

Circular Economy and Remedial Frameworks in Contract Law

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Abstract : This paper examines remedies for defective manufactured goods in commercial circular economic transactions. The linear 'take-make-dispose' model fits well with the conventional remedial framework in which damages are considered the primary remedy. Damages under English Sales Law encourages buyers to look for a substitute seller with broadly similar goods to the ones agreed on in the original contract, enter into contract with this new seller and hence terminate the original contract. By doing so, the buyer ends the contractual relationship. This seems contrary to the core principles of the circular economy: keeping products, components, and materials in longer use, which can partly be achieved by product refurbishment. This process involves returning a product to good working condition by replacing or repairing major components that are faulty or close to failure and making 'cosmetic' changes to update the appearance of a product. This remedy has not been widely accepted or applied in commercial cases, which in turn flags up the secondary nature of performance-related remedies. This paper critically analyses the laws concerning the seller's duty to cure in English law and the extent to which they correspond with core principles of the circular economy. In addition, this paper takes into account the potential of circular economic transactions being characterised as something other than sales. In such situations, the likely outcome will be a license to use products, which may limit the choice of remedy further. Consequently, this paper suggests an outline remedial framework specifically for commercial circular economic transactions in manufactured goods.

Keywords : circular economy, contract law, remedies, English Sales Law

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