.

Refusal by Linda to accept the car might not, however, constitute repudiation of the contract which would allow Bradsall Motors to sue her. If the company, acting through Colin Varley, made a statement of fact which induced her to enter into the contract, and the statement was false, Bradsall Motors are guilty of misrepresentation, and Linda is entitled to rescind. The statement 'low mileage' may be too vague to amount to a representation. The odometer reading, if incorrect, might be a false trade description within section 1 of the Trade Descriptions Act 1968; but in view of the disclaimer on the order form, the mileage figure given there is not a representation: *Humming Bird*

Motors Ltd v *Hobbs* [1986] *The Times*, 14 June, CA. Whether Linda has a case in misrepresentation thus turns on exactly what Colin Varley said, whether he believed it, and what reliance Linda placed upon it. We are told that Colin was himself suspicious of the odometer reading: this may help Linda if she can get him to admit it.

3 The credit contract with Kwiklone

This is an agreement for personal credit of less than £15,000, and is therefore a regulated agreement within section 8 of the Consumer Credit Act 1974. The act lays down a number of requirements in sections 60–64 with respect to the formalities of execution of regulated agreements, and the furnishing to the debtor of copies and notices. The agreement must contain all the terms legibly set out in prescribed form, and must be signed by the debtor, who must be given a copy of it when she signs. When executed by the creditor, a second copy must be sent to the debtor. If any of these formalities is not complied with, s.65 provides that the agreement is 'improperly executed'. If the debtor did not sign it, it is entirely unenforceable, and other defects make the agreement enforceable only by court order. In the real case on which this study is based, it was not contested that the credit agreement was unenforceable for want of formality.

Apart from the question of enforceability, it may be that Linda has in any case withdrawn from the agreement. Her right at common law to revoke her offer before it is accepted is strengthened by sections 56 and 57 of the Consumer Credit Act 1974, which allow her to withdraw from a regulated agreement without penalty at any time until it is accepted by the creditor, and to do so by giving notice to the supplier as agent for the creditor. It is a question of fact whether Linda has exercised her right of withdrawal by notifying Bradsall Motors before Kwiklone accepted her offer. If, which is likely, Linda expected to receive confirmation of the credit agreement by post, Kwiklone accepted when they posted their letter to her: *Adams* v. *Lindsell* (1818) 1 B & Ald 681.

6. Catesby

1. Comfort Egbeolu

The advertisement (Document A) is unexceptionable. The letter in reply to Comfort's application (Document B) appears reasonable; but the comparable letter to Andrew Partington (Document C), written later, makes it clear that the vacancy for which Comfort applied had not in fact been filled. Catesbys are thus *prima facie* guilty of discrimination, either on grounds of sex, contrary to the Sex Discrimination Act 1975 s.6, or on grounds of race, contrary to the Race Relations Act 1976 s.4(1). Comfort may serve Form RR65 on Catesbys: this is a questionnaire requiring them to give information about their policy and practice with respect to possible discrimination in employment. This procedure is optional, but Comfort would be well advised to follow it, since it may strengthen her case: even more so if Catesbys decline to reply or give little information. Comfort would also be well advised to enlist the help of the Equal Opportunities Commission and/or the Commission for Racial Equality, both of which publish codes of practice which employers are encouraged to observe, and either of which may be able to assist her with advice and/or financial backing. If she is not satisfied with the reply to the form, or if she decides to make a complaint without it, Comfort may claim compensation for the discrimination against her (up to a statutory maximum of £7,500) by applying to an Industrial Tribunal. She must proceed within three months from the date of the alleged offence.

2. Jim Waite

He clearly qualifies for protection under section 151 of the Employment Protection (Consolidation) Act 1978, having worked for Catesbys for thirty-two years; the qualifying period is two. There is no evidence of unfair selection for redundancy within s.59 of the act, but his employment at the Leicester office has clearly been terminated (Document D), and unless (which we do not know) his contract allows his employer to move him to another place of work, he has been dismissed by reason of redundancy.

The offer of redeployment to a different place of work may constitute an offer of renewal or re-engagement. If the offer is of suitable alternative employment, and the employee unreasonably refuses it, the right to compensation for redundancy is lost: s.82. The work at Northampton may be suitable, being apparently similar to what Jim was doing before: but he is 58, and Northampton is 30 miles away, so that it may not be unreasonable for him to refuse it. The place of work and the personal circumstances of the employee may both be taken into account in deciding what is reasonable in this context. The fact that Jim has started work at Northampton does not of itself constitute an acceptance of the offer of renewal or re-engagement: *Shields Furniture Ltd* v. *Goff* [1973] 2 All ER 653; and the act itself gives employees a trial period of four weeks in such cases, so that if they give notice within this period for any reason, they are treated as having been dismissed at the date of termination of the original employment: s.84.

If Jim has been made redundant, Catesbys are bound by the Act to pay him compensation. Section 73 defines the calculation for the basic award:

One week's pay for each year of service before age 41 (in Jim's case, 15)	15.0
One and a half weeks' pay for each year of service from age 41 (17)	25.5
Total weeks' pay	40.5
Up to a maximum of £4560 or £158 per week	

3. Heather Norton

She has a case for a complaint of discrimination against her on grounds of marital status, contrary to the Sex Discrimination Act 1975 s.3. In this case, the discrimination is indirect, by the employer imposing a condition for promotion which married women are less likely to be able to fulfil than unmarried women or men, namely a long period of continuous service which would militate against a woman leaving employment to bring up children and resuming at a later date. The procedure is the same as for Comfort Egbeolu (see above).

7. Gladglaze

1. General

This problem turns mainly on the status and construction of clauses 8 and 13 of the Model Conditions (Document A). Clause 8 is an exclusion clause, which purports to make the operator of the plant hired under the agreement (i.e. the crane driver) the servant of the hirer, not the owner. The effect of this, if upheld, is that if the crane driver is negligent, the hirer cannot sue the owner because he (the hirer) is himself vicariously liable. Clause 13 provides that the hirer should indemnify the owner for any liability incurred by the latter arising out of the use of the plant.

2. Negligence

Was the crane driver negligent? To found a claim in negligence, the plaintiff must show an unbroken chain of causation linking breach of a duty of care with the damage caused. There is not enough information in the case study to answer this question with certainty; this note proceeds on the assumption that the driver was negligent, and that his negligence caused the damage which is the subject of the claim against Harry Ashworth by the owners of the damaged building: the question at issue is thus whether, if he is sued by the owner of the building, Ashworth can in his turn sue Gerry Downton's company, or whether Downton is protected by clause 8.

3. Status of the exclusion clause

The first question to consider is whether the printed terms, including clause 8, are incorporated into the contract. In the real case on which the problem is based, the crane owner's claim to rely on the exclusion clause fell at this first hurdle, the County Court judge holding that the contract was made orally on the telephone, and that the hirer had at that time no actual notice of the printed conditions signed later: the case thus falls within the ambit of earlier decisions such as *Olley* v. *Marlborough Court Hotel* [1949] 1 KB 532 and *Dennant* v. *Skinner and Collom* [1948] 2 KB 164, as is argued in the notes on the Bradsall Motors case study.

