

Sale of Goods Act 1979

As amended

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S1

- The Act applies to sale of **goods** contracts
- NOT services (See supply of Goods & Services Act 1982)

Application s2

- A sale of goods contract is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.
- Where property is transferred it is called a sale
- If it is for a future time its called an agreement to sell

Who has the capacity to sell? s3

- Most individuals or businesses
- Where **necessaries** are sold and delivered to a minor or a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price for them. If seller is unaware of the disability he may recover full price

What are necessaries?

- goods suitable to the condition in life of the minor or other person concerned and to his actual requirements at the time of the sale and delivery.
- Not the same as necessities. Necessary to maintain their station in life. M&S suit for me, bespoke Saville Row for a banker/politician/film star

How contract is made s.4

- contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
- Think of day to day examples!

Existing or future goods.s.5

- Goods can be in existence at time of contract, owned/possessed by the seller
- Or
- goods to be manufactured or acquired by him after the making of the contract of sale, in this Act called future goods.

Goods which have perished 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.

Goods perishing before sale but after agreement to sell s.7

- Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is avoided.

Ascertainment of price s.8

- The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.
- Where the price is not determined, as mentioned above, the buyer must pay a reasonable price.
- What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation s.9

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided; but if the goods or any part of them have been delivered to and appropriated by the buyer he must pay a reasonable price for them.
- Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault.

Stipulations about time s.10

- Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not of the essence of a contract of sale.
- In a contract of sale "month" prima facie means calendar month

When condition to be treated as warranty (not applicable to Scotland) s.11

- Can repudiate a contract for breach of a condition, however, buyer can treat it as a breach of warranty
- Terms such as Warranty and Condition in a contract depend upon the construction of the contract not on the use of those terms

S.12 implied terms about title

- It is an implied term that a seller 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
- Buyer will enjoy quiet possession
- 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.

s.13 Sale by description.

- It is a condition (in England, Wales & NI) that goods will correspond to their description

s.14 Implied terms about quality or fitness

- Where the seller sells goods **in the course of a business**, there is an implied term that the goods supplied under the contract are of satisfactory quality
- 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.
- These are breaches of condition in UK, apart from Scotland
- See s.14 for more detail

s.15 Sale by sample

- If there is a contract for sale by sample
- Then bulk should conform to the sample
- The goods will be free from any defect not apparent on reasonable examination of the sample
- (this is a condition in England, NI & Wales)

s.15A Modification of remedies for breach of condition in non-consumer cases

Where in the case of a contract of sale—

(a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15 above, but

(b) the breach is so slight that it would be unreasonable for him to reject them,

if the buyer does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.

(2) This section applies unless a contrary intention appears in, or is to be implied from, the contract. (Businesses can exempt implied terms from contract subject to UCTA 1977)

(3) It is for the seller to show that a breach fell within subsection (1)(b) above.

(4) This section does not apply to Scotland.

s.16 Goods must be ascertained

Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained

e.g. goods sold in bulk, such as a ship full of wheat for delivery to many buyers, until wheat is removed and identified it is unascertained

s. 17 Property passes when intended to pass.

- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

s. 18 Rules for ascertaining intention.

- Rule 1.—Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

Rule 3

- Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice that it has been done

Rule 4.

When goods are delivered to the buyer on approval or on sale or return or other similar terms the property in the goods passes to the buyer:—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time.

Rule 5.

1)Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made.

(2)Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other ...for the purpose of transmission to the buyer, and does not **reserve the right of disposal**, he is to be taken to have unconditionally appropriated the goods to the contract

(3)Where there is a contract for the sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk and the bulk is reduced to (or to less than) that quantity, then, if the buyer under that contract is the only buyer to whom goods are then due out of the bulk—

(a)the remaining goods are to be taken as appropriated to that contract at the time when the bulk is so reduced; and

(b)the property in those goods then passes to that buyer.

s. 19 Reservation of right of disposal. (aka reservation of title)

- Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

S.20 passing of risk

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

(2) But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

(4) In a case where the buyer deals as consumer or, in Scotland, where there is a consumer contract in which the buyer is a consumer, subsections (1) to (3) above must be ignored and the goods remain at the seller's risk until they are delivered to the consumer.

Ss. 20 A & B undivided shares in goods forming part of a bulk

- Quite a complex area of law but
- 20A where there is a contract for the sale of a specific quantity of unascertained good forming part of a bulk and the buyer has paid for some or all he becomes an owner in common
- 20B An owner in common shall be deemed to have consented to delivery from the bulk to any other owner in common. It should not affect the rights or obligations of any other owner in common

s. 21 Sale by person not the owner.

- where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

S 22 Market overt

- Only applies to good sold before 1 Jan 1968
- Once car boot sales were introduced it was a licence to sell stolen goods hence this section was removed

s. 27 Duties of seller and buyer.

- It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

S. 28 Payment and delivery are concurrent conditions.

- Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

**s. 30 Delivery of wrong quantity.
To ordinary consumers**

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.

**Delivery of wrong quantity to a
buyer who does not deal as
consumer**

- They may not—
- Reject the whole of the goods
- if the shortfall or, as the case may be, excess is so slight that it would be unreasonable for him to do so.
- It is for the seller to show that a shortfall or excess is minimal.
- This aspect does not apply to Scotland.

s. 34 Buyer's right of examining the goods

Unless otherwise agreed, when the seller delivers goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract and, in the case of a contract for sale by sample, of comparing the bulk with the sample.

s. 35 Acceptance.

- The buyer is deemed to have accepted the goods
- (a) when he intimates to the seller that he has accepted them, or
- (b) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller.

35 A Right of partial rejection.

- If the buyer—
- has the right to reject the goods by reason of a breach on the part of the seller that affects some or all of them, but
- accepts some of the goods, including, where there are any goods unaffected by the breach, all such goods,
- he does not by accepting them lose his right to reject the rest.

36 Buyer not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

55 Exclusion of implied terms.

Where rights duties or liabilities under contract are implied by law they may

Subject to the Unfair Contract terms Act 1977

Be removed or varied by express agreement or by course of dealing between the parties or any other method that binds the parties.

Generally this means business to business contracts as consumers cannot sign away their implied rights.
