

CHAPTER THREE

STATUTORY REGULATION OF CONTRACTS FOR THE SALE AND SUPPLY OF GOODS

Introduction to the Sale and Supply of Goods and the Sale and Supply of Goods and Services.

This Chapter is primarily concerned with the statutory regulation of contracts for the sale of goods. The law on sale of goods is closely related to, but distinct from the general law of contract. The principal provisions regarding sales of goods are statutory but are applied within a common law framework governing contractual agreement.

Four topics are discussed below as a grounding for International Trade

- 1). The inter relationship between the common law and statute.
- 2). Statutory implied conditions and warranties.
- 3). The concepts of the passing of risk and property and the provisions dealing with the sale of goods by a non-owner.
- 4). Statutory remedies and the rights of the parties for breaches of contracts.

Sale of Goods and Sources of Law : The law relating to contracts for the sale of goods is primarily governed by **The Sale of Goods Act 1979** plus 1994 amendments which was first passed as the **Sale of Goods Act 1893**. This was a codifying statute in that it codified the common law, adopting the principles governing the 19th century contract's of sale. The 19th century cases were of a mercantile (domestic & international trade) nature and provided the background to the implied terms **s12 - 15 SOGA** and especially **s13 - 14 SOGA** regarding merchantable quality and fitness for purpose. The latter has now been replaced by the concept of satisfactory quality.

The original Act had been modified by the **Sale of Goods (Implied Terms) Act 1973** and these modifications were in turn incorporated into the **Sale of Goods Act 1979** which has since been subject to further amendments under **The Sale of Goods Amendment Act 1994**. Despite the large amount of statutory activity in the area the **Sale of Goods Acts** are still not considered to provide the best solutions to many of the problems which domestic and international trade have to deal with and future reforms are anticipated. The Law Commission Report proposed the removal of the common law doctrine of Privity of Contract. which resulted in the passing of **Contracts (Rights Against 3rd Parties) Act 1999**, which provides some protection for third party rights where the provisions of the Act apply, but the Doctrine of Privity of Contract has not be abolished. There is a Universal Contract of Sales Convention and the Vienna Convention on the International Sales of Goods plus EC proposals for universal international sales contracts and commercial law provisions. The E.C. is gradually introducing legislation on a wide range of fronts imposing for instance minimum standards regarding both consumer protection and regulating anti-competitive agreements. Certain specific areas have been addressed by Parliament on an interim basis to solve immediate problems. The **Carriage of Goods By Sea Act 1992** is an example of a modern regime to cover aspects of privity of contract in relation to carriage of goods by sea. Its provisions are not of general application.

The Sale of Goods Act is not a complete code in respect of the sale of goods. It does not codify the general law of contract in England & Scotland. Concepts such as offer, acceptance, consideration etc have been left untouched by the **Sale of Goods Acts**. These are still governed by the common law of contract. Since there was only partial codification, the common law cannot be ignored.

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The pattern of law, which emerges, is not particularly tidy. Rules regarding the passing of risk and property, conditions and warranties, express and implied terms, unfair contract terms and consumer protection, controls against monopolies relating to sales of goods are just some of the competing concepts requiring careful definition and consideration by those who wish to involve themselves with this area of the law.

When the **Sale of Goods Act** was first passed it was based on the 19th century ideal of the "freedom of contract" or "laissez faire", a notion that the law should not prevent the parties from making whatever contracts they chose to make. This is still acknowledged by **s55(11) SOGA** which provides that where any right, duty or liability arises under a contract of sale by implication of law then it may be negated or varied by express agreement or by a course of dealings between the parties or by such usage as binds both parties to the contract.

The principle of "freedom of contract" can be seen in the right of the parties to expressly exclude the implied terms **ss12 - 15 SOGA**. Not until 1973 did statute law put any restrictions on the rights of the seller to exclude his duties under the Act by means of the **Supply of Goods.(Implied Terms) Act 1973**, most of which has now been repealed and re-enacted in the **Unfair Contract Terms Act 1977**. This has itself now been supplemented by provisions regarding the supply of goods and services and by E.C. consumer protection provisions such as **The Consumer Protection Act 1987** and the **General Product Safety Regulations 1994 SI 1994/2328**, regarding dangerous goods, **The Unfair Terms in Consumer Contracts Regulations 1999 (replacing the UTCCR 1994)** and the **Unfair Terms in Consumer Contracts Directive 93/13/EEC**.

