

Conditions, Warranties and Innominate Terms

Chambers Briefing | Contract Law Revision Sheet

CORE DISTINCTION: Classification matters because it affects the innocent party's right to terminate for breach. Always separate common-law classification from statutory consumer remedies.

Three categories

Category	Meaning	Remedy for breach	Illustrative authority
Condition	A term classified so that breach gives a right to treat the contract as discharged, subject to any statutory qualification.	Termination (strictly: acceptance of repudiatory breach) plus damages, if the innocent party elects to terminate.	Poussard v Spiers (1876) 1 QBD 410
Warranty	A lesser term: breach does not by itself justify termination.	Damages only.	Bettini v Gye (1876) 1 QBD 183
Innominate / intermediate term	The remedy depends on the consequences of the breach rather than a fixed label.	Termination only where the consequences deprive the innocent party of substantially the whole benefit of the contract; otherwise damages.	Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26

Hong Kong Fir - the question to ask

Do not ask only, "Was the term important?" Ask what the breach actually did to the bargain. Did its consequences substantially deprive the innocent party of the benefit they were intended to obtain?

Sale of Goods Act 1979 - commercial sales

- Sections 13, 14 and 15 contain important implied terms in sales to which the Act applies. By section 11(3), a condition may in some circumstances be treated as a warranty by the buyer.
- Section 15A is a key qualification in non-consumer sales: where breach of a term implied by sections 13, 14 or 15 is so slight that rejection would be unreasonable, the breach may be treated as breach of warranty rather than breach of condition. The seller bears the burden of showing that the breach is so slight.
- Do not import the Consumer Rights Act 2015 remedies into a B2B Sale of Goods Act problem.

Consumer Rights Act 2015 - keep the regimes separate

For consumer contracts, the CRA provides its own statutory rights and remedies. It is safer to state the actual statutory remedy than to describe every consumer right as a contractual "condition".

Subject	Examples of statutory rights	Remedy structure
Goods	Satisfactory quality; fitness for purpose; description	Short-term right to reject, repair/replacement, and price reduction/final rejection depending on the statutory conditions.
Services	Reasonable care and skill; reasonable price/time where	Repeat performance and/or price reduction where the statutory

	applicable	conditions are met.
Digital content	Satisfactory quality; fitness for purpose; description	Repair/replacement and price reduction; additional rules apply to damage caused to devices or other digital content.

Exam method

1. Identify the contract type: consumer or non-consumer.
2. Identify the source of the term: express, implied by common law, SGA 1979, CRA 2015 or another statute.
3. Ask whether the term is classified as a condition, warranty or innominate term - or whether the statute supplies its own remedy scheme.
4. If innominate, assess the consequences of the breach.
5. Check for statutory qualifications such as SGA 1979 s15A.
6. State the remedy precisely.

WATCH OUT: “Condition” is not simply a synonym for “important term”. Classification can be fixed by statute, by express wording properly construed, or by the nature of the obligation; innominate terms require a consequences-based analysis.

Primary reference points: Sale of Goods Act 1979, ss 11, 13-15A; Consumer Rights Act 2015, Parts 1 and 2; Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26.