Outline Solutions to Questions in Chapter 10

Question 1

- Where goods are sold in course of a business terms are implied into the contract by the Sale of Goods 1979.

- The carpet: section 13 description - where there is reliance on description of the goods, the seller is also responsible even if he did not attach the description to the goods, e.g. if it was put there by the manufacturer. *Beale v Taylor* (1967) and the seller is liable even though the carpet is not defective, *Arcos v Ronason* (1933). The carpet was sold as 100% wool and it did not match its description.

- Section 15 sale by sample - where there is an implied condition that the bulk will correspond with the sample in quality, the buyer will have the opportunity of comparing the bulk with the sample, *Godfrey v Perry* (1960). The carpet did not match the sample.

- The skis: Section 14(2) the goods will be of satisfactory quality. Satisfactory quality: standard a reasonable person would consider satisfactory, considering the price, the description and other relevant circumstances which may include, fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from minor defects, safety, and durability. *Clegg v Andersson* (2003), *Ward v MGM Marine Ltd* (2012).

- Section 14(3) the goods must be reasonably fit for their purpose. When consumers buy goods which they put to their usual purpose it will be implied that they had made known that purpose, and that they relied on the sellers skill and judgment to supply goods which are fit for that purpose. These were skis and it would be implied that they were suitable for the sport. *Jewson Ltd v Kelly* (2003)

Question 2

- Where the seller has breached a condition of the contract, the buyer is entitled to repudiate the contract provided he has not already accepted the goods.

- The rules on what constitutes ‘acceptance’ are set out in SOGA s35. It makes no difference that Ali has not read the acceptance note, the question is - has Ali had an opportunity to examine the goods and check goods conform to the contract? *Jones v Gallagher* (2004).

- Where defective goods are delivered to a buyer, the buyer is not considered to have accepted goods merely because he asks for or agrees to goods being repaired by the seller. Where goods are repaired he must be given enough information to make an informed choice, *J & H Richie Ltd v Lloyd Ltd* (2007).

- A consumer buyer has certain additional remedies under ss 48A-48F. Ali is a consumer buyer.
• S48B states that the buyer has the right to require the seller to repair or replace the goods within a reasonable time. The right to repair or replacement is qualified in that the seller does not have to repair or replace the goods if it is impossible, or disproportionate in relation to other remedies.
• If the buyer is making a claim within 6 months of delivery of goods, it is assumed that the goods were defective at the date of delivery unless the seller proves otherwise. It will be up to IT Solutions to show the laptop was not defective.
• In a consumer contract rights cannot be excluded - the sign is invalid.

Question 3
• Section 13: If the goods are sold by description, the goods will match their description. A sale by description’ is a sale where there is reliance on a description.
• Section 14 (2): If sold in course of business, the goods will be of satisfactory quality. The goods must meet the standard that a reasonable person would consider satisfactory, taking into account all relevant circumstances including price and description.
• When deciding if goods are satisfactory, the court can take into account public statements, particularly advertising or labelling, about the specific characteristics of the product, by the producer or his representatives.
• The seller will not be liable if the buyer has either had the defect pointed out to him or he has examined the goods and should have noticed it.
• Section 14(3): If sold in course of a business, the goods will be reasonably fit for their specified purpose. The buyer must expressly or by implication make the purpose known to the seller and rely on their skill and judgement.
• Where a consumer buys goods for their normal purpose it will be implied that he had made this known to the seller and that he relied on the seller’s skill and judgment.
• Section 15: If sold by sample, the goods will match the sample, and be free from any defect of quality not apparent on a reasonable examination of the sample.

Question 4
• In consumer contracts risk only passes on delivery of goods to consumer. In non-consumer contracts risk passes (unless otherwise agreed) when ownership passes.
• Passing of ownership depends upon whether the goods are ‘specific’ or ‘unascertained’. Where no intention is evident in a contract for the sale of specified goods then the first four rules set down in s18 are used. If the goods are ‘unascertained’ and no intention is evident Rule 5 is used.

• Rule 1: in an unconditional contract for the sale of specific goods in a deliverable state the property passes to the buyer when the contract is made.

• Rule 2: In a contract for the sale of specific goods where the seller has agreed to do something to the goods to put them in a deliverable state, the property does not pass until the thing is done and the buyer is notified.

• Rule 3: Where the seller is to weigh, measure or test the goods to find the price, property does not pass until this is completed and the buyer has been notified.

• Rule 4: Goods are delivered on approval, sale or return or other similar terms ownership passes when the buyer signifies approval or takes some action which assumes ownership or keeps the goods longer than the time limited stated in the contract or if no time limited is stated, keeps the goods for more than a reasonable time.

• Rule 5: Ownership of unascertained goods passes when the goods matching the contract description are in a deliverable state and are unconditionally appropriated to the contract.