Statutory Definitions of Goods and Sale : s2 & s61 S.O.G.A. 1979

Goods : s61 S.O.G.A. 1979. "Goods" includes all personal chattels other than things in action & money and in particular goods include emblements, industrial growing crops and things which are attached to and form part of the land, but which are agreed to be severed before or under the contract of sale.

- a). Money can be goods if it is a curio e.g. 1897 Jubilee Coin. See **Moss v Hancock**.
- b). Emblements and industrial growing crops : Not natural growth - but exist through the labour of man and therefore goods and not land.

Things growing naturally on the land. If severed before sale they become they become goods.

Morgan v Russell (1909) 1 K.B. 367. Sale of cinders and slag not in defined or detached heaps resting on the ground was held to be a sale of an interest in land.

The contract of sale : s2(1) S.O.G.A. 1979. A contract of sale is defined in **s2(4) SOGA** as 'A contract where the property in the goods passes to the buyer at the time of the contract.'

Distinguish from an agreement to sell which is a contract under which the transfer of property in the goods takes place at some future time, and or on some condition being fulfilled, e.g. a contract for the manufacture of goods, an agreement to sell because the property cannot pass until manufacture has taken place.

Classification of Goods under the Sale of Goods Act

Specific Goods. These are goods agreed upon at the time the contract is made. Most retail sales are sales for specific goods.

Unascertained goods. These may be either :-

- i) Generic goods or
- ii) Part of a particular type for example a model of T.V., the actual T.V. not being identified at the time of the contract but later. Unascertained goods may be part of a larger quantity of goods, for example 50 tons of wheat out of 200 tons.

Ascertained goods. These are not defined in S.O.G.A.. It means goods, which are identified in accordance with the contract after the contract has been made. Unascertained goods never become specific. They become ascertained in accordance with the contract.

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Future and existing goods : s61 S.O.G.A. 1979. Future goods are goods to be manufactured or acquired by the seller after the contract of sale has been made. (overlaps with the specific and unascertained goods).

Sale of Goods Contracts and related contracts : Distinguishing a contract of sale from a contract of barter, a gift and a contract of work and material and saying why the distinction was previously important but is now less important because of the **Supply of Goods & Services Act 1982**.

Exchange or barter. No money passes. It seemed to be the rule that if goods were exchanged for money and other goods it was a contract of sale, i.e. a contract of part exchange. Thus, in **Aldridge v Johnson**,¹ A farmer swapped some bullocks for barley & cash also exchanged hands. The barley being worth more than the bullocks. The court held that this was a contract of sale. Similarly in **Dawson v Duckfield**,² two lorries were paid for, partly by cash and partly by the part exchange of two old lorries. Again the court held that this was nonetheless a contract of sale. Contrast this with **Harrison v Luke**,³ regarding a contract of part exchange involving a direct swap of goods which was held not to be a contract of sale.

Work and materials. Goods and a service are supplied together. The courts look at the substance of the contract. If it is to sell goods it is a sale. Thus in **Mansell Furriers Ltd v Tapper [1953] 1 W.L.R. 49.** there was a contract for the sale of a mink coat. The supplier was to acquire the mink pelts and then sew them together and hand over the finished item to the buyer. Held - a contract of sale. By contrast in **Robinson v Graves**,⁴ it was established that a contract to paint a portrait is a contract for services - skill and labour. Mixed goods and services cause a problem as in **Stewart v Revell's Ltd**,⁵ where the plaintiff took a car to a garage to have the brakes repaired. The garage replaced the brake linings. They did it incorrectly. The car crashed. It was held that this was a contract for skill and labour. The importance of the distinction was most significant because the implied terms of the **Sale of Goods Act** did not until the **Supply of Goods and Services Act** apply to a contract of skill and labour.

The common law went some way to remedying this problem. The common law conditions implied into a contract for skill and materials were similar to those implied into a sale of goods contract by the **Sale of Goods Act**. Thus in **Meyers v Brent**,⁶ a garage contracted to repair the claimant's car. They supplied and fitted six connecting rods, which they obtained from the manufacturers. A rod contained a latent defect which the garage could not be expected to discover. The repairs were ineffective. The C.A. held that when a person contracts to do work and supply materials he warranted that the materials would be of good quality and reasonably fit for the purpose he was using them for. Similarly, in **Young & Marton v McManus Childs Ltd**,⁷ a building subcontractor, employed to do roofing work, was told by the contractor to use Somerset 13 tiles. The tiles used had a latent defect and were of unmerchantable quality. The subcontractor was held liable for the breach of implied warranty even though the main contractor had specified the tiles.