4. Constructive notice

Did Ashworth have constructive notice of the clause? In a somewhat similar case, *British Crane Hire Corporation* v. *Ipswich Plant Hire Ltd* [1975] QB 303, the plaintiff was held to be fixed with constructive notice; but the case may be distinguishable because, unlike the parties in the present problem, both sides were in the same line of business, both had similar clauses in their standard form contracts, and they had had previous dealings with

each other on the basis of those contracts. None of these points applies here. Downton may nevertheless argue 'custom of the trade': i.e. it is common knowledge in the building and construction industry that plant is hired on standard conditions including clauses like clause 8. The recent unreported High Court case of *Thompson* v. *T. Lohan (Plant Hire) Ltd* (1985) may help Downton here: Hodgson J held that in somewhat similar circumstances the CPA Model Conditions did form part of the contract. Ashworth would presumably plead that he was not sufficiently *au fait* with the custom of the plant hire business that he could be presumed to know that the CPA conditions would apply.

5. Reasonableness

If it is decided that Ashworth did have notice of the clause, the next question is whether it is reasonable. To succeed, it must come within section 2(2) of the Unfair Contract Terms Act 1977, which requires that to be valid, the exclusion must satisfy the test of reasonableness laid down in section 11, which in turn refers to the criteria in Schedule 2. The Court of Appeal considered the CPA clause 8 to be unreasonable in the case of *Phillips Products Ltd* v. *T. Hyland & Hamstead Plant Hire Co Ltd* (1984) 4 Tr L 98. In that case the court also rejected a further argument that the clause merely allocated liability as between hirer and owner, and was not therefore an exclusion clause at all: if liability is transferred from A to B, this is an exclusion of liability as far as A is concerned.

On balance, therefore, it seems that clause 8 may fail to protect Downton's firm, which is vicariously liable for the negligence of the crane driver: but Slade LJ in *Phillips* v. *Hyland & Hamstead* stressed that the court's conclusion was reached on the particular facts, and was not binding in relation to similar clauses in different circumstances.

6. The indemnity clause

There is another trap for Ashworth. In *Thompson* v. *Lohan*, where the plant owner accepted liability and there was no attempt to make the hirer liable, the issue was whether in third party proceedings the owner could recover from the hirer under the indemnity provision in clause 13(b). Hodgson J held that he could, and that the Unfair Contract Terms Act 1977 did not apply to the indemnity clause. Ashworth may thus succeed in transferring liability for the crane driver's negligence to Downton on the basis that the exclusion clause is unreasonable, only to find that he gets it straight back again because of the indemnity provision.

8. Gradgrind

1. General

English law governs the contract: Document A, clause 14.

2. Heinz Kessl Technik

(a) The second lathe

It was delivered late. This could be a breach of condition of the contract, time of delivery being usually (though not necessarily) of the essence: but it is probably not so here, since the delay is due to the fault of the buyer, and the seller can also invoke clause 2(3) of the contract, which gives it an extension of time if delivery is delayed by (*inter alia*) "any . . . cause . . . beyond the seller's reasonable control." Gradgrind is in any case itself in breach of clause 3(3) by not providing a power supply, and is bound by clause 3(6)(a) to reimburse the seller for the expense thereby incurred (e.g. the engineer's extra travel and accommodation expenses). It cannot therefore refuse to accept and pay for the second lathe in accordance with its obligations under section 27 of the Sale of Goods Act 1979.

(b) The third lathe

Heinz Kessl Technik can again invoke clause 2(3), which relieves it of liability for delay in delivery due (*inter alia*) to flood, accident, or delay in transport. It must of course still deliver the lathe within a reasonable time, as provided in the second sentence of the sub-clause.

The lathe has been damaged by the negligence of a third party (the shipping company acting through the agency of the navigating officer). Standing to sue the shipper depends primarily on ownership of the lathe. Unless otherwise agreed, risk passes with property in the goods: Sale of Goods Act 1979 s.20(1); and property in the third lathe is still with the seller under the reservation of title ('Romalpa') clause 2(4). Section 20 can however be overridden by agreement, and clause 3(2) of the contract expressly transfers risk (but not property) to the buyer on delivery to a carrier. Gradgrind is thus in the position of claiming against a third party for damage to goods to which it (Gradgrind) has no title. The attempt made by Staughton J in *The Irene's Success* [1982] QB 481 to permit the buyer to recover from the third party in these circumstances has been overruled by the House of Lords in *Leigh and Sillivan Ltd* v. *Aliakmon Shipping Ltd* [1986] 2 WLR 902, in which it was held that a buyer's standing to sue a carrier in negligence for damage to goods depended on the buyer's having title to the goods; mere contractual rights over them were not sufficient.

Gradgrind cannot therefore sue the shipping company for the damage to the lathe, which is not yet theirs; but they may have an action against Heinz Kessl Tecknik for failing to insure the goods. It is true that under clause 3(2) of the contract the seller has

only a discretion to insure, not a duty: but if it has failed to do so it is probably in breach of section 32(2) of the Sale of Goods Act 1979, which requires it to make a reasonable contract of carriage. If it does not, the buyer is entitled to treat the goods as not having been delivered, or sue for damages.

It is not clear whether Heinz Kessl Technik notified Gradgrind of the shipment of the third lathe. If it did not, it is also in breach of section 32(3) of the Act, which requires such notification when goods are sent by sea at buyer's risk. Failure to notify means that risk reverts to the seller. It seems likely therefore that Heinz Kessl will have to bear the loss caused by the damage to the third lathe in the shipping accident, notwithstanding clause 3(2): if, however, Gradgrind was notified of the shipment, the clause is effective, risk has passed, and Gradgrind must bear the loss.

(c) The fourth lathe

The contract is for delivery by instalments, paid for separately and thus severable within the terms of section 31(2) of the Sale of Goods Act 1979. Gradgrind is therefore not prevented by acceptance of the first two instalments from rejecting the fourth if they have justification. The court will apply the tests in *Maple Flock Co Ltd* v. *Universal Furniture Products Ltd* [1934] 1 KB 148 and *Munro and Co Ltd* v. *Meyer* [1930] 2 KB 312 to determine whether the breach in respect of the third instalment is sufficiently serious to warrant Gradgrind's repudiating the fourth. The court will have regard to the extent of the breach in relation to the whole contract, and the likelihood of its repetition: *Munro* v. *Meyer* (611 defective tons in 1500: held, breach justifying rejection of future instalments) may be nearer to the present case than *Maple Flock* v. *Universal Furniture* (one defective instalment in 18: held, no justification to refuse future instalments); but Gradgrind's right to repudiate is not certain.

2. Takashi Machine Tools Inc

The control device was patented before the lathes were sold. If the patent claim is upheld, the seller is in breach of section 12(2)(a) of the Sale of Goods Act 1979 (implied warranty that the goods will be free from encumbrances at time of sale and passing of property). The interim injunction is certainly a breach of the implied warranty of quiet possession in section 12(2)(b): c.f. *Microbeads A. G.* v. *Vinhurst Road Markings Ltd* [1975] 1 WLR 218.

Because these breaches are only of warranty, Gradgrind cannot reject the lathes; but it can sue for damages, and set off any recovered against payments made or due: and it can invoke clause 6 of the contract, which commits Heinz Kessl Technik (with Gradgrind's co-operation) to defend the patent action and secure for Gradgrind the right to retain and use the lathes, either by procuring a licence from the patentee or by modifying the equipment.

