
Editorial

Durability

One of the unwritten laws that govern our daily lives is the rule that an expensive piece of equipment breaks down on the day after the warranty expires. What happens then depends on our own persistence and the commercial sense of the manufacturer. The Sale of Goods Act is no help, and the courts have not spoken out clearly, but reason tells us that one aspect of merchantability is durability.

The issue of durability is one of the matters that the English and Scottish Law Commissions have been examining. A consultative paper just issued¹ makes some proposals for the reform of the law on the sale and supply of goods, including a suggestion that the statutory definition of "merchantability" should include "durability". This is not an entirely unused innovation. Two Canadian provinces, Nova Scotia and Saskatchewan, have added "reasonable durability" to their commercial codes. English law, without any statutory authority, already recognises that durability is an element in the quality of goods. Lord Diplock, in the distressing case of *Lambert v Lewis* in 1981 said: "I do not doubt it is a continuing warranty that the goods will continue to be fit for that purpose for a reasonable time". He was relating durability to fitness rather than merchantability, thus illustrating another point made by the Law Commission working party, that some attention would be given to the

definitions of the various types of implied warranty.

All the references to durability include the adjective "reasonable": no court would enforce a concept of durability that was not reasonable, but putting in the adjective will not solve the problem of how long a product should last. In every case the court must make up its mind on the facts, and will take into account such factors as price and the expectations of the buyer. This is not a question that can be answered by a computer, by a mechanical assessment of stored factors. We have some guidance from manufacturers, as, for example, in the case of refrigerators. Manufacturers are now offering a five-year service contract, at a not very high price, and we may assume that they expect their products to last five years. Would it be reasonable for the buyer to expect more? Or, more to the point, is it reasonable for the manufacturers to charge for the service?

If the Sale of Goods Act is amended, and the court decisions begin to stress the element of durability, doubtless the attitude of manufacturers will change. Perhaps competition will help. Whether the law will actually be changed is another matter. Many of the recommendations of the Law Commissions do lead to legislation but it is not always so.

¹*Sale and Supply of Goods (1983). Working Paper No 85, Consultative Memorandum No 58. HMSO. £3.50.*