

## TITLE

Sale of Goods Act, s.12 provides that:

"In a contract of sale, there is an implied **condition** on the part of the seller that in the case of a sale he has the 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."

unless the contract provides for a lesser interest to pass.

|                  |   |
|------------------|---|
| <b>Condition</b> | if there is a breach of this provision the other party may repudiate the contract |
|------------------|---|

### Butterworth v Kingsway Motors [1954] 1 WLR 1286

|                 |   |   |
|-----------------|---|---|
| Dealer          | - | sells car to Finance Company  |
| Finance Company | - | hires car on hire purchase to A   |
| A               | - | sells car to B and continues paying hire purchase installments                      |
| B               | - | sells car to C  |
| C               | - | sells car to Kingsway Motors  |
| Kingsway Motors | - | sell car to Butterworth   |
| Butterworth     | - | notified of hire purchase returns car to Kingsway and claims back the price he paid |
| A               | - | pays final installment  |

The effect of these transactions under s.12 is as follows:

|             |                        |                 |
|-------------|------------------------|-----------------|
| Dealer      | passes title to        | Finance Company |
| Finance Co. | does not pass title to | A               |
| A           | does not pass title to | B               |
| B           | does not pass title to | C               |
| C           | does not pass title to | Kingsway Motors |

Kingsway                      does not pass title to                      Butterworth

So that, as Kingsway Motors are in breach of s.12, they have broken a condition of the contract so Butterworth can rescind and demand his money back.

Payment of the final installment results in A finally obtaining ownership which immediately travels along the chain:

Finance Co. -                      A                      ->                      B                      ->                      C                      ->                      Kingsway

but as Butterworth had already rescinded for breach of condition he was entitled to his money back.

### **Karflex Ltd v Poole [1933] 2 KB 251**

The plaintiffs were hire-purchase dealers that bought a car from "X" and hired it to the defendant with the option to purchase when all payments had been met; the defendant paid the deposit and nothing else, the plaintiffs sued.

Later it was found that "X" had not been the owner of the car at all, the plaintiffs paid the real owner and carried on with their action.

**Held** – The action failed because the plaintiffs were in breach of an "*Implied Condition under s.13*" that they were in a position to sell the car, and at the time of the contract they did not own the car, the defendant was entitled to repudiate the contract and even recover his deposit.

It is also provided by s.12 that the buyer of goods shall have the right of quiet possession so that, even if title passes, the seller may be in breach if the buyer cannot use the goods as expected.

### **Niblett v Confections Materials Co Ltd [1921] 3KB 387**

The defendants "an American company" sold 3000 tins of condensed milk Labelled "*Nistly*" to the plaintiffs. When the tins arrived in England they were stopped by H. M. Customs on the grounds that the labels infringed the trade mark of a well known English company "*Nestlé Co*".

**Held** – The English company could have obtained an injunction to prevent the sale of the goods, the sellers had no right to sell them. Breach of the right to quiet possession.

For cases in which the relevant legislation is the Supply of Goods and Services Act 1982, s.2 provides the same protection to the buyer and in the case of hire purchase and conditional sale the Supply of Goods (Implied Terms) Act 1973 (as amended by the Consumer Credit Act 1974), s.8 provides similarly.

All these sections are governed by ss.6(1) and 7(3A). Unfair Contract Terms Act 1977 which provide that the sections cannot be excluded or restricted by reference to any contract term.