

## THE LAW RELATING TO THE DISPOSAL OF CATTLE INFECTED WITH BVD VIRUS

*Note produced by Nigel Durnford, 18 January 2007, to meet an action point from the EIG10 meeting of 30 November 2006.*

Cattle infected with BVD should be disposed of direct to slaughter.

They must be fit to be transported and if showing any signs of abnormality accompanied to the slaughterhouse by a Food Chain Information Declaration completed by the owner or person in charge of the animal. (*Food Hygiene (England) Regulations 2006 – Regulation (EC) No 852/2004 – Annex 1; PART A.I (1) (b), II. 3 (a), 4 (J), III 7, 8. (b) & (c).*)

### 1. CRIMINAL LAW

#### **Sale by Auctions through a Market**

An infected animal cannot be sold through a market.

It is an offence for a person (this would include the owner or person in charge of the animals as well as the Auctioneer & his company) to permit an unfit animal to be exposed for sale in a market.

"Unfit" includes diseased or ill animals.

(*Welfare of Animals at Markets Order 1990 – Article 5 (1)*).

#### **Sale by Private Treaty**

Any person who in the course of a trade or business, (a) applies a false trade description to any goods (includes animals) or (b) supplies or offers to supply any goods to which a false trade description is applied commits an offence.

A Trade description is an indication direct or indirect, and by whatever means given, of ..... including 'fitness for purpose', 'other history' and in relation to any animal includes sex, breed or cross fertility and soundness.

(*Trade Descriptions Act 1968 – Section 1*).

### 2. CIVIL LAW

When you buy goods from a trader (Farmer), a contract is entered into. The law gives you certain implied, or automatic, statutory rights under this contract.

#### **The Sale of Goods Act 1979 (as amended)**

Says that goods should be as follows:

- **Of satisfactory quality**

This means the goods must meet the standards that any reasonable person would expect, taking into account the description, the price and all other relevant information. In some circumstances the retailer may be liable for any statement made by the manufacturer about the goods.

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Satisfactory quality includes the appearance and finish of the goods, their safety and durability and whether they are free from defects (including minor faults).

- **Fit for purpose**

That goods of this type are generally sold. They must also be fit for any specific or particular purpose made known to the seller at the time of the agreement.

- **As described**

- goods should correspond with any description applied to them.

In business to business transactions the seller can put restrictions into the terms & conditions of the contract but these would only apply if they were not unfair under the Unfair Contract Terms Act 1977.

**HOWEVER -**

**Private sales**

When you buy goods from a private individual, you don't have the same rights as when buying from a trader. The legal principle of caveat emptor, or 'buyer beware' operates. You have no rights to expect that goods be of satisfactory quality or fit for their purpose, but there is a requirement that they should be 'as described'. You should check goods thoroughly before you buy them.

If any of the above are not met then there would be a breach of contract and redress is possible. Consequential loss can also apply.

**Remedy for Misrepresentation**

Misrepresentation may be actionable – where it is a false statement of fact made by one party (or his agent) which is intended to and does induce the other party to enter the contract. A statement may be made in writing, orally or even by conduct (making the goods tell a lie about themselves. A mere statement of opinion provided genuinely held is not a statement of fact. However a statement of opinion by someone in a position to know the facts will be regarded as a statement of fact).

A mere traders / dealers puff is not a statement of fact. The distinction between a trader's puff and a statement having legal significance is a fine one.

There are Two Remedies for Misrepresentation

1. **Rescission –**

Misrepresentation by one party makes the contract voidable (at the option of the other).

2. **Damages –**

Damages may be claimed on their own or in addition to rescission. Damages are available for fraudulent & negligent misrepresentation:- Misrepresentation Act 1967 – Section 2).