9. Hillaby's

1. Julie Hendry

It is unlawful for an employer to treat a woman employee less favourably than a man, and thereby cause her detriment: Sex Discrimination Act 1975 ss.1(1)(a) and 6(2)(b). Sexual harassment (including harassment by other employees) can amount to discrimination: *Porcelli* v. *Strathclyde* [1986] ICR 564; but it is a question of fact. If discrimination is proved, Julie can claim compensation by application to an industrial tribunal, which may make an award up to the current maximum of £7500.

She has been dismissed without notice; Hillabys are in breach of contract, because the grounds for dismissal are clearly inadequate, there being no justifying misconduct or breach on her part. At common law, Julie can claim wages due to her, including for the period of notice not given (i.e. a week, assuming she is paid weekly).

Although the dismissal may well be thought unfair, Julie is not protected by the Employment Protection (Consolidation) Act 1978 as amended, because she has insufficient service with the firm. She joined on 15 July 1985, and was dismissed on 19 July 1987: a total of 2 years and 4 days, to which must be added the statutory minimum one week's notice required by section 49 of the Act: but the sixteen days' strike in March 1987, although not breaking her continuity of service, must be deducted from the qualifying period: s.151 and Schedule 13. This brings Julie's total service down below the 104 weeks' minimum currently required to qualify for protection from unfair dismissal.

2. Angela Wharton

She walked out; but clearly as the result of the manager's bad-tempered and discriminatory behaviour towards her. She can argue that his conduct justified her in leaving, and that she is therefore the victim of constructive dismissal. To do so, she must show that the employer has repudiated her employment contract; unreasonable conduct is not enough: *Western Excavating (ECC) Ltd* v. *Sharp* [1973] ICR 484. Mr Briginshaw's invitation to her to take her cards and go is evidence of such repudiation; though the company may try to argue that it was only a peremptory manner of speaking, and not intended to be taken literally. If the court takes Mr Briginshaw at his word, Angela has been unfairly dismissed, since the reason for her dismissal does not fall within the permitted list in section 57 of the Employment Protection (Consolidation) Act 1978. Unlike Julie Hendry, Angela Wharton qualifies for the protection of section 54, having served one week longer than her friend, which brings her total period of employment (calculated in the same way as for Julie) to just over the required minimum of 104 weeks.

Angela can claim compensation under section 73 by applying to an industrial tribunal. If she succeeds, the basic award will be calculated at the rate of one week's pay for every year of service (assuming Angela's time with the firm was between the ages of 22 and 40; if her age falls outside these limits she will get less if younger, more if older): but in any case not more than the current maximum of £158 per week.

In addition to the basic award, Angela may qualify for a discretionary compensatory award under section 74, if the tribunal considers it just and equitable in all the circumstances. This may be the case if she can show that she has incurred loss beyond

wages accrued due; e.g. because the manner of her dismissal made it more difficult for her to obtain another job;there is no compensation, however, for hurt feelings. Other possible remedies which Angela may seek are an order for reinstatement or re-engagement under section 69.

3. Harry Parkes

He also qualifies for protection, and appears to have been dismissed unfairly. If he has been dismissed for his trade union activities, this is expressly prohibited by section 58; if the allegation is that his dismissal is within the exceptions in section 57, because he has been guilty of misconduct, the case of *Wilson* v. *Racher* [1974] ICR 428 may assist him: in that case an exchange of abuse between employer and employee was held not to justify dismissal. The employer may (as with the two women) plead no intention to dismiss, merely a use of strong language; but this looks doubtful here, where the manager said "You're sacked." If he has been unfairly dismissed, his remedies will be the same as his colleague Angela Wharton's, although his longer period of service will entitle him to a higher basic award, with one and a half week's pay for every week of service over the age of 40.

10. Jane Perry Antiques

All these problems concern questions of transfer of title to goods by a non-owner; the first and last also concern the relationship of principal and agent.

1. The painting

The Factors Act 1889 provides in section 2 that where a mercantile agent is in possession of goods with the consent of the owner, sales made by him in the ordinary course of business as a mercantile agent are as valid as if expressly authorised by the owner, provided that the buyer takes in good faith and without notice of the lack of authority. A mercantile agent is one who has in the normal course of business authority to buy and sell goods: Factors Act 1889 s.1. Jane Perry Antiques buys and sells goods for customers, and Document A is evidence of the owner's consent: the conditions in the Factors Act are satisfied, and title to the painting has passed to the buyer. The owner (as principal) has an action for damages against the shop (as agent) for breach of the agency contract, since it was clearly not the owner's intention to authorise a sale at this stage.

2. The tea caddy

At first sight, this seems to be a similar case to that of the painting; but it is clear from Document A that the caddy was only in the shop's hands for the purposes of repair: thus although the owner consented to Jane's business taking possession of it, this was not in its capacity as a mercantile agent, but as a repairer. The Factors Act does not apply, and title to the tea caddy remains with the customer, who can recover it in an action for conversion, or sue the buyer or Jane for damages.

3. The bookcase

A mistake by the seller as to the identity of the buyer will not make the contract void if the parties contract face to face: *Lewis* v. *Averay* [1972] 1 QB 198, CA; the buyer acquires a voidable title to the goods, and by section 23 of the Sale of Goods Act 1979 she can pass a good title to *her* buyer, provided that the title has not been avoided at the time of the second sale, and that the second buyer acts in good faith without notice of the defect. Ownership of the bookcase thus turns on whether Jane Perry Antiques has successfully avoided the contract of sale to the bogus Lady Camberley before the latter resells the piece. In *Car and Universal Finance Ltd* v. *Caldwell* [1965] 1 QB 535 it was held that notifying the police was a sufficient act of avoidance in circumstances where there was no reasonable prospect of notifying the fraudulent buyer personally. If the bookcase had not been resold at the time the police were contacted, Jane may be able to get it back through an action for conversion, if it can be traced. If not, her remedy is the

probably useless one of an action for damages against the fraudulent buyer for deceit and/or conversion.

As far as the returned cheque is concerned, this is of no help to Jane: a forgery is a nullity, and neither the real Lady Camberley nor her bank is liable on the cheque. Jane's only action here is again for damages for deceit against the buyer.

4. The desk

Title in specific goods passes by intention: at the time of the contract if no contrary intention appears, and the goods are in a deliverable state — time of payment and delivery are irrelevant: Sale of Goods Act 1979 ss.17, 18 (rule 1). Miriam Watson thus acquired title to the desk when Martin Fellowes sold it to her; but section 24 of the Act provides that a seller still in possession of goods after title has passed to the buyer confers a good title if she sells the same goods to a second buyer, provided that the latter takes in good faith without notice of the previous sale.

John Walker thus gets a good title, and neither Miriam Watson nor Jane Perry Antiques can recover it unless he agrees. Miriam can sue Jane, but may not get much unless it is perhaps possible to acquire a comparable desk in time for her son's birthday at greater expense.

