

Who is Responsible? Look at the Contract

In a contract, who is responsible for what is determined by the wording – which is why it is crucial to get the wording right from the outset. In a recent case, a company bought oil on a standard FOB (free on board) contract.

The oil was of satisfactory quality when it was put on the ship, but not when it arrived in port after an uneventful passage at sea. The buyer held the seller responsible, implying a condition into the contract that the oil would be fit for purpose on delivery. The seller denied responsibility, pointing to a clause which excluded 'all guarantees, warranties or representations, express or implied, of merchantability, fitness or suitability of the oil...'

The case turned on the wording of the contract. The court ruled that there was an implied term (a 'condition') in the contract that the oil would be of satisfactory quality on delivery to the port after a normal passage at sea. The exclusion clause did not, as stated, exclude a change in quality of the oil. The effect of the condition was that the vendor was responsible for the oil failing to be of merchantable quality at the port of discharge.

Kamlesh Chandarana can advise you on any aspect of contract law.