

SALE OF GOODS

Although this series of lectures is entitled Sale of Goods it will cover the whole area under which goods transfer from one person to another, except land, i.e.

Sale of Goods
Supply of Goods
Transfer of Goods by hire purchase
Product Liability

The last of these will be covered on its own later in the course but the first three will use the provisions of the Sale of Goods Act as a starting point and similarities and differences for other transaction will be highlighted.

The principal legislation to be considered is

The Sale of Goods Act 1979

This Act principally covers the sale of goods for money,
NOT goods bought on HP and not services

The Supply of Goods and Services Act 1982

This Act covers those aspects of contract where there is a mixture of goods and services supplied; for example, installation of a central heating system where there are radiators, pipes and a boiler supplied but the principal amount of money for the contract will be the cost of labour

The Supply of Goods (Implied Terms) Act 1973

This Act principally relates to those aspects of goods supplied on hire purchase or conditional sales

The Sale and Supply of Goods Act 1994

This is not dealt with on its own as it was an Act which amended the above legislation

The Sale and Supply of Goods to Consumers Regulations 2002 SI No. 3045

Amended SOGA and SOSASA extending remedies:

- **a full refund**, if this is within a reasonable time of the sale or

- **a reasonable amount of compensation (or “damages”)** for up to six years from the date of sale (This does not mean all goods have to last six years! It is the limit for making a claim).
- **a repair or replacement.** Unless it is disproportionately costly in comparison with the alternative.
- **a partial or full refund**, depending on what is reasonable in the circumstances.

Contract (Rights of Third Parties) Act 1999

This extends the rights of the buyer to anyone else named at the time of purchase

Any person who is not a party to a contract, if he is expressly identified, then he may enforce any term of the contract. This gives virtually the same contractual rights to a party as the persons who initially contracted together. An example would be buying a present for someone and asking for their name to be included on the contract. For example, the shop writing that name on the invoice. If there were any problems then they, as well as the contracting parties, could take action.

The first hurdle to be tackled in any discussion of this area is which piece of legislation applies? This is found from the definition near the beginning of the Act.

s.2(1), Sale of Goods Act 1979

"A contract for the sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods for a money consideration called the price."

It follows that if the transaction involves goods and services, or buying goods on extended finance such as HP, then the Sale of Goods Act does not apply. However, similar provisions exist in other statutes giving the same levels of protection.

It is arguable that where the Service element is very small in relation to the whole contract the transaction ought to be regarded as a SALE OF GOODS but where the service element is significant it should be a SUPPLY OF GOODS AND SERVICES.

For example a takeaway, is this Sale of Goods or Supply of Goods & Services?

DEFINITION

Contract	If there is no valid contract there can be no sale of goods, or supply of services, as the Sale of Goods Act and the Supply of Goods and Services Act, require a "contract for the transfer of goods".
Transfers or -	It does not matter if the actual hand over of the goods is to be agrees to delayed, the sale of goods takes place when the contract is made transfer .
Property in the Goods -	This means ownership in whole or in part. Often referred to as title
Money	If the transaction does not include money consideration there is no sale of goods but there will be a supply of goods if there is valuable consideration of some type.

FORMALITIES

A contract of sale of goods, or supply of goods requires no formalities, **SGA s.4**, whereas a contract for hire-purchase or a conditional sale agreement is required to be in a particular form, Consumer Credit Act 1974, s.60.(Form and content of agreements).

THE GOODS

The following rules in the Sale of Goods Act may be assumed to be applicable to all types of transaction on the basis that they are a codification of the Common Law.

- a) The goods need not be owned by the seller or in existence at the time of the contract but might be acquired or manufactured by the seller at some future date. These are referred to as future goods as opposed to specific goods and different rules apply in respect of them. **(s.5)**
- b) Obviously future goods cannot, generally, cease to exist but specific goods, that is goods agreed on at the time of the sale can cease to exist.

s.6 - Where there is a contract for the sale of specific goods, and the goods, without the knowledge of the seller, have perished at the time when the contract is made the contract is void.