By implied warranty the common law tried to reduce the differences in the terms implied into the two kinds of contract. Some differences remained.

- i) In a contract for skill and materials no warranty was implied regarding the materials unless in all the circumstances it was reasonable. **Young & Marton v McManus Child** S.O.G.A. liability is strict.
- ii) The implied warranties were excludable. See **Meyers v Brent**. Per Du Parq.L.J. whose dictum was quoted with approval by the House of Lords in **Young & Marton's** case.⁸

Supply of Goods and Services Act 1982 : The Act is in two parts. Part I is based on the Law Commission Report No 95. 1979. Part II contains the proposals of the National Consumer Council regarding contracts for the supply of services.

¹ **Aldridge v Johnson** (1857) 7 E&B 885 Q.B.D.

² **Dawson v Duckfield** (1936) 2 All.ER.232.

³ **Harrison v Luke**. 1845 Chalmers. p82

⁴ **Robinson v Graves** (1935) 1 K.B. 579

⁵ **Stewart v Revell's Ltd** (1952) 1 All E.R. 1191.

⁶ **Meyers v Brent** [1934] 1 K.B. 46.

⁷ **Young & Marton v McManus Childs Ltd** (1969) 1 A.C. 454. Per Lord Reid.

⁸ but see now s6(1) U.C.T.A. 1977

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Part I. Contracts for the transfer of property & goods :

s2-5 Supply of Goods and Services Act 1982 implies terms similar provisions to **s13-15 Sale of Goods Act 1979**. Thus the distinction between contracts of sale and related contracts is of less importance than previously. Part II. Contracts of hire e.g. cars etc. **s6 - 10 SOGSA 1982** implies similar terms into hire contracts.

The concept of the transfer of property in goods is problematical regarding mixed contracts for goods and services. Presumably provisions of the SOGSA 1982 do not apply unless ownership is transferred, but when does this occur ? Consider the following. Is ownership transferred when a hair dresser supplies faulty shampoo ? If no property in the shampoo is transferred the 1982 Act is not applicable. If property is passed, at what stage does it pass ?

Contracts for Hire Purchase. These should be distinguished from contracts for the sale of goods. The essence of the contract is that the goods are hired out so that the hirer pays for them by instalments and when the final instalment is paid he has the option to purchase the goods.

- i) The hirer is not a buyer. He has not bought or agreed to buy the goods.
- ii) Although the hirer has possession of the goods ownership is retained by the H.P. Co - a form of security for the H.P. Co. If the purchaser defaults subject to consumer protection acts the hirer can repossess.

The impact of sale of goods legislation on International Trade is most significant regarding the implied terms regarding the quality of goods and merchantable quality, and in respect of the passing of property and the passing of risk.

Much of the legislation regarding consumer protection is rarely invoked in international trade disputes because the parties to the contracts are not usually consumers but rather intermediary business men who supply materials for the manufacturing industries and who may supply the retail trade directly or indirectly.

Importers however should be aware of their liabilities regarding defective goods which injure consumers under the provisions of the Consumer Protection Act 1987 since the Act are not limited to retailers dealing directly with the consumers.

Contracts of services in international trade : The most common services in international trade relate to the contract of carriage and allied services such as loading brokers, shipping agents and marine insurance. Marine Insurance is governed by the **Marine Insurance Act 1906** and by the Standard Form I.C.C. Insurance Policies. Under the Treaty of European Union the E.C. is committed under **Title IV Transport :** to developing a common transport policy **Article 74** and now extends through regulations to sea transport.

Title V : Common Rules on Competition and approximation of laws Chapter 1 Rules on Competition govern all industries in the E.C. which have been subject to E.C. Regulations and Directives on anti-competition practices. There is a growing body of E.C. Regulations governing freight charges and conditions of carriage subsequent to **Articles 85-87** which have to be adhered to. The Commission has special powers to act as a court and fine shipping companies that operate monopolies on shipping routes and cases such as the **West Africa Shipping Case** show that the E.C. can fine companies large amounts of money for breach of the regulations.

Minimum standards for carriage of goods are governed by **The Hague, The Hague Visby and The Hamburg Rules**. International Finance is governed by the **Uniform Customs and Practices of Documentary Credits** developed by the International Chamber of Commerce, which also develops standardised rules for bank guarantees etc. The overriding regime governing Bills of Exchange is the **Bills of Exchange Act**.