5. The dining table and chairs

It is the duty of an agent to act in good faith and with due diligence towards her principal. In particular, in the case of an agency for sale, the agent should communicate all material information, including all offers (especially if they are higher than offers previously received). An agent who fails to do this must account to her principal for any loss which the latter incurs: for example *Keppel* v. *Wheeler* [1927] 1 KB 577. Michael Yardley, the owner, can thus claim the difference in price between the two offers (i.e. £350) but he cannot recover the goods, even if he claims that Jane Perry Antiques was not authorised to sell: the rules of mercantile agency apply, as with the painting considered above, and Mr Hardcastle (Document C) gets a good title. The aggrieved customer making the rejected higher offer has no remedy: although the agent is bound to communicate the higher offer to her principal, failure to do so confers no rights on a third party, and the principal is not of course bound to accept the offer even it it is communicated.

11. John Silver Engineering

1. Mrs Williams

The contract for the lawnmowers is for delivery by instalments, each invoiced and paid for separately (Document B). Each instalment is thus a severable contract: section 31(2) of the Sale of Goods Act 1979 applies, but section 11(4) does not. If the seller is in breach of condition with respect to the second instalment, the buyer has the right to reject, notwithstanding acceptance of the first instalment; but whether the buyer also has the right to reject future instalments because of the breach with respect to the second is a question of construction and of fact. The criteria applied by the courts to justify repudiation of the whole contract in such circumstances are the extent of the breach in relation to the whole contract, and the likelihood of its recurrence. In *Maple Flock Co* v. *Universal Furniture Products Ltd* [1934] 1 KB 148, one defective instalment in eighteen was held insufficient for the buyer to refuse further deliveries; *contra, Munro & Co Ltd* v. *Meyer* [1930] 2 KB 312, where adulteration of 611 tons of bonemeal out of a total of 1500 was held a sufficiently extensive breach, and sufficiently likely to recur, to justify the buyer's treating the whole contract as repudiated. In the present case, four defective mowers out of sixty seems unlikely to justify rejection of future deliveries.

It is not clear in any case whether there is a breach of condition by the seller at all. The complaint is of bent covers, and while such a defect might well make the mowers unmerchantable (i.e. unfit for normal use) within the implied condition in section 14(2) of the Sale of Goods Act 1979, this will only apply if the mowers were damaged at the time of delivery. For this purpose, delivery to a carrier in pursuance of the contract is delivery to the buyer: s.32(1), and thus performance of the seller's obligation to deliver under section 27, and unconditional appropriation of unascertained goods to the contract under section 18, rule 5(2). Property and risk will have passed to the buyer, who must take the risk of damage in transit unless she can show (which seems unlikely here) that the contract of carriage made by the seller was unsuitable: s.32(2). Mrs Williams' claim thus turns on factual evidence as to when the damage occurred. If it was caused by British Rail, she may have a claim in negligence against them, but she cannot refuse to take delivery without breaking her contract with John Silver.

Under section 75 of the Bills of Exchange Act 1882, Mrs Williams is entitled to countermand her cheque, and her bank must act on that instruction; but this does not of course relieve her of liability to pay for the mowers, and John Silver may alternatively sue her on the separate contract embodied in the cheque, which constitutes an undertaking that it will be paid by the bank, and that if it is not the drawer will pay personally: Bills of Exchange Act 1882 s.55.

2. Mr Parrott

(a) *The price.* It is an offence under sections 20 and 21 of the Consumer Protection Act 1987 to give in the course of business a misleading indication to consumers of the price of goods. An indication is misleading if (*inter alia*) consumers might reasonably infer that "the facts . . . by reference to which [they] might reasonably be expected to judge the validity of any relevant comparison . . . are not what in fact they are": s.21(1). The sign

'Elsewhere £195 . . . ' makes just such an inaccurate and misleading comparison, and Mr Stevenson's notice constitutes an offence for which the company may be fined.

In addition to constituting an offence, Mr Stevenson's assurance that Mr Parrott would not find the machine as cheap elsewhere may constitute a misrepresentation which, if he relied on it, as he alleges in Document C, would entitle Mr Parrott to rescind the contract and/or claim damages. The fact that the company did not authorise the price claim will not help it, since as their agent Mr Stevenson has apparent authority, and a third party acting in good faith will not be aware of the company's instructions to the salesman.

(b) *The broken blade.* There may also be a misrepresentation here in the assurance of suitability for rough ground; but Mr Parrott will have a stronger case against the company under section 14(3) of the Sale of Goods Act 1979, which provides that where a particular purpose is made known by the buyer, goods are sold subject to an implied condition that they will be fit for that purpose, even if it is not a normal one. If, which appears to be the case, this condition is broken, Mr Parrott has the right to reject the mower, unless he has accepted it by keeping it beyond a reasonable time: s.35; in which case section 11(4) will reduce his claim to one of damages for breach of warranty. Four days may not be considered long enough to constitute acceptance; but note the recent case of *Bernstein* v. *Pamsons Motors Ltd* [1986] *The Times* 25 October, where the buyer of an unmerchantable car was held to have lost the right to reject after only three weeks and 142 miles. If he claims damages, Mr Parrott can recover the cost of repairing or replacing the mower, but not the loss of income from the injured dog, which is indirect loss not contemplated by both parties at the time of the contract, and thus outside the rule in *Hadley* v. *Baxendale* (1854) 9 Exch 341.

(c) *The credit sale agreement.* This is an agreement for personal credit of less than £15,000, and thus a regulated agreement subject to the Consumer Credit Act 1974. We assume no defect in execution (ss.60–64), but Mr Parrott should check this: if defective, it may be unenforceable. It was (presumably) signed in the shop, and not therefore cancellable under section 67: however, if Mr Parrott succeeds in an action for rescission or damages on the grounds of misrepresentation or breach of contract by the supplier, section 75 gives him a 'like claim' in respect of the credit contract. It was made clear in *UDT* v. *Taylor* [1980] SLT 28 that 'like claim' means 'claim for a like remedy' (i.e. rescission or damages as the case may be), not 'claim on like grounds'; thus Mr Parrott does not have to show misrepresentation or breach of contract with respect to the credit agreement.

12. Kidditoys

This problem concerns a buyer's right to damages for non-delivery of goods by the seller.

Under section 27 of the Sale of Goods Act 1979, the seller is bound to deliver the goods in accordance with the contract. Failure to do so on the agreed date is a breach of condition if time is of the essence; whether this is so is a matter of fact and construction of the contract: s.10(2). We are told that Glenwood knew that the consignment was intended for the Christmas trade, and that Albert Webster emphasised the importance and finality of the 10 November deadline: it seems likely that time of delivery is of the essence. If so, Webster is entitled to refuse late delivery (Document E). He is also entitled to damages for non-delivery under section 51(1). Section 51(2) defines the measure of damages, restating the rule in *Hadley* v. *Baxendale* (1854) 9 Exch 341 that compensation is due for loss directly resulting from the breach, while section 51(3) restates the 'market rule' that damages are to be calculated by comparing the contract price with the market price at the time of the breach: *Tai Hing Cotton Mill Ltd* v. *Kamsing Knitting Factory* [1978] 2 WLR 834, PC. A further common law rule (not restated in the Sale of Goods Act) obliges the victim of a breach of contract to take reasonable steps to mitigate his loss: in the case of non-delivery of goods, by seeking alternative supplies. Webster has clearly done this.

