

FITNESS FOR PURPOSE

S. 14(2B) provides that:

'goods must be fit for all the purposes for which goods of the kind in question are commonly supplied.'

This may be by implication or expressly made known by the buyer.

Priest v Last [1903] 2 KB 148

The claimant purchased a hot water bottle from the defendant. The bottle was used by the claimant's wife and, on its fifth use, it burst, scalding her. Defence claimed that Priest did not state for what purpose he wanted the hot water bottle.

Held – The hot water bottle was not fit for “*its obvious and usual purpose*” and was therefore unmerchantable.

Thus it may be that an obvious purpose is presupposed, particularly if the item has only one main purpose

This brings back the multi-purpose problem in another guise.

Ashington Piggeries v Christopher Hill Ltd [1972] AC 441

Herring meal was sold for compounding into animal feed, but the meal was contaminated, this rendered it mildly toxic to some animals but seriously toxic to mink. And the farmer suffered heavy losses upon feeding the food compound to his minks.

Held: The farmer was entitled to damages, the meal was unfit for its purpose, although deadly to mink, it was also toxic to other animals

As a result a purpose may be general, e.g. feed, and the particular purpose may be one within it. This is probably the maximum extent of fitness and the analogy must not be overused. Furthermore, any individual attributes of the subject may render the item not unfit.

Griffiths v Peter Conway Ltd [1939] 1 All ER 685

The plaintiff bought a Harris Tweed, tailor-made coat from the defendants. Due to her abnormally sensitive skin, she contracted dermatitis from wearing the coat. Only someone who had a similar skin type would have suffered from this problem.

Held – Plaintiff failed. The defendants did not know of the plaintiff's sensitive skin and could not be expected to assume its existence. The coat was fit for most people. s14 (3) of the Sale of Goods Act did not apply

There is a suggestion that the seller should, in certain circumstances, know that a particular type of thing is required and so provide for it such that, if it is not provided the seller will be in breach of the section.

Manchester Liners v Rea [1922] 2 AC 74

The seller supplied coal to be used in a ship. The coal delivered by the seller was unsuitable for the steamer for which the buyer intended it to be used.

Held – By Lord Green, Ships differed in their types and requirements, and coal merchants knew this, there was a breach of the implied condition.

The question then becomes, if the seller knows of the purpose is it assumed that the buyer is relying on the seller?

Teheran-Europe Corp v S T Belton Ltd [1968] 2 QB 545

The plaintiff was a Persian company who bought machines from an agent in London, the agent inspected all goods. It turned out that the goods were not suitable for the home market.

Held – Was the buyer relying on the sellers "*skill and judgment*" that the goods were fit for their purpose. They weren't, it would be contrary to common sense to apply the seller's skill and judgment to a market they knew nothing about and the buyers knew everything.

However, if the supplier is not made aware of the particular purpose then there is no breach of the implied condition of fitness for purpose.

Thus the key area is the extent of the reliance. Mere knowledge is not enough as that only starts the process. Obviously in many cases reliance can be inferred from knowledge but, where this is not so some evidence is needed.

It might be thought that the section would only apply where the goods are manufactured or processed but this is not the case:

Frost v Aylesbury Dairy Co. Ltd. [1905] 1 KB 608

A woman died of typhoid contracted from infected milk supplied by the defendant. The plaintiff "*Her husband*" sued for breach of contract, relying on a term implied by s.14 (1) of the Sale of Goods Act 1893, (*equivalent to that in s.14 (3) of the 1979 Act*).

Held – The milk was not fit for the purpose; it is not a defence that no amount of skill or judgement would have allowed the sellers to spot the defect.

ADDITIONAL RIGHTS OF BUYER IN CONSUMER CASES
Added by The Sale & Supply of Goods to Consumers Regs 2002

This amendment was as a result of EU legislation

48A Introductory

- (1) This section applies if -
 - (a) **the buyer deals as consumer** and
 - (b) the goods do not conform to the contract of sale at the time of delivery.
- (2) If this section applies, the buyer has the right -
 - (a) under and in accordance with section 48B below, to require the seller to repair or replace the goods, or
 - (b) under and in accordance with section 48C below -
 - (i) to require the seller to reduce the purchase price of the goods to the buyer by an appropriate amount, or
 - (ii) to rescind the contract with regard to the goods in question.
- (3) For the purposes of subsection (1)(b) above goods which do not conform to the contract of sale at any time within the period of six months starting with the date on which the goods were delivered to the buyer must be taken not to have so conformed at that date.

This would cover, for example, a latent defect

- (4) Subsection (3) above does not apply if -
 - (a) it is established that the goods did so conform at that date;
 - (b) its application is incompatible with the nature of the goods or the nature of the lack of conformity.

48B Repair or replacement of the goods

(1) If section 48A above applies, the buyer may require the seller -

- (a) to repair the goods, or
- (b) to replace the goods.

(2) If the buyer requires the seller to repair or replace the goods, the seller must -

- (a) repair or, as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer;
- (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The buyer must not require the seller to repair or, as the case may be, replace the goods if that remedy is -

- (a) impossible, or
- (b) disproportionate in comparison to the other of those remedies, or
- (c) disproportionate in comparison to an appropriate reduction in the purchase price under paragraph (a), or rescission under paragraph (b), of section 48C(1) below.

(4) One remedy is disproportionate in comparison to the other if the one imposes costs on the seller which, in comparison to those imposed on him by the other, are unreasonable, taking into account -

- (a) the value which the goods would have if they conformed to the contract of sale,
- (b) the significance of the lack of conformity, and
- (c) whether the other remedy could be effected without significant inconvenience to the buyer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined by reference to -

- (a) the nature of the goods, and
- (b) the purpose for which the goods were acquired.

48C Reduction of purchase price or rescission of contract

- (1) If section 48A above applies, the buyer may -
 - (a) require the seller to reduce the purchase price of the goods in question to the buyer by an appropriate amount, or
 - (b) rescind the contract with regard to those goods,

if the condition in subsection (2) below is satisfied.

- (2) The condition is that -
 - (a) by virtue of section 48B(3) above the buyer may require neither repair nor replacement of the goods; or
 - (b) the buyer has required the seller to repair or replace the goods, but the seller is in breach of the requirement of section 48B(2)(a) above to do so within a reasonable time and without significant inconvenience to the buyer.

(3) For the purposes of this Part, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take account of the use he has had of the goods since they were delivered to him.

48D Relation to other remedies etc.

- (1) If the buyer requires the seller to repair or replace the goods the buyer must not act under subsection (2) until he has given the seller a reasonable time in which to repair or replace (as the case may be) the goods.
- (2) The buyer acts under this subsection if -
 - (a) in England and Wales or Northern Ireland he rejects the goods and terminates the contract for breach of condition;
 - (b) in Scotland he rejects any goods delivered under the contract and treats it as repudiated;
 - (c) he requires the goods to be replaced or repaired (as the case may be).