

SATISFACTORY QUALITY

Formerly referred to as merchantable quality

Probably the most important section in the Sale of Goods Act is s.14. However, as a preliminary point it must be emphasized that this section, unlike the rest of the Act, applies to sales **in the course of a business only**. So if goods are bought privately you can sue for description NOT satisfactory quality.

It is provided in s.14(2) that;

"...There is an implied condition that the goods supplied under the contract are of satisfactory quality..."

Wilson v Rickett Cockerell & Co Ltd [1954] 1 QB 598

The claimant was a housewife who purchased a consignment of Coalite from the defendants. When lit, a detonator in the Coalite exploded blowing up the fireplace.

At first instance, it was held that it was the detonator, which had exploded and the coalite itself was of merchantable quality.

Held - On appeal, the Coalite was sold in units of one bag, contained in which was the explosive material, and that the bag of Coalite, as a unit, was not fit for its purpose as a household fuel. Damages were awarded to the claimant under s 14(2) of the Act. (Section 14(3) (as it is now) was deemed not to apply as the claimant had not relied on the skill and judgment of the defendants in order to select a fuel.)

There is now a statutory definition of satisfactory quality in s.14(2A) which states:

"Goods are of a 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 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 that kind are commonly supplied,
- b) appearance and finish,
- c) freedom from minor defects,
- d) safety, and
- e) durability.

(2C) the term implied by sub s (2) above **does not extend** to any matter making the quality of the 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."

The result is that there are a number of tests, purpose, reasonableness, price and relevant circumstances, all of which are somewhat elastic concepts.

Is there an absolute standard or is the standard relative, and if relative, to what?

Reasonable Person

Jewson Ltd v Kelly QBD 2 August 2002

Jewson Ltd supplied 12 electric boilers to Kelly. He claimed they were not of satisfactory quality. Mr David Foskett QC sitting as Deputy Judge stated that when considering whether goods were of satisfactory quality it was necessary to consider under S14(2) whether the reasonable person, having considered subsection (2A) and (2B), would have regarded the boilers as of satisfactory quality, taking in to account any description, price and all other relevant circumstances, including their state and condition, fitness for purpose, appearance, freedom from minor defects safety and durability.

The hypothetical reasonable person had to take in to account the circumstances of the individual buyer and the background to the particular transaction in question.

The fact that the boilers intrinsically worked satisfactorily was not enough since a reasonable person would have said that a new form of electric boiler, claiming to provide efficient, low-cost heating in residential dwellings ought to be capable of

being shown to meet such a claim within tests or procedures prevailing at the time, or if not why not?

Further a reasonable person would say without meeting such tests or procedures or without an explanation a reasonable person would say the boilers were not of satisfactory quality.

HOW LONG CAN A BUYER TAKE TO REJECT FAULTY GOODS?

Rogers v Parish (Scarborough) Ltd [1987] QB 933

The plaintiff bought an “as new” Range Rover; after a few weeks it proved unsatisfactory and was replaced. The replacement was equally unsatisfactory, and attempts to repair various faults were unsuccessful. After five months the plaintiff tried to reject the car on the grounds that it was not of merchantable quality.

Held - The court of Appeal said they were entitled to do so: the expectations of the purchaser of a Range Rover were higher than those of the purchaser of an ordinary car.

If goods are not rejected at the earliest opportunity the courts can take the attitude that they have been accepted by the buyers and the remedy of rejection is lost.

Clegg & Another V Anderson (T/A Nordic Marine) [2203] EWCA Civ 320

The buyer, Clegg, had purchased a boat, which, on delivery, had a keel that was too heavy. On delivery in August 2000 he had advised that there was a problem with the boat and a potential solution was suggested to him. He requested more information to enable him to make a decision. The seller eventually supplied this in Feb 2001 and offered 2 further solutions both different from the original one. The seller made it clear that doing nothing was not an option for the buyer. 3 weeks later the buyer rejected the boat, some six months after delivery. CA accepted evidence that the boat was unsafe and hence not of satisfactory quality.

Held 3 weeks following receipt of the information from the seller was deemed to be reasonable and Clegg was able to reject the boat.

There may also be questions as to exactly what is purpose. Obviously the buyer will have a purpose but how far is this relevant to the contract of sale and thus satisfactory quality?

Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 WLR 1

The sellers supplied waterproofing material in plastic pails. These collapsed spilling their contents, having been stacked on a dock in Kuwait by the buyer in piles six high in bright sunshine and temperature up to 150° F for several days. The buyer claimed they were not fit for the purpose.