In the present case, the contract price of the goods is £3.00 per unit. The market price at the time of the breach was was £4.50 (Document B). Webster can thus claim the difference of £1.50 per unit, i.e. £1500, plus any additional expense incurred in purchasing the alternative supplies. The fact that Kidditoys has not actually contracted with Willingtons at £4.50, and that cheaper supplies subsequently became available, is immaterial: Kidditoys can take advantage of the cheaper teddies available from Cheungs without prejudicing their claim against Glenwood.

Whether Kidditoys can claim for the loss of profit on sub-sales of which it may be deprived depends on the principle in the second limb of the rule in *Hadley* v. *Baxendale* which says that such loss is recoverable if it was in the contemplation of both parties at the time of the contract. Since this was a sale by a manufacturer to a wholesaler and clearly for trade, it seems certain that the seller must have known that the bears were to be resold, and that the buyer would suffer loss of profit if they were not delivered. Since Webster expected to resell the bears for £5.00 each, Kidditoys can thus claim a further £2000 loss of profit, provided that it can satisfy the court that this is the true measure of its loss. The amount of damages will of course be reduced if Kidditoys buys the Chinese bears and resells successfully. If it makes up the balance of 300 bears by buying at £4.50 from Willingtons, and resells the whole lot at the projected £5.00, its profit will be 700 × £2.50 = £1750 on the cheaper bears, and 300 × £0.50 = £150 on the dearer ones, a total of £1900. Its extra claim on Glenwood will only be for the balance of £100.

Kidditoys must supply its retail customers, or it will in turn be liable to them for breach of contract for non-delivery, and open to the same action as Kidditoys itself contemplates against Glenwood. Since it can replace the missing bears (albeit to some extent more expensively) it would be well advised to do so, fulfil its customers' orders, and concentrate on recovering additional costs and loss of profit from Glenwood as outlined above. If delay prevents some or all of the retailers' orders from being fulfilled, the cost resulting from their claims can be added to Kidditoys' claim against Glenwood, again bearing in mind that Glenwood, being in the trade, will almost certainly have known that their failure to deliver would cause Kidditoys in turn to have to break their contracts for the sub-sales; but all this will depend on the detailed facts.

13. Merritons

The legal problem lurking in Merritons' promotion letter (Document A) is whether or not it is a credit token. If it is, section 51 of the Consumer Credit Act 1974 makes the unsolicited sending of it to customers or other members of the public a criminal offence.

Section 14 of the Act defines a credit token as

> 'a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to an individual by a person carrying on a consumer credit business, who undertakes —
>
> (a) that on production of it (whether or not some other action is also required) he will supply cash, goods and services (or any of them) on credit . . . '

Document A clearly falls within this definition to the extent that it is a document. What is less clear is whether by sending it Merritons 'undertake' to provide credit. Several phrases in the letter suggest that this is so: the manager says that the card is already prepared: 'All (the customer has) to do is sign'; the customer's 'extra spending power is guaranteed' (the word 'guaranteed' is repeated in the P.S.); the tear-off slip at the bottom is headed 'Charge Card Acceptance'. All this is calculated to give the impression that the store is committed, and all the customer has to do is to signify acceptance.

In the real exchange of letters on which this case study is loosely based, the retailer's legal officer approached the problem by arguing that the promotion letter was an invitation to treat. The customer made an application for credit by completing the form, and this constituted an offer, which the store could refuse, and which even if accepted required further formalities before credit would be granted. There was thus no contractual commitment by the retailer in the original letter to give credit, and since it did not 'undertake' to provide credit, the letter could not be a credit token.

Elliott v. *Director General of Fair Trading* [1980] 1 WLR 977 was cited by both sides in the argument. In that case, a retailer sent unsolicited promotional material, including a plasticised card looking like a credit card which was described in the accompanying material as 'valid for immediate use'. This was not true: on presentation of the card, the customer had to complete further formalities in order to apply for credit, which was not automatically granted. Lord Lane CJ and Woolf J, sitting in the Queen's Bench Divisional Court, considered this point, but held that the doubtful contractual status of the promotional material did not prevent its being a credit token, which is what it appeared to be:

> 'The word is "undertakes", and there is no necessity for any contractual agreement or possibility of contractual agreement to exist . . . The card says "This credit card is valid for immediate use. The sole requirement is your signature . . . Credit is immediately available if you have a bank account." The fact that none of those statements is true

does not absolve the card from being what
it purports to be, namely a credit-token card.'
per Lord Lane CJ at 982

The Lord Chief Justice went on to point out that the definition in section 14 defines a credit token in terms of an undertaking to provide credit 'whether or not some other action is also required', and said that the further formalities relied on by Elliotts clearly fell within this phrase. Since the card had admittedly been sent unsolicited, the retailer's appeal failed, and its conviction under section 51 by the magistrates was upheld.

The retailer in the real case which provided the idea for this case study did not accept the representation made through the Trading Standards Officer that its promotional letter was similar to the card in the *Elliott* case: but did change the wording in the letter.

14. Osgood Finance

Note: all references to section numbers are to the Consumer Credit Act 1974.

1. General

It is not clear whether Norman Dransfield has one hire purchase agreement with Osgood Finance or three: but whichever is the case, the amount of personal credit is less than £15,000, and the agreement(s) is/are thus regulated, and governed by the Consumer Credit Act 1974. The Act allows a debtor to terminate a regulated agreement at any time by notice to the creditor: s.99; clause 5 of the contract (Document C) gives him a similar right.

2. Termination of the contract

The first problem to be considered is whether Norman's letter to Osgood (Document B) constitutes a notice of termination, or merely of intention to default on payment. If it is the former, Norman has exercised his right under section 99, and his liability to Osgood is limited by section 100 to a maximum of half the total hire purchase price: in this case, £755. He has paid a total of £466.09, so he would have to pay a further £288.91. This statutory provision overrides the minimum payment clause 7(ii) in the contract: s.173(1).

If Norman has not terminated, but merely defaults, the creditor (Osgood) should serve a default notice under sections 87 and 88, specifying the nature of the default, the action Norman must take to put it right (a minimum of seven days' notice is required), and the consequences of non-compliance. If Norman does comply, the breach of the agreement caused by his default is treated as not having occurred, and Osgood must continue with the agreement: s.89. If the notice is not complied with, Osgood may then bring the agreement to an end under clause 4(d) of the contract, and can invoke the minimum payment clause 7(ii), which entitles it to claim 75% of the total hire purchase price (£1132.50): that is, a further £666.41 in addition to the £466.09 already paid.

Clause 7(ii) may be valid as an agreed damages clause if it is a genuine pre-estimation of loss. It may however be void if it is a penalty as defined in *Dunlop Phneumatic Tyre Co Ltd* v. *New Garage and Motor Co Ltd* [1915] AC 79. In that case the House of Lords considered such a clause a penalty if

(a) the sum payable is extravagant in comparison with the greatest loss that could be suffered

or (b) the breach consists of a failure to pay and the clause stipulates a greater sum

or (c) if 'a single lump sum is made payable by way of compensation, on the occurrence of one or more or all of several events, some of which may occasion serious and others but trifling damage'.

Bearing in mind that the creditor will expect to get the goods back after termination of the contract following default by the debtor, and that clause 7(ii) can be invoked whenever the agreement is terminated, it might be construed as a penalty within either (a) or (more likely) (c) above, and therefore void.

