Professor Louise Gullifer’s lunch seminar: The interpretation of retention of title clauses—has the Court of Appeal got it wrong in Wilson v Holt?

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The School of Law was honoured to have Professor Louise Gullifer from Oxford University speak at a lunch seminar held on 27th September. More than fifty students and teachers attended the seminar.

In the recent Court of Appeal decision in Wilson v Holt the majority interpreted a retention of title clause in a sale of goods contract as creating an agency relationship between the buyer and seller, so that the buyer sub-sold the goods as agent of the seller. This meant that property in the goods never passed to the buyer, and the seller could not bring an action for the price.

Professor Gullifer argued that the agency construction is wrong as it gives rise to many uncommercial consequences, leads to uncertainty and potentially upsets the balance of interests between financiers of small and medium sized enterprises. She contends that the case of Aluminium Industrie Vaassen B.V. v. Romalpa Aluminium Ltd, used to support many uncommercial interpretations of retention of title clauses, is fundamentally flawed and should be put to rest. Finally, it is argued that the view of the Court of Appeal in Wilson v Holt that section 49 of the Sale of Goods Act 1979 includes the only two circumstances in which a seller can sue for the price is unsatisfactory, and that the section should be reinterpreted or, ideally, reformed.

Professor Louise Gullifer is Professor of Commercial Law at Oxford University. She has been teaching at Oxford since 1991, and before that she practised as a barrister. She teaches Roman law, Contract law, Commercial Law, Corporate Insolvency law and Corporate Finance law and has been the senior law tutor at Harris Manchester College since 1999.