



# Commercial law Video Blog - How Complete is the Consumer Rights Act?

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## VIDEO TRANSCRIPT

Hi, everybody, and welcome to the Commercial law blog. It is our second post for 2020-2021. In today's short video, I'll be asking 'How complete is the Consumer Rights Act'.

First of all, I want to think about really where the Consumer Rights Act came from. The Consumer Rights Act 2015 very much looks like a consumer law code. It brings together lots of pieces of legislation and consolidates them into one place so that all forms of sale and supply of goods were in a single piece of legislation. Consumer law has a home.

The Consumer Rights Act also fills gaps, for example, around digital content and simplifies the language used in implied terms. Of course, the Consumer Rights Act was built on top of earlier legislation, Sale of Goods Act 1979, which was a revision to the Sale of Goods Act 1893, which in turn was a codification of the common law. It's no surprise that it's going to still show signs of that and have strong roots in that.

It was also important that in clarifying the rights of consumers, the rights and duties of sellers were also not radically or unfairly changed. So it's understandable that the Consumer Rights Act has a lot in common with the Sale of Goods Act. It's important that they continue to mirror each other as far as possible in substance. It will be unfair, for example, if a buyer were buying goods on a radically different set of terms that they were then selling them, particularly, of course, for a retailer as that would leave them with a significant amount of risk more than anyone else potentially in the chain.

However, if we look more closely, we see the Consumer Rights Act is in fact quite patchy. There are a number of areas important to consumers where the act is in fact totally silent, and where, as a result, the Sale of Goods Act continues to apply. We can see that these are actually quite numerous. For example, we see that all of the provisions in sections 1 to 10 on the formation of the contract continue to apply to the Consumer Rights Act. None of these provisions are quite technical. Indeed, the concept of a contract, which is a common law concept, not really elaborated in the Sale of Goods Act, is one which, in a true legal sense, is unlikely to be fully appreciated by the average consumer.

Nonetheless, of course, it's very often easy to see when a contract has come to be fault, if a buyer has agreed to buy and the seller has agreed to sell, if money has changed hands and goods have changed hands. It would be difficult to argue that there isn't a contract, and so this seldom becomes a live issue. There are, however, very frequently live issues around the transfer of property and the transfer of title. Then the Consumer Rights Act, there are no provisions dealing with either of these at all. Consumers must therefore always fall back on the provisions in the Sale of Goods Act. There are, of course, provisions in the consumer rights act on the passing of risk.

There are then a number of other provisions, which are absent for the Consumer Rights Act or is partially absent from the Consumer Rights Act. We see, for example, at sections 29 and 34 of the

Sale of Goods Act continue to apply, at least in part, and all of part 5 - that is all of the rights of unpaid sales continue to apply. As the rules in relation to auction sales, which is a relatively small part of consumer sales but nonetheless, a relatively important one in some economic sectors, and of course, consumers still have access to common law remedies for breach of contract as a result of section 19(11) of the Consumer Rights Act. There are not just gaps that are filled by the Sale of Goods Act, but also gaps that are filled by the common law.

It's interesting that so many gaps should be left. It's sensible the definition of a sale contract should be the same under the Consumer Rights Act. Why could that definition, for example, not have been carried over simply to create a more complete code while also providing an opportunity to update the language perhaps? As we move on to the final slide, we can then think about what is the effect of this. A more notable gap in the Consumer Rights Act are the provisions on the passing of property and the transfer of title, again, sections 16 to 20b and then the provisions in Section 21 to 25 on the exceptions to the *nemo dat* rule.

All of those provisions contain a number of really quite technical pieces of language and often rely on very, very fine distinctions. The rules about delivering the right to examine goods continue to apply in limited circumstances, as we've already mentioned. In Section 37, all with the rules on self remedies continue to be found in the Sale of Goods Act. This is convenient for sellers, does it also suggest not capable of being improved or at least updated to be clearer. Should we be concerned about these gaps? The answer, of course, is that it depends on which gap we're considering. Given the shift towards being more pro-consumer is perhaps only fair to leave the familiar seller remedies untouched and in place, although it seems to lack ambition. By contrast, it is very surprising that there are no updated provisions on the passing of property and transfer of title? The biggest issue for consumers has always been the passing of risk and this was addressed, but to have these major provisions, especially still outside of the Consumer Rights Act, is concerning. Particularly, of course, as we know that there are provisions in relation to passing of title, as I mentioned a couple of moments ago, can be some technical and there's so densely-drafted. One could argue, of course, that they seldom affect consumers, but that doesn't really seem to be really the issue here.

The provisions on passing a property are now finally being considered by the Law Commission, as discussed in the pre-exam update in my last blog post, but there are no discussions of passing of title, *nemo dat* exceptions, or areas such as seller's remedies could be remodeled and incorporated into the Consumer Rights Act. There seems to be little argument against at least updating the language and perhaps considering the effectiveness of the seller's remedies, as much for the benefit of consumers to understand what remedies a seller might have as for the seller to have a better sense of what their rights are as against consumers.

The results of these gaps is that the CRA has yet to realize its full potential. Consumers are still left to wrestle with difficult and technical terms, for example, as to what a contract actually is, what amounts the deliverable state, what a specific and unascertained goods and who is a mercantile agent. It is difficult not to feel that there isn't scope for the Consumer Rights Acts to be further enhanced. Law Commissions proposed on reform the passing of property rules for consumers if they become law will be very welcomed, but it seems that absolutely, there is more work to do.

I hope it's been interesting and it is really notable how this is not quite the code that it appears. I think we're yet to really understand and to see the effects and the potential gaps and it may be that over years to come, we start seeing legislative developments to close them.