If the agreement is terminated early, Osgood will no doubt argue that it has lost the profit which would have been forthcoming had it continued to its full term. It cannot, however, sue for this loss of profit by way of damages: if Norman Dransfield has terminated under section 99, there is no breach of contract, and therefore no action lies; if he has not terminated, but is merely in default and Osgood have themselves terminated, they are the cause of their own loss and cannot recover damages from the debtor: *Financings Ltd* v. *Baldock* [1963] 2 QB 104.

3. Status of the goods

Under section 90, goods in respect of which one-third of the total hire purchase price has been paid are protected, and canot be repossessed by the creditor except by a return order made by the court under section 133. The washing machine is already protected: the cooker requires a further £27.28, the fridge a further £25. Norman can pay £30 now (Document B), and he can therefore secure protection for one or other by making all the payment on one agreement, if the three items are subject to separate agreements. If all three are subject to a single agreement, he can exercise his right under section 81 to appropriate payment to whichever goods he chooses. If he makes no appropriation, the payment will be divided among the three items in proportion to the amount due on each, and neither fridge nor cooker will be protected.

4. Powers of the court

Section 133 gives the court power, if it appears just, to make a return order, allowing the creditor to repossess the goods (although even after such an order the debtor may retain them on payment of the balance due); or a transfer order, passing title to some of the goods to the debtor and returning others to the creditor. A transfer order is not appropriate here, however, being available only where the total payments already made exceed the cost of the goods to be transferred by at least one-third of the unpaid balance. To retain the cheapest item (the £375 fridge), Norman would have to have made payments of £722.97, i.e. £375 + (£1043.91 ÷ 3); he has in fact paid only £466.09.

Osgood Finance thus appears entitled to its goods back. The court however has the power under section 129, on the application of either debtor or creditor, to make a time order if it thinks just, extending or rescheduling the payments to enable the debtor to continue with the agreement, having regard to his means. Sections 135 and 136 give the court additional discretionary powers to attach conditions to an order, to delay operation of any of its terms, or to include in it provisions for subsequent amendment.

15. Pentangle

1. General

This problem concerns the extent of an agent's authority and resulting power to bind the principal; the contract between principal and agent; and termination of an employment contract.

2. Huxtable & Morris

As the manager of the shop, Alison is Priscilla's agent, and can bind Priscilla to contracts which she (Alison) makes by virtue of actual authority conferred on her either expressly (if Priscilla gives her particular instructions) or by implication that she is empowered to perform any acts within the usual scope of a manager's duties.

Upon receipt of her letter of dismissal (Document A), Alison's actual authority ceases. She will however continue to have ostensible (or apparent) authority to contract with existing customers and suppliers, and with any others who know that she is the manager, until they have actual notice of the withdrawal of her authority by dismissal. The Order for the books placed with Huxtable and Morris by Alison on the day of (and presumably after) her dismissal is binding on Priscilla, since the publishers are existing suppliers who we are told have a long-standing relationship with Pentangle, and they had at the time of the contract no actual notice of the termination of Alison's authority.

3. A. C. Laxton

This firm, being unknown to Priscilla, cannot claim that she has held out Alison to them as having authority to contract on her behalf. There is thus neither actual nor ostensible authority, and Priscilla is not bound to pay for the souvenirs supplied. Ratification of an unauthorised act by an agent is possible provided the principal was identified to the third party, and was legally capable of contracting, at the time of the contract, and provided she is in possession of all material facts when she ratifies (or intends to contract regardless of the facts). All these conditions are fulfilled here, so that if she wished, Priscilla could adopt the contract by paying the invoice, and thus confer authority retrospectively on Alison's act. It seems doubtful, however, that she would wish to do so.

4. Alison

An agent owes her principal a duty of good faith, and may not make a secret profit at the principal's expense, or deliberately cause her loss. If she does, her principal is entitled to terminate the agency on the grounds of breach of contract, and can hold the agent to

account for the secret profit. In *Salford Corporation* v. *Lever* [1891] 1 QB 168 an agent took a commission from a supplier who recouped the payment by overcharging the principal. It was held that the latter could recover both the bribe and the loss caused by the overcharging. This decision was however disapproved by the Privy Council in *Mahesan* v. *Malaysia Government Officers' Co-operative Housing Society Ltd* [1979] AC 374; the principal is only entitled to recover once.

Although Priscilla may validly terminate Alison's authority as agent, this does not automatically imply a right to terminate Alison's employment. Alison has been working full time as manager of Pentangle for over six years, and is *prima facie* protected from unfair dismissal by section 54 of the Employment Protection (Consolidation) Act 1978, which requires a minimum period of two years' continuous employment. To avoid liability for unfair dismissal, the employer must be able to show that the employment was terminated for one of the reasons set out in section 57 of the act. These include reasons related to the conduct of the employee: s.57(4)(b); and dishonesty has been held to be a valid reason for dismissal falling within this provision, for example, in *Parker* v. *Clifford Dunn Ltd* [1979] ICR 463, EAT; *Trust House Forte Ltd* v. *Murphy* [1977] IRLR 186, EAT. It is true that even where there is dishonesty, the employer still has to show that she has acted reasonably in resorting to dismissal, rather than a lesser sanction; but in view of the decisions cited, Alison's claim for reinstatement or compensation for her dismissal seems unlikely to succeed.

16. Trendmaker

Note: all references to section numbers are to the Sale of Goods Act 1979.

1. General

This problem concerns the liability as between seller and buyer for damage to goods. Unless otherwise agreed, risk passes with property in the goods: s.20(1). There is no evidence of agreement to the contrary here, so the problem turns on the passing of property. The situation is different in respect of each of the three items.

2. The nest of tables

This is a particular item identified by Stuart Simmons in his letter (Document A). It was reserved for him by Trendmaker, and is thus 'identified and agreed upon at the time . . . of sale', and hence specific goods as defined in Section 61. Section 17 provides that property in specific goods passes when the parties intended; if no intention is apparent, section 18 provides rules for ascertaining it. Under rule 1, property in specific goods in a deliverable state passes at the time of the contract, regardless of the time of delivery or payment. Property in the tables thus passed to the Simmonses when Trendmaker acted upon and thus accepted the offer in Document A, and they must bear the loss and pay for the damaged tables.

3. The carpet tiles

The tiles were not specifically identified in the shop, but generically in terms of a catalogue description (Document B). They are thus unascertained goods in which, according to section 16, property does not pass unless and until they are ascertained. Rule 5 in section 18 deals with such goods, and provides that property passes when goods of the contract description are unconditionally appropriated to the contract by the seller with the assent (which may be, and often is, implied) of the buyer (or *vice versa*). Appropriation took place when the store staff set aside the 84 tiles to fulfil Nadine Simmons' order. Property did not however pass at that point, because rule 5 has to be read subject to rule 2, which says that 'where . . . the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done'. Thus although the goods were appropriated to the contract by being set aside and physically delivered, they were not yet in a 'deliverable state' because they had still to be laid by Trendmaker's fitter (Documents B, C and D); property had still not passed when they were damaged: c.f. *Head (Philip) and Sons Ltd* v. *Showfronts Ltd* [1970] 1 Lloyd's Rep 140. Trendmaker must replace the damaged tiles and fit new ones.

