

# Contracts in English

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**11 When condition to be treated as warranty**

- (1) This section does not apply to Scotland.
- (2) Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- (3) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract.
- (4) Subject to section 35A below where a contract of sale is not severable and the buyer has accepted the goods or part of them, the breach of a condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is an express or implied term of the contract to that effect.
- (4A) Subsection (4) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 19 to 22 of that Act).
- (5) [Repealed]
- (6) Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.
- (7) Paragraph 2 of Schedule 1 below applies in relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967.

**12 Implied terms about title, etc.**

- (1) In a contract of sale, other than one to which subsection (3) below applies, there is an implied term 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 such a right at the time when the property is to pass.
- (2) In a contract of sale, other than one to which subsection (3) below applies, there is also an implied term that –
  - (a) 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
  - (b) 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.
- (3) This subsection applies to a contract of sale in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the seller should transfer only such title as he or a third person may have.
- (4) In a contract to which subsection (3) above applies there is an implied term 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.
- (5) In a contract to which subsection (3) above applies there is also an implied term that none of the following will disturb the buyer's quiet possession of the goods, namely –
  - (a) the seller;
  - (b) 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;
  - (c) 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 is made.
- (5A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition and the terms implied by subsections (2), (4) and (5) above are warranties.

- (6) Paragraph 3 of Schedule 1 below applies in relation to a contract made before 18 May 1973.
- (7) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 17 of that Act).

### **13 Sale by description**

- (1) Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description.
- (1A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.
- (2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
- (3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.
- (4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18 May 1973.
- (5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 11 of that Act).

### **14 Implied terms about quality or fitness**

- (1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) 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.
- (2A) For the purposes of this Act, 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.
- (2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods –
- (a) fitness for the purposes for which goods of the kind in question are commonly supplied,
  - (b) appearance and finish,
  - (c) freedom from minor defects,
  - (d) safety, and
  - (e) durability.
- (2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory –
- (a) which is specifically drawn to the buyer’s attention before the contract is made,
  - (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or
  - (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.
- (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known –
- (a) to the seller, or
  - (b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker, any particular purpose for which the goods are being bought, there is an implied term 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 skill or judgment of the seller or credit-broker.

- (4) An implied term about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.
- (5) The preceding 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) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.
- (7) Paragraph 5 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before the appointed day, and paragraph 6 in relation to one made before 18 May 1973.
- (8) In subsection (7) above and paragraph 5 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument.
- (9) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 9, 10 and 18 of that Act).

### **Sale by sample**

#### **15 Sale by sample**

- (1) A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract.
- (2) In the case of a contract for sale by sample there is an implied term –
  - (a) that the bulk will correspond with the sample in quality;
  - (b) [Repealed]
  - (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.
- (3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.
- (4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973.
- (5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 13 and 18 of that Act).

### **Miscellaneous**

#### **15A Modification of remedies for breach of condition in non-consumer cases**

- (1) 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,
 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.
- (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.

#### **15B [Applicable only to Scotland.]**

**PART III  
EFFECTS OF THE CONTRACT**

**Transfer of property as between seller and buyer**

**16 Goods must be ascertained**

Subject to section 20A below 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.

**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.

**18 Rules for ascertaining intention**

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

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, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, 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 bailee or custodian (whether named by the buyer or not) 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 which is identified either in the contract or by subsequent agreement between the parties 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.
- (4) Paragraph (3) above applies also (with the necessary modifications) where a bulk is reduced to (or to less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and he is the only buyer to whom goods are then due out of that bulk.

### 19 Reservation of right of disposal

- (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, 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.
- (2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie to be taken to reserve the right of disposal.
- (3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

### 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.
- (3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.
- (4) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 29 of that Act).

### 20A Undivided shares in goods forming part of a bulk

- (1) This section applies to a contract for the sale of a specified quantity of unascertained goods if the following conditions are met –
  - (a) the goods or some of them form part of a bulk which is identified either in the contract or by subsequent agreement between the parties; and
  - (b) the buyer has paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk.
- (2) Where this section applies, then (unless the parties agree otherwise), as soon as the conditions specified in paragraphs (a) and (b) of subsection (1) above are met or at such later time as the parties may agree –
  - (a) property in an undivided share in the bulk is transferred to the buyer, and
  - (b) the buyer becomes an owner in common of the bulk.
- (3) Subject to subsection (4) below, for the purposes of this section, the undivided share of a buyer in a bulk at any time shall be such share as the quantity of goods paid for and due to the buyer out of the bulk bears to the quantity of goods in the bulk at that time.
- (4) Where the aggregate of the undivided shares of buyers in a bulk determined under subsection (3) above would at any time exceed the whole of the bulk at that time, the undivided share in the bulk of each buyer shall be reduced proportionately so that the aggregate of the undivided shares is equal to the whole bulk.

- (5) Where a buyer has paid the price for only some of the goods due to him out of a bulk, any delivery to the buyer out of the bulk shall, for the purposes of this section, be ascribed in the first place to the goods in respect of which payment has been made.
- (6) For the purposes of this section payment of part of the price for any goods shall be treated as payment for a corresponding part of the goods.

### **20B Deemed consent by co-owner to dealings in bulk goods**

- (1) A person who has become an owner in common of a bulk by virtue of section 20A above shall be deemed to have consented to –
  - (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods which are due to him under his contract;
  - (b) any dealing with or removal, delivery or disposal of goods in the bulk by any other person who is an owner in common of the bulk in so far as the goods fall within that co-owner's undivided share in the bulk at the time of the dealing, removal, delivery or disposal.
- (2) No cause of action shall accrue to anyone against a person by reason of that person having acted in accordance with paragraph (a) or (b) of subsection (1) above in reliance on any consent deemed to have been given under that subsection.
- (3) Nothing in this section or section 20A above shall –
  - (a) impose an obligation on a buyer of goods out of a bulk to compensate any other buyer of goods out of that bulk for any shortfall in the goods received by that other buyer;
  - (b) affect any contractual arrangement between buyers of goods out of a bulk for adjustments between themselves; or
  - (c) affect the rights of any buyer under his contract.

## **Transfer of title**

### **21 Sale by person not the owner**

- (1) Subject to this Act, 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.
- (2) Nothing in this Act affects –
  - (a) the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were their true owner;
  - (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

### **22 Market overt**

- (