Sale of Goods Act 1979 Implied Terms

s11. When condition to be treated as warranty

- 11(2) *Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.*

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- 11(3) *Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract.*
- 11(4) *Where a contract of sale is not severable and the buyer has accepted the goods or part of them, the breach of a condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is an express or implied term of the contract to that effect.*
- 11(6) *Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.*
- s12. Implied terms as to title.**
- 12(1) *In a contract of sale, other than one to which ss(3) below applies, there is an implied term on the part of the seller that in the case of a sale he has a right to sell the goods and in the case of an agreement to sell he will have such a right at the time when the property is to pass.*
- 12(2) *In a contract of sale, other than one to which ss(3) below applies there is also an implied term that*
- (a) *the goods are free and will remain free until the time when the property is to pass from any charge of encumbrance not disclosed or known to the buyer before the contract is made; and*
 - (b) *the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.*
- 12(3) *This subsection applies to a contract of sale in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the seller should transfer only such title as he or a third person may have.*
- 12(4) *In a contract to which ss3 above applies there is an implied term that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made.*
- 12(5) *In a contract to which ss3 above applies there is also an implied term that none of the following will disturb the buyer's quiet possession of the goods, namely*
- (a) *the seller*
 - (b) *in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person;*
 - (c) *anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.*
- 12(5A) *As regards England & Wales and Northern Ireland the term implied by ss1 above is a condition and the terms implied by ss2, 4 & 5 above are warranties.*

Guarantee of Good Title. 12(1) S.O.G.A. 1979. In a contract of sale there is an implied term on the part of the seller that he has a right to sell the goods and that in the case of an agreement to sell, he will have such a right at the time the property is to pass. It does not require the seller to be the owner, or that he should acquire title before transferring the goods, merely that he must have "the right to sell."

The expression "right to sell" is wider than the expression title and it means that the buyer is protected not only when the seller has no title but also when he is prevented from selling the goods by a legal process such as an injunction. Thus the right to sell includes the "legal power to sell".

In **Niblett v Confectioners Materials Co.**⁹ sellers agreed to sell a consignment of 3,000 tins of condensed milk. The tins bore a wrapping which infringed another company's trade mark and that company had the legal right to stop the sale by an injunction. The buyer had to remove the labels and sell the tins at a reduced price. He sued the sellers for damages for breach of what is now s12(1). He succeeded in the C.A. Although property in the tins had passed to the buyers, never the less they could have been stopped by injunction from selling the tins.

Cases on s12(1) show that if there is a breach of the section the buyer can reject the goods and recover the full price, even if he has done something which would otherwise amount to an acceptance.

Roland v Divall¹⁰ involved the sale of a car. The buyer used it for 4 months before discovering it had been stolen. The seller was not the true owner. The buyer returned the car to the true owner and sued the seller

⁹ **Niblett v Confectioners Materials Co** [1921] 3 K.B. 387.

¹⁰ **Roland v Divall** [1923] 2 K.B. 500.

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for return of the purchase price. The C.A. held that there was a total failure of consideration. The buyer had bargained for ownership not use. Since the buyer had received no consideration there was no acceptance by him. The 4 months use was regarded as irrelevant. No set off (a sum deducted to take into account any advantages received or detriments suffered) was allowed for the 4 months use.

s12(2) S.O.G.A. 1979. Gives the seller a limited right to contract out of his obligations as to title if it is made clear in the contract that the seller's title may be defective. In practice s12(2) is limited. If the third party does not possess the goods it is unlikely that he will have a charge over the goods. If he does have possession then the seller will not be able to make delivery of the goods to the buyer.

s13. Sale of Goods Act 1979 Implied condition as to the description of the Goods.

- 1). *Where there is a contract for the sale of goods by description there is an implied term that the goods will correspond to the description.*
- 1A) *As regards England and Wales and Northern Ireland, the term implied by ss1 above is a condition.*
- 2). *If the sale is by sample as well as by description it is not sufficient that the bulk of the goods correspond to the sample if they do not also correspond to the description.*
- 3). *A Sale of Goods is not prevented from being a sale by description by reason only that being exposed for sale or hire, they are selected by the buyer.*

What is a sale by description ?

Regarding 'Unseen Goods', **Varley v Whipp**¹¹ held that where a buyer has not seen the goods but relies on the description alone it is a sale by description. The seller agreed to sell a reaping machine described as new the previous year. The buyer had not seen the machine: When delivered he found it to be an old machine. The court held that it was a sale by description. The machine didn't correspond to the description so the buyer could reject the machine. It is clear that whilst **Varley v Whipp** concerned a contract for specific goods, the same rule also applies to all future and unascertained goods, which are therefore sales by description and covers catalogue purchases and orders through a dealer.