4. The chair covers

These were on approval: rule 4 of section 18 applies, and property will only pass when the buyer signifies acceptance to the seller, keeps the goods beyond the agreed time (if no time is agreed, beyond a reasonable time), or does any other act adopting the transaction (e.g. reselling the goods). The trial period in this case was seven days (Document C), and the damage occurred on the first day, within hours of delivery, by which time the Simmonses had taken no action: property had not therefore passed, and the goods were still at seller's risk.

5. The buyer as bailee

It is clear that under the section 18 rules the Simmonses are only liable to pay for the nest of tables, and not the carpet tiles or chaircovers, and they can legitimately complain (Document G) about the appearance of the tiles and chaircover in their account statement (Document F). They may nevertheless be liable for the damage to these latter two items. Section 20 provides expressly that passing of risk does not affect the buyer's duties or liabilities as bailee of the seller's goods (or vice versa). A bailee of goods is under a duty to take reasonable care of them: *Coughlin* v. *Gillison* [1899] 1 QB 145. If the goods are lost or damaged while in his care, the bailee is liable unless he can prove that he was not negligent: *Joseph Travers Ltd* v. *Cooper* [1915] 1 KB 73; this is a reversal of the burden of proof in ordinary negligence cases. Stuart Simmons claims (Document G) that Trendmaker's driver should not have put the goods in the shed; but it is clear from Document D that he was asked to do so by Nadine Simmons, who expected to be out when he called. Liability thus turns on whether the damage to the goods in the shed caused by the overflowing of the stream was reasonably foreseeable: this is a question of fact which there is not enough information to answer, although it provides an opportunity to discuss the principles of foreseeability and remoteness of damage generally.

17. Wadsworths

1. General

There is no suggestion that Henry Wadsworth's insurance claim is exaggerated or in any way fraudulent, which would entitle the insurer to reject liability under clause 6 of the general conditions in the policy (Document A); and the claim is within the time limits imposed by clause 5(a) and (c): but two basic principles underlying all contracts of insurance are those of insurable interest and disclosure, and these will cause Henry Wadsworth trouble.

2. Insurable interest

The purpose of insurance is to protect some (financial) interest of the insured: thus in general a person can insure his own life, but not that of another person, unless there is some financial reason for doing so: for example, an employee on a fixed term contract of employment at an agreed salary can insure his employer's life to cover the loss occasioned by the death of the latter, and consequent loss of salary following premature termination of the employment contract: *Hebdon* v. *West* (1863) 3 B&S 579.

In law, a limited company is a separate person from its members: in *Salomon* v. *A. Salomon and Co Ltd* [1897] AC 22 the proprietor of an incorporated one-man business, who held almost all the shares in it, was able to take a charge on the company's assets, thereby becoming a secured creditor and taking precedence in the company's liquidation over the unsecured creditors, who got nothing. For a contemporary illustration of the same principle see *Goodwin* v. *Birmingham City Football Club* [1980] NLJ 471.

This separation between the company and its members, which worked in favour of Mr Salomon, worked against Mr Macaura in *Macaura* v. *Northern Assurance Co* [1925] AC 619. The plaintiff incorporated his timber business and became the majority shareholder. When some timber was destroyed in a fire, Mr Macaura claimed on his insurance policy, which was still in his own name. The insurers refused to pay; a decision upheld by the House of Lords on the ground that the policyholder had no insurable interest in the property: the timber had been transferred to the company when the business was incorporated, but the insurance policy had not. Henry Wadsworth has done the same thing as Mr Macaura: we are told that he took out the policy in his own name five years ago and has not communicated with the insurers since, except to pay the annual premiums; but the incorporation was only two years ago. He cannot therefore claim under the policy for damage to company property.

3. Disclosure

Insurance contracts are contracts of the utmost good faith, and subject to a duty on the insured to disclose all material facts. Non-disclosure makes the contract voidable at the instance of the insurer. There is no duty at common law to disclose material facts except

at the time of the contract or its renewal: *Pim* v. *Reid* (1843) 6 M&G 1; but many modern policies require disclosure at any time during the currency of the contract. It is not entirely clear from the wording of clause 2 in the present case (Document A, based on an actual policy), whether this is so here; but Henry Wadsworth has clearly failed to advise the insurer of changes in his circumstances at any stage since he took out the policy.

A material fact is any fact which would influence a prudent insurer in deciding whether or on what terms to accept the risk: *Lambert* v. *Co-operative Insurance Society* [1975] 2 Lloyd's Rep 485. The insured need not disclose facts of which he is unaware (unless the lack of awareness results from his negligence), nor those which diminish the risk, or which are common knowledge; and the insurer may be estopped from setting up non-disclosure if he has himself limited his enquiries or accepted incomplete replies; but clearly the widening of the range of stock to include highly flammable items is a material fact which should have been disclosed, as is the extension to the premises.

Henry Wadsworth is thus caught by clause 2 of the contract; he may be caught by clause 14(c) as well, and perhaps by clause 14(d) if he has not complied with building or fire regulations. On all counts, he has no grounds to challenge the insurers if (as seems certain) they refuse to pay.

18. Wendy's

Note: this problem requires reference to Document A in the 'Wadsworths' case study, which contains the general conditions of contract common to both case studies, as well as to the particular details contained in 'Wendy's' Documents A and B.

1. General

As with Henry Wadsworth in the preceding case study, there is no suggestion of fraud (clause 6 of the general conditions, Wadsworths Document A); or of delay in claiming (clause 5): but as in Wadsworth's case, Wendy Barnes and Jennifer Langdon may encounter difficulties arising from the principles of insurance law. They do not have the particular problem discussed in the note to the Wadsworths case study of having no insurable interest in the property damaged: they are partners, not a limited company, and since a partnership has no separate legal identity, the insurance in their personal names, set out in the specification (Document A), is valid.

2. Average

Schedule 1A to the policy sets out the sums insured in respect of fire and special perils. The schedule is reproduced as Document B. Damage caused by road vehicles is number 12 in the list of contingencies specified in the schedule, and is included in the list of 'contingencies applicable' at the head of the schedule. Wendy and Jennifer can therefore claim for the damage: but the sums in the schedule are expressed to be subject to average. This phrase is explained in clause 8 of the general conditions (Wadsworths Document A). The effect of the clause is that claims will not be paid in full on property underinsured, and is well illustrated by the case of *Acme Wood Flooring Co* v. *Marten* (1904) 90 LT 313, where timber worth £36,000 was insured for £12,000 subject to average. Damage was caused to the value of £12,000, and the court held that since one-third of the value of the property had been lost, the insured was due one-third of the insured value, i.e. £4,000. In Wendy's case, the premises are insured for £40,000, a little over 72.7% of the current value, which we are told is £55,000. She and Jennifer will thus be able to claim only 72.7% of the £6,000 damage, i.e. about £4363. They must bear the uninsured loss of £1637 themselves, unless they can recover it directly from James Reade, the driver of the car which caused the damage. This possibility is discussed in section 6 of this note.

3. Loss of business

There is another problem. Wendy's and Jennifer's loss is not only the cost of repairs, but the loss of business and consequent profit while the restaurant is closed. The business is insured for contingencies other than the fire and special perils detailed in Document B;

but the case study mentions only burglary, employer's liability, and public and product liability: the women have no claim for loss due to closure (the actual policy on which this case study is based does provide a schedule giving cover for such loss, but Wendy and Jennifer have not taken advantage of it).