Held – The sellers were not in breach of their duty. The packaging was fit for most ordinary purposes

Also within purpose is the problem of the item with many purposes, is it unsatisfactory if unfit for one?

Henry Kendall & Sons v Lillico & Sons Ltd [1969] 2 AC 31

The plaintiffs bought “ground nut extract” without any previous experience of dealing with it. They bought it to make poultry feed, unfortunately it contained a toxin that was poisonous to poultry, but not for its normal use (*cattle feed*). The buyer fed it to his pheasants and most of them were killed. The plaintiff claimed the product was of unmerchantable quality

Held – It was not unmerchantable just because it was not fit for one purpose, the outcome may have been different if the purpose it was to be used for had been disclosed to the seller when it was bought.

There is also the question of what is the buyer required to do to render the item merchantable?

Heil v Hedges [1951] 1 TLR 512

Purchaser bought a pork chop which caused a tape worm infestation the buyer, claimed it was of unmerchantable quality.

Held - The judge found the chop was of merchantable quality: there would have been no danger if it had been cooked properly before eating it, and the importance of cooking pork properly was well known.

So that if the buyer should do something to the goods the fact of doing it incompetently will not render them unmerchantable.

However, the goods may be faulty but some simple procedure would render them harmless. Are they still unmerchantable?

Grant v Australian Knitting Mills [1936] AC 85

The claimant bought some woollen underpants which contained a sulphite. When mixed with water they formed an acid. When Mr Grant got out of hospital he sued the company.

Held – The goods were not of merchantable quality Simple washing would have removed the chemicals, but it was not reasonable to expect the buyer to wash the pants before wearing them.

The other main problem is the relevance of price, particularly with regard to second hand goods.

B S Brown & Son v Craiks Ltd [1970] 1 All ER 823

The appellants ordered a quantity of cloth from the respondents, for making dresses. The respondents believed that it was for industrial purposes. The price (36.25d per yard) was higher than normal for industrial fabric but not unreasonably high. The cloth was not suitable for making dresses and the appellants cancelled the contract and claimed damages. Both parties were left with substantial quantities of cloth; the respondents managed to sell some of this for industrial purposes at 30d per yard.

Held - The cloth was of merchantable quality, because it could still be sold, even at a lower price.

But there must be some point at which the price difference renders the thing unmerchantable with that description.

Beecham & Co Ltd v Francis Howerd & Co Pty Ltd [1921] VLR 428

The defendant bought “*Spruce Timber*” for making piano’s, the defendant selected the timber himself from the plaintiffs stock, it was later found to have “*dry rot*” which could not be noticed on a reasonable external examination. The sellers argued it could still be used for making boxes, a common use for Spruce. The buyer paid 80 shillings per 100ft whereas timber for boxes was only 30 shillings.

Held – It was not merchantable quality under the Contract Terms.

Thus price is a relevant item in many situations but not always so.

On used goods this may be even more relevant.

Crowther v Shannon Motor Co [1975] 1 All ER 139

The plaintiff had bought a used Jaguar that had done 82,000 miles at a cost of £390, he drove a further 2,000 miles in the next three weeks, the engine had to be replaced, and evidence from the previous owner stated "*it was clapped out*" when it was sold to the defendant.

Held - The vehicle was not of merchantable quality. The court said, a car is expected to go for a reasonable period after sale, (*implying certain durability*).

If the product is described as less than perfect then it is merchantable with that description.

Bartlett v Sidney Marcus Ltd [1965] 1 WLR 1013

The plaintiff bought a used car for £950; he was warned of possible problems with the clutch and was allowed a £25 discount on the basis that he would get this fixed himself, or he could pay £975 and the seller would repair the clutch. He used the car for about a month, but the repair would cost £48, the plaintiff tried to reject the car.

Held – The plaintiff's case failed. It was not unmerchantable just because the defect proved more serious than expected.

A further issue is durability; is an item unsatisfactory because it fails to last or is there just a one stage test at the point of sale?

Mash & Murrell v Joseph I Emanuel [1961] 1 All ER 485, [1961] 1 WLR 862

The sellers (*in Cyprus*) sold potatoes Carriage & Freight (C&F) to Liverpool, the potatoes were sound when loaded but rotten on arrival in Liverpool.

Held: The sellers were liable, in such a contract the goods should be loaded in such a way that they can endure a normal journey and be in a merchantable condition upon arrival.

Thus the continuing durability of an item is relevant in so far as it relates to the condition of it at the time of sale.