Regarding 'Inspected Goods' it was held in **Beale v Taylor**¹² that the words "1961, Herald Convertible " in an advert formed part of the contract's description. The buyer bought by reference to the description. The car was in two parts, a 1961 model and an earlier model, which had been welded together. Thus, there may be a sale by description even if the buyer has seen and examined goods.

Under s13(3) Sale of Goods Act 1979, a sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer. Thus an ordinary sale in a shop or a supermarket may be a sale by description. This was recognised by the common law in **Grant v Australian Knitting Mills**¹³ per Wright LJ. "There is a sale by description even though the buyer is buying something displayed before him on the counter so long as that specific thing is a thing corresponding to a description, it is a sale by description". e.g. a woollen undergarment, a hot water bottle, a second hand reaping machine. The only circumstance where a shop sale is not a sale by description is where the goods are selected and handed over without any exchange of words and the goods are not labelled.

What is the description ? How much of the words used by the parties is subject to s13 ?

- i). The descriptive statement to be part of s13 must be incorporated into the contract. If not, it is a mere representation as in **Oscar Chess v Williams**.¹⁴
- ii) Even if the words of description are incorporated into the contract it is not necessarily part of the description under s13. Only statements, which constitute a substantial ingredient in the identity in the thing are part of the description for the purposes of s13.

In **Ashington Piggeries v Christopher Hill**,¹⁵ the words 'Fair, average quality of the season' did not form part of the description of herring meal which was contaminated and not suitable for mink, though sold to the buyer as mink food. The mink died. The court held that there was no breach of s13.

¹¹ **Varley v Whipp** [1900] 1 Q.B.516

¹² **Beale v Taylor** [1967] 1 W.L.R. 1193 C.A.

¹³ **Grant v Australian Knitting Mills** [1936] A.C. 85. Privy Council. per Wright LJ.

¹⁴ **Oscar Chess v Williams** [1957] 1 W.L.R. 370.

¹⁵ **Ashington Piggeries v Christopher Hill** [1972] A.C. 441

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Note that it could amount to a breach of the s14 Sale of Goods Act 1979 requirements regarding fitness for purposes but one has to beware of the effect of exemption clauses in commercial contracts. In such circumstances it is important to distinguish between 'quality and essential attributes' and the question of identity, since s13 only refers to words of identity. **Reardon Smith Lines v Hansen Tangen**¹⁶ distinguishes between words of identity and words of identification. Contract for the sale of an oil tanker. Term of the contract that the tanker was to be built by the Oosaka Ship Building Co. to be known as Oosaka 354. Oosaka subcontracted the ship out to Oshima - 004. There was slump in the oil trade and the Buyer sought to avoid the contract. He claimed there was a breach of a term of the contract to be built by Oosaka no 354. The court found that Oosaka 354 were not words of identity, only of identification and as such were not within the scope of s13.

In **Re Arbitration between Moore & Landaur**,¹⁷ a contract required 30,000 cans of fruit to be delivered in boxes of 30 cans each i.e. 1,000 boxes. The seller delivered 500 boxes of 30 cans. + 617 boxes of 24 cans. The total number of cans was the 30,000 ordered. The Court of Appeal held the seller's duty under s13 was strict. There was a breach and the buyer could reject. In the light of s15A Sale of Goods Act, unless the contract now declares that the description is a condition entitling the innocent party to avoid the contract it would now be up to the court to decide whether or not the breach is so slight that it would be unreasonable to reject the goods. Similarly, in **Arcos v Ronassen**¹⁸ a quantity of staves, half inch thick ordered by a buyer. Over 95% of the staves delivered were a sixteenth of an inch oversize. Despite the fact that they were found to be commercially within the contract specification, and of merchantable quality and fit for the purpose of barrel making the buyer was able to reject them under s13. Again, s15A could now affect the outcome of such a case in the future.

What is the test for deciding if goods comply to their description ? According to **Ashington**, whether goods comply with a description generally accepted in the trade such as "pure bird seed" is a question of fact in each case. Wilberforce L.J. stated that the law is not concerned with the metaphysical but broad common sense and men in the market in question. Thus if pure bird seed means a minimum of 98% pure in the trade that is likely to be what is required.

The Link between s13 & s14. Goods may comply with the description but be of unsatisfactory quality, or unfit for the purpose, unsafe, not durable, contain minor defects or have a defective appearance and finish. Alternatively, goods may be of satisfactory quality but fail to correspond to their description. Statements as to the quality are not normally descriptive but there may be an overlap, for instance. 'A woollen suit'. If the suit is a mixture of wool and other fabrics there is a breach of s13. If the suit is not of a satisfactory quality there is a breach of s14.

s14. Implied terms about Quality and Fitness etc.