4. Reinstatement

Assuming that Protector Insurance pays out £4363 on the damage claim, this is an indemnity to Wendy and Jennifer for their loss, and they are not bound to use the money to repair the damage: but, as with most modern policies, the insurer is given the option to reinstate the property instead of paying cash, and clause 7 of the general conditions (Wadsworths Document A) requires the insured to co-operate with the insurer if the latter should elect to exercise this option. If the insurer does elect to reinstate, this election is binding, even if the cost of reinstatement exceeds the insured value; the Protector policy thus includes a proviso in clause 7 limiting its maximum expenditure on reinstatement to the value insured.

5. Subrogation

Once a claim has been paid, the insurer takes over by subrogation any rights of the insured to claim against anyone responsible for the loss: in this case, the driver James Reade, who will doubtless in turn claim on his own insurance policy. What began as a claim by the restaurant owners against the driver thus becomes by subrogation a claim by one insurance company against another, which is how the majority of such incidents are resolved. Clause 11 of the general conditions requires the insured to co-operate in bringing proceedings (which will be conducted in the name of the insured) against the third party causing the loss or damage.

6. Claims against the third party

Protector Insurance is only concerned to exercise its right of subrogation to recover (as far as possible) its expenditure in meeting the claim made by Wendy and Jennifer. If it recovers more, the balance belongs to the insured claimants; but they are responsible for pursuing their own claim against the third party in respect of their uninsured loss, namely the balance of £1637 in respect of the damage to the premises, and the loss of profit resulting from the closure of the restaurant for repairs.

To succeed in a claim in negligence against the driver, James Reade, Wendy and Jennifer must show that he owed them a duty of care which he broke, thereby causing the loss or damage which is the subject of the claim. If found liable, Reade might in turn be able to claim an indemnity from the Prentices, whose small child caused the accident in the first place.

Motorists owe a duty to others not to cause them foreseeable loss or injury by their driving: it is likely that Reade has broken that duty in this particular case, but not certain without more information. If he is found to have done so, the causal connection of the breach with the damage to the restaurant is clear, and Wendy and Jennifer can recover the cost of its repair. The financial loss resulting from subsequent closure may also be recoverable, although there has been a historical reluctance by the courts to allow recovery of such indirect 'economic' loss. The House of Lords in *Junior Books Ltd* v. *Veitchi Co Ltd* [1983] 1 AC 520 appeared to some extent to overcome this reluctance and widen liability in negligence for economic loss in cases where the plaintiff could show a

relationship of proximity to the defendant which entitled him to rely on the defendant's competence. That decision was distinguished by the Court of Appeal in *Muirhead* v. *Industrial Tank Specialities Ltd* [1985] 3 All ER 705, but that court's return to the idea of consequential loss may still allow Wendy and Jennifer to recover from James Reade in the present case. Robert Goff LJ said in his judgment that 'the true question . . . was simply whether damage of the relevant type was reasonably foreseeable by (the defendant)'. On this basis, it can be argued that Reade must have known that if he demolished the front of the restaurant with his car, it would have to be closed for repair, thus causing foreseeable consequential loss.

19. Wundatools

Note: all references to section numbers are to the Sale of Goods Act 1979 unless otherwise stated.

1. Breach of contract

The Sale of Goods Act 1979 implies terms into contracts for the sale of goods: it is a condition of all such contracts that goods sold will:

(a) correspond with their description: s.13;
(b) be of merchantable quality (i.e. reasonably fit for the purpose(s) for which such goods are commonly bought): s.14(2), (6);
(c) be reasonably fit for any particular purpose made known by the buyer to the seller, even if this is not a purpose for which such goods are commonly bought, unless the circumstances show that the buyer did not rely on the skill and judgment of the seller: s.14(3);
(d) if sold by sample, correspond with the sample, and be free of hidden defects making them unmerchantable which a reasonable examination of the sample would not reveal: s.15.

If any of these conditions is broken, the buyer has the right to repudiate the contract and get his money back, although this right is lost if the buyer has accepted the goods, in which case he can only claim damages for breach of warranty: s.11(4). In addition to rejecting the goods, the victim of a breach of condition may sue for damages to cover any loss resulting.

The letters received from Gumble (Document A) and Green (Document B) show that the hammers appear to have been wrongly described as having ash shafts. If the complaints about breaking shafts are correct, the hammers are probably also unmerchantable, and there is thus also a breach of section 15 (rules relating to samples). On any of these grounds, these two customers can sue. They cannot reject the goods, since they have accepted them (resale, being an act inconsistent with the seller's title, constitutes acceptance: s.35); but they can sue for damages. The exclusion clause in Gumble's case ('warranted only equal to sample': Document A) will not help Wundatools. It was probably too late to form part of the contract anyway: c.f. *Healey* v. *Howlett & Sons* [1917] 1 KB 337; and section 13(2), giving statutory force to *Nichol* v. *Godts* (1854) 10 Exch 191, makes it clear that if goods are sold by sample and description, they must correspond with both.

In the case of Col. Carruthers (Document C), the customer specified a particular purpose for which he wanted the goods, and he clearly relied on the seller's skill and judgment: Wundatools are thus in breach of section 14(3), and Col. Carruthers can sue on this ground, or on the ground of unmerchantability.

Wundatools may be able to claim an indemnity from whoever supplied them with the wood for the hammer handles, on similar grounds of lack of correspondence with

description and/or unmerchantability or unsuitability for stated purpose: but this will depend on the construction of its supply contract and the surrounding facts, about which we have no information.

2. Negligence

If a product is defective because the manufacturer has not taken reasonable care in making it, and the defect causes damage or injury, the user may be entitled to damages in negligence: *Donoghue* v. *Stevenson* [1932] AC 562. This depends partly on whether there was a reasonable opportunity for intermediate inspection, but Mrs Dungle (Document D) and Mr Grouse (or his insurance company suing on his behalf) (Document E) may well be able to sue on this ground. Wundatools might defend such an action by showing that they have a good quality control system, and have thus taken reasonable care (the duty is not absolute, as it is under the implied terms in the Sale of Goods Act); but the volume of complaints makes it seem unlikely that the court would accept this. Both complainants can also sue the retailers from whom they bought the hammers under sections 13 and/or 14 of the Sale of Goods Act (see above, section 1 of this note); if they succeed, the retailers may have an indemnity on the same grounds against Wundatools.

3. Product liability

A producer is strictly liable for damage caused by a defect in his product: Consumer Protection Act 1987 s.2(1). This liability cannot be excluded: s.7; and although the Act does allow certain limited defences (including the controversial 'state of the art' defence in section 4), none applies to Wundatools. There is a *de minimis* provision which disallows claims for less than £275, but several (if not all) the complainants in this case may have suffered damage costing more than that.

4. Criminal liability

It is an offence under section 1 of the Trade Descriptions Act 1968 to apply a false trade description to goods. By describing the hammers as having ash shafts when they were in fact elm, Wundatools is liable to a fine if any trading standards officer brings a successful prosecution. It may also have contravened Part II of the Consumer Protection Act 1987, section 10 of which requires goods to be "reasonably safe having regard to all the circumstances." It is an offence to supply goods which do not satisfy this requirement.