



Supply of Goods (Implied Terms) Act 1973

1973 CHAPTER 13

Sale of Goods

1 Implied undertakings as to title, etc.

For section 12 of the principal Act (implied conditions as to title, and implied warranties as to quiet possession and freedom from encumbrances) there shall be substituted the following section:—

“12 Implied under-takings as to title, etc.

- (1) In every contract of sale, other than one to which subsection (2) of this section applies, there is—
 - (a) an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods, and in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass; and
 - (b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made and that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.
- (2) In a contract of sale, in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the seller should transfer only such title as he or a third person may have, there is—
 - (a) an implied warranty that 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 : and
 - (b) an implied warranty that neither—

- (i) the seller ; nor
- (ii) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person ; nor
- (iii) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract ii; made; will disturb the buyer's quiet possession of the goods.”

2 Sale by description

Section 13 of the principal Act (sale by description) shall be renumbered as subsection (1) of that section, and at the end there shall be inserted the following subsection:—

“(2) A sale of goods shall not be prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.”

3 Implied undertakings as to quality or fitness

For section 14 of the principal Act (implied undertakings as to quality or fitness) there shall be substituted the following section:—

“14 Implied undertakings as to quality or fitness.

- (1) Except as provided by this section, and section 15 of this Act and subject to the provisions of any other enactment, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract or sale.
- (2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—
 - (a) as regards defects specifically drawn to the buyer's attention before the contract is made; or
 - (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.
- (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgment.
- (4) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a contract of sale by usage.
- (5) The foregoing provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in

the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

- (6) In the application of subsection (3) above to an agreement for the sale of goods under which the purchase price or part of it is payable by instalments any reference to the seller shall include a reference to the person by whom any antecedent negotiations are conducted ; and section 58(3) and (5) of the Hire-Purchase Act 1965, section 54(3) and (5) of the Hire-Purchase (Scotland) Act 1965 and section 65(3) and (5) of the Hire-Purchase Act (Northern Ireland) 1966 (meaning of antecedent negotiations and related expressions) shall apply in relation to this subsection as they apply in relation to each of those Acts, but as if a reference to any such agreement were included in the references in subsection (3) of each of those sections to the agreements there mentioned.”

4 Exclusion of implied terms and conditions

For section 55 of the principal Act (exclusion of implied terms and conditions) there shall be substituted the following section:—

“55 Exclusion of implied terms and conditions.

- (1) Where any right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negated or varied by express agreement, or by the course of dealing between the parties, or by usage if the usage is such as to bind both parties to the contract, but the foregoing provision shall have effect subject to the following provisions of this section.
- (2) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent therewith.
- (3) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 12 of this Act shall be void.
- (4) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 13, 14 or 15 of this Act shall be void in the case of a consumer sale and shall, in any other case, not be enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.
- (5) In determining for the purposes of subsection (4) above whether or not reliance on any such term would be fair or reasonable regard shall be had to all the circumstances of the case and in particular to the following matters—
 - (a) the strength of the bargaining positions of the seller and buyer relative to each other, taking into account, among other things, the availability of suitable alternative products and sources of supply ;
 - (b) whether the buyer received an inducement to agree to the term or in accepting it had an opportunity of buying the goods or suitable alternatives without it from any source of supply;
 - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);

Status: This is the original version (as it was originally enacted).

- (d) where the term exempts from all or any of the provisions of section 13, 14 or 15 of this Act if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
 - (e) whether the goods were manufactured, processed, or adapted to the special order of the buyer.
- (6) Subsection (5) above shall not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 13, 14 or 15 of this Act is not a term of the contract.
- (7) In this section " consumer sale " means a sale of goods (other than a sale by auction or by competitive tender) by a seller in the course of a business where the goods—
- (a) are of a type ordinarily bought for private use or consumption ; and
 - (b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.
- (8) The onus of proving that a sale falls to be treated for the purposes of this section as not being a consumer sale shall lie on the party so contending.
- (9) Any reference in this section to a term exempting from all or any of the provisions of any section of this Act is a reference to a term which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of all or any of the provisions of that section, or the exercise of a right conferred by any provision of that section, or any liability of the seller for breach of a condition or warranty implied by any provision of that section.
- (10) It is hereby declared that any reference in this section to a term of a contract includes a reference to a term which although not contained in a contract is incorporated in the contract by another term of the contract.
- (11) This section is subject to section 61(6) of this Act.”

5 Conflict of laws

- (1) After section 55 of the principal Act there shall be inserted the following section:—

“55A Conflict of laws.

Where the proper law of a contract for the sale of goods would, apart from a term that it should be the law of some other country or a term to the like effect, be the law of any part of the United Kingdom, or where any such contract contains a term which purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of sections 12 to 15 and 55 of this Act, those sections shall, notwithstanding that term but subject to section 61(6) of this Act, apply to the contract.”

- (2) In section 1(4) of the Uniform Laws on International Sales Act 1967 (which provides that no provision of the law of any part of the United Kingdom shall be regarded as a mandatory provision for the purposes of the Uniform Law on the International Sale of Goods so as to override the choice of the parties) for the words from " no provision " to the end of the subsection there shall be substituted the words " no provision of the law of any part of the United Kingdom, except sections 12 to 15, 55 and 55A of

the Sale of Goods Act 1893, shall be regarded as a mandatory provision within the meaning of that Article. "

6 International sales

In section 61 of the principal Act (savings) there shall be inserted after subsection (5) thereof the following subsection—

“(6) Nothing in section 55 or 55A of this Act shall prevent the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 of this Act.”

7 Interpretation

(1) In section 62(1) of the principal Act (definitions) at the appropriate points in alphabetical order there shall be inserted the following definitions:

“" business " includes a profession and the activities of any government department (including a department of the Government of Northern Ireland), local authority or statutory undertaker;

" contract for the international sale of goods" means a contract of sale of goods made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States (the Channel Islands and the Isle of Man being treated for this purpose as different States from the United Kingdom) and in the case of which one of the following conditions is satisfied, that is to say—

- (a) the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another; or
- (b) the acts constituting the offer and acceptance have been effected in the territories of different States ; or
- (c) delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.”

(2) After section 62(1) of the principal Act there shall be inserted the following subsection:

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“(1A) Goods of any kind are of merchantable quality within the meaning of this Act if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances; and any reference in this Act to unmerchantable goods shall be construed accordingly.”