- 1). *Except as provided by this section and s15 below, and subject to any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale.*
- 2). *Where the seller sells goods in the course of a business there is an implied condition that the goods supplied under the contract are of satisfactory quality.*
- 2A) *For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.*
- 2B) *For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods -*
 - (a) *fitness for all the purposes for which goods of the kind in question are commonly supplied.*
 - (b) *appearance and finish,*
 - (c) *freedom from minor defects,*
 - (d) *safety and*
 - (e) *durability.*

¹⁶ **Reardon Smith Lines v Hansen Tangen** [1976] 3 All.E.R. 570.

¹⁷ **Re Arbitration between Moore & Co.Ltd & Landauer & Co** [1921] 2 KB 519

¹⁸ **Arcos Ltd v E.A. Ronassen & Son** [1933] AC470

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- 2C) *The term implied by ss2 above does not extend to any matter making the quality of goods unsatisfactory -*
- (a) *which is specifically drawn to the buyer's attention before the contract is made.*
 - (b) *where the buyer examines the goods before the contract is made, which that examination ought to reveal or*
 - (c) *in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.*
- 3). *Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known*
- a) *to the seller, or*
 - b) *(where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit broker to the seller) to that broker,*
- any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit broker.*
- 4). *An implied term about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.*
- 5). *The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.*
- 6). *As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.*

What does " in the course of a business " mean ? s14(1). retains the general rule of caveat emptor, and so s14(2) & (3) are exceptions to the general rule. The s14(2). implied condition as to satisfactory quality¹⁹ only applies to sales of goods in the course of a business. s14(2) does not apply to private sales. **Haivering L.B.C. v Stevenson**²⁰ involved the sale of a car hire company's own cars. The court held that the sale was made in the course of a trade or business, because it was an integral part of the business carried on by the car hire firm, namely to sell and replace aged hire cars on a regular basis. The business involved the regular sale of used cars, even though they were not specifically in the used car business. By contrast, **Davis v Sumner**²¹ concerned a self employed courier who sold his car. He has used the car almost exclusively in his business transporting film and T.V. tapes for a T.V. Co. The court held that this was not a sale in the course of a trade or business. The sale was not an integral part of the business. It was merely an isolated, sporadic disposal of capital no longer required for the business.

s14(2C). Contains two exceptions. Firstly, there is no implied term of satisfactory quality as regards any defects specifically drawn to the buyer's attention before the contract is made. This raises the problem 'How particular must a seller be in pointing out defects in the goods ?' In **Bartlett v Sydney Marcus Ltd.**²² the price of a second hand car was reduced from £950 to £925 after a seller pointed to a defect in the clutch. In fact the costs of the repairs required were £84. It was held that there had been no breach of s14(2). Sale of Goods Act 1893.

Secondly, there is no implied condition of satisfactory quality if the buyer examines the goods before the contract is made, which the buyer's examination should have revealed. The buyer is under no obligation to examine the goods. If he does not examine them he does not lose the protection of the section. It is perhaps better not to examine goods unless you are an expert and know what you are looking for.

What does Satisfactory Quality mean ? The traditional objective legal test of reasonable person & all the relevant circumstances is established, but is relative to price and description. A list of aspects of quality is provided which take into account a number of the cases considered under the previous provisions. Nonetheless, predictability will not be achieved in this area until the courts have applied the section on a number of occasions and provided some concrete examples for guidance as to how the courts will approach the section. How might some of these old cases be decided today ? **Jackson v Rotax Motor & Cycle Co.**²³.

¹⁹ replacing the old concept of merchantable quality

²⁰ **Haivering L.B.C. v Stevenson** [1970] 1 W.L.R.1375

²¹ **Davis v Sumner** [1984] 1 W.L.R. 1013.

²² **Bartlett v Sydney Marcus Ltd** [1965] 1 W.L.R. 1013

²³ **Jackson v Rotax Motor & Cycle Co.** [1910] 2 K.B. 937.