Barrow, Lane and Ballard Ltd v Phillip Phillips & Co. Ltd [1929] 1 KB 574

The plaintiffs bought 700 bags of ground-nuts believed to be in a certain warehouse; in fact 109 of the bags had disappeared when the contract was made. The buyers took delivery of 150 bags about two months later it was discovered no more bags were left at the warehouse.

The buyers had two bills of exchange, one for 150 bags and another for 700 bags; they admitted liability for the 150 bags but not the 700 bags.

The buyers refused to pay either bill on the grounds that the sellers were in breach of an implied term that "*the goods existed*" probably as their insurance would not have paid but the sellers insurance probably would have done.

Held – The contract was void under s.6, rather than a breach of contract. The goods had perished.

Asfar & Co. Ltd v Blundell [1896] 1 QB 123

Dates were shipped on a barge under bills of lading "*making the freight payable on right delivery.*" The barge sank on to a sewage outfall, it was subsequently raised. On arrival at the port of discharge it was found that the dates still looked like dates. The insurance underwriters claimed therefore that the dates had not perished they were impregnated with sewage and sea water, but were still dates.

Held - Freight was not payable in respect of them, the nature of the thing had been altered.

- c) Equally, where there is a contract for specific goods but they perish before the risk passes to the buyer the contract is also void. **(s.7)**

Turnbull v Rendell [1948] 2 All ER 1036

The seller agreed to sell 75 tons of `table potatoes` from a specific crop, some of which were still in the ground. At the time of the contract, the potatoes were so badly affected with secondary growth that they no longer answered the description `table potatoes`. A claim under s.13 "goods do not match the description" was brought against the seller.

Held – The buyers claim for damages was rejected, the potatoes had `perished` within the meaning of s.13 of the Act and the contract was void

One result is that goods have perished when they have ceased to be what was contracted for even, though still useable, but this does have practical limits:

Cehave NV v Bremer Handelsgesellschaft, The Hansa Nord, [1976] QB 44

Citrus pellets case

Thus, perishing is a business matter, not a scientific one, and it is the business efficacy of the transaction which matters, not any other.

It is of note that all of the above legislation is in place primarily for consumers.

We understand consumers to be individuals who purchase on their own behalf or for their families, however, businesses can also purchase as consumers (see *Rasbora V JCL Marine Ltd* [1977] 1 Lloyd's Rep 645).

Large businesses or those of similar size when contracting between themselves, can arrange to omit all or any implied terms. Implied terms cannot be excluded in any “consumer” contract.

THE RULE FOR DAMAGES IN ALL CONTRACT CASES

Hadley v Baxendale (1854) 156 ER 145; 9 ExCh 341

A shaft in Hadley's (P) mill broke rendering the mill inoperable. Hadley hired Baxendale (D) to transport the broken mill shaft to an engineer in Greenwich so that he could make a duplicate. Hadley told Baxendale that the shaft must be sent immediately and Baxendale promised to deliver it the next day. Baxendale did not know that the mill would be inoperable until the new shaft arrived. Baxendale was negligent and did not transport the shaft as promised, causing the mill to remain shut down for an additional five days. Hadley had paid 2 pounds four shillings to ship the shaft and sued for 300 pounds in damages due to lost profits and wages. The jury awarded Hadley 25 pounds beyond the amount already paid to the court and Baxendale appealed.

Issue

- What is the amount of damages to which an injured party is entitled for breach of contract?

Holding and Rule

- **An injured party may recover those damages reasonably considered to arise naturally from a breach of contract, or those damages within the reasonable contemplation of the parties at the time of contracting.**

The court held **that the usual rule was that the claimant is entitled to the amount he or she would have received if the breaching party had performed; i.e. the plaintiff is placed in the same position she would have been in had the breaching party performed**. Under this rule, Hadley would have been entitled to recover lost profits from the five extra days the mill was inoperable.

The court held that in this case however the rule should be that:

the damages were those fairly and reasonably considered to have arisen naturally from the breach itself, or such as may be reasonably supposed to have been in the contemplation of both parties at the time the contract was made.

The court held that if there were special circumstances under which the contract had been made, and these circumstances were known to both parties at the time they made the contract, then any breach of the contract would result in damages that would naturally flow from those special circumstances.