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concerned a contract for a consignment of motor horns described as new. Half of the consignment were slightly damaged, dented and scratched because of bad packaging. The Court of Appeal found there had been a breach of s14. Similarly, **Lee v York Coach & Marine**²⁴ concerned the sale of a used car. It had a number of defects and was unsafe. The Court of Appeal held that there had been a breach s14. The car was unsafe and unroadworthy. Under s14 the car had to be safe when driven. **Rogers v Parish (Scarborough) Ltd.**²⁵ concerned a new Range Rover Car. The care had defects in the engine, gear box, body work and oil seals. None of these defects made the car undriveable or unroadworthy but all required repairs. The Court of Appeal held that there was a breach of s14. The court stated that the meaning depended on the market, so that deficiencies acceptable in a second hand vehicle would not be acceptable in a new vehicle. In a new vehicle, factors like comfort, ease of handling, reliability, and pride in outward and inward appearance are important. Presumably this continues to apply to satisfactory quality.

Fitness for purpose.

s14(3) *Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known -*

a) *to the seller, or*

b) *where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit broker to the seller, to that broker,:-*

any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit broker.

s14(4) *An implied term about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.*

s14(5) *The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.*

s14(6) *As regards England & Wales and Northern Ireland, the terms implied by ss2 & 3 above are conditions.*

The circumstances in which the condition will be implied.

The buyer must rely on the seller's skill and the reliance must be reasonable. There will be no implied term if the buyer does not rely on, or it is unreasonable for the buyer to rely on the seller's skill and judgement. As in **Grant v Australian Knitting Mills**²⁶ reliance is seldom express. Usually it is implied. In the case of a purchase from a retailer the reliance will in general be inferred from the fact that a buyer will go to a shop confident that the tradesman has selected his stock with skill and judgement. Reliance by the buyer is usually presumed by the law. It is up to the seller to rebut the presumption, that is to say, to show that the buyer did not rely on his skill and judgement. If the seller is a manufacturer it is very difficult to rebut this presumption. If both seller and buyer are members of the same commodity market (i.e. businessmen in the same trade) the presumption will be more easily rebutted.

Partial reliance on the seller's skill and judgement is sufficient Thus in **Cammell Laird v Manganese Bronze**,²⁷ a buyer ordered a ship's propeller. He gave the seller specifications about part only of the propeller. The propeller was not fit for purpose because of a defect in a part for which the seller was responsible. There was a breach of s14(3) because the buyer had relied on the seller's skill and judgement. There can still be reliance even though the buyer may suspect that only a certain type of goods will be supplied. In **Manchester Lines v Rea**,²⁸ coal was ordered for bunkering a ship. The suppliers knew a particular kind of coal was required but it was in short supply so they sent a different kind which was not suitable. Although the buyer suspected that this might happen there was still reliance on the seller's skill and judgement to supply a suitable type of coal for bunkering

²⁴ **Lee v York Coach & Marine.** 1977 R.T.R. 35. Cairns J.

²⁵ **Rogers v Parish (Scarborough) Ltd.** [1987] 2 All.E.R. 232.

²⁶ **Grant v Australian Knitting Mills.** [1933]. Wright L.

²⁷ **Cammell Laird v Manganese Bronze** [1934] A.C. 402.

²⁸ **Manchester Lines v Rea** 1922 A.C. 74.

CHAPTER THREE

The particular purpose for which the goods have been bought.

If the goods have only one purpose then notification by the buyer of the purpose for which he buys the goods will be implied from the purchase. In **Priest v Last**.²⁹ a hot water bottle burst while being used. The buyer claimed for breach of s14(3). The seller argued that the buyer had not made known the purpose for which the hot water bottle would be used. This was rejected by the court since hot water bottles are bought for a specific purpose.

If goods have a number of purposes to which they may be put then the cases suggest that the responsibility placed upon the seller is a very heavy one. **Kendall v Lillico** ³⁰ concerned a contract for Brazilian ground nuts extract, sold for the purpose of compounding into feed stuffs for cattle and poultry. The buyer used the goods for feeding his turkeys. This proved to be fatal. Evidence showed the extract was not dangerous to cattle. There was a breach of s14(3).

In **Ashington Piggeries**, sellers sold Herring meal to compound into animal feeding stuffs. This proved fatal to the buyer's mink. It was suitable as a general feeding stuff. In this case it was shown that the buyer relied on his own judgement as to the suitability of the foodstuff to mink, but on the seller's skill and judgement as to its general suitability as animal food stuffs. The House of Lords held there was a breach of s14(3). The seller should have made it clear that the buyer should not rely on the seller's skill and judgement in an area that the seller knew little or nothing about.

Extent of the seller's obligations under s14(3).

It covers all the goods supplied under the contract, whether intentionally supplied or not. The court held in **Gedding v Marsh**.³¹ that the duty extends to packaging and included a bottle containing the mineral water. In **Wilson v Rickell Cockerel & Co**.³² a seller supplied coalite fuel. It contained an explosive substance. The sellers argued that the coalite itself was of merchantable quality. It was only the extra substance, which made the fuel dangerous. The Court of Appeal rejected the argument. The phrase "supplied under contract" means the whole substance supplied, not just the coalite. In **Wormell v R.H.M. Agriculture (Fast) Ltd**.³³ the Court of Appeal held that goods meant not just the goods themselves, but the container, packaging and any instructions supplied with the goods. If the instructions were wrong or misleading the goods were not of merchantable quality or fit for the purpose contrary to the requirements of s14(2) or (3) breach. However in that particular case the court found as a fact that the instructions were not in fact misleading.

Note that liability under s14(6) is strict as confirmed by **Frost v Aylesbury Dairy**.³⁴

s15. Implied conditions in Sale by Sample.

15(1) *A contract is a contract for sale by sample where there is an express or implied term to that effect in the contract.*

15(2) *In the case of a contract for sale by sample there is an implied term*

a) *that the bulk will correspond with the sample in quality;*

b) *that the goods will be free from any defect which would not be apparent on reasonable examination of the sample.*

15(3) *As regards England & Wales & Northern Ireland, the term implied by ss2 above is a condition.*

In **Godley v Perry** ³⁵ a boy was injured using a defective catapult bought from a retailer. The retailer had bought it by sample from the wholesaler Inspection of the sample followed by purchase of the consignment. The boy successfully sued the retailer under s14(2)(3). The retailer successfully sued the wholesaler under s15(2)(c), since the defect was not revealed by a reasonable inspection. s15(2)(c) therefore gives the retailer an indemnity against his supplier.

Exclusion of liability for the implied terms of the S.O.G.A. A distinction is drawn between consumer and non consumer contracts for all the implied terms except s12. Any attempt to exclude liability for s12 is void.

²⁹ **Priest v Last**. [1903] 2 K.B. 148.

³⁰ **Kendall v Lillico** [1969] 2 A.C. 31.

³¹ **Gedding v Marsh**. (1929) 1 K.B. 668.

³² **Wilson v Rickell Cockerel & Co** [1954] 1 Q.B. 598.

³³ **Wormell v R.H.M. Agriculture (Fast) Ltd** [1987] 1 W.L.R. 1091

³⁴ **Frost v Aylesbury Dairy** [1905] 1 K.B. 608.

³⁵ **Godley v Perry** (1960) 1 W.L.R. 9.

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s6(11). U.C.T.A. 1977. *As against a person dealing as a consumer any attempt to exclude or restrict liability for implied terms of s13,14, 15, or 16 is void.* ³⁶

s12 U.C.T.A. 1977. Definition of a consumer sale :Provides that a person is dealing as a consumer if :-

- i). He neither makes the contract in the course of a business nor holds himself out as doing so, and
- ii) the other party does make the contract in the course of a business and
- iii) the goods are of a type ordinarily supplied for private use or consumption.

In the course of business : It means that the buyer is buying the goods as an integral part of his business - or the purchase is necessarily incidental to the business. In **Peter Symmans & Co v Cook**³⁷ a firm of surveyors bought a second hand Rolls Royce which proved to be defective. C.A. held: It was a dealing as a consumer, because the buying of a car is not an integral part of the business of surveying. In **Rosbora Ltd. v J.C.L. Marine Ltd.**³⁸ a private buyer bought a boat, and sold it to a Company Incorporated to avoid V.A.T. Although the Co was the final buyer the original purchase was still a consumer sale.

Business contracts. s6(3).U.C.T.A. 1977.. If the buyer deals otherwise than as a consumer, liability for the implied terms can be excluded or restricted subject to the *reasonableness test*.

The reasonableness test : s11 & Schedule II. U.C.T.A. 1977. These provide guidelines for the court in assessing reasonableness of exclusion clauses and limitation clauses.

- i). Relative bargaining strength of the parties.
- ii). Whether B received any inducements for the clause to be included in the K.
- iii) Whether the customer ought to have known of the existence of the exclusion clause for example because of trade custom.
- iv) If liability is excluded ; if some condition is not complied with, for example, giving notice within a time limit, whether it is reasonable and practical to expect compliance with the condition.
- v). Whether goods have been processed or manufactured to the order of the customer.

³⁶ see also s6(2) U.C.T.A. 1977.

³⁷ **Peter Symmans & Co v Cook** (1981) 131 N.L.J. 758.

³⁸ **Rosbora Ltd. v J.C.L. Marine Ltd.** (1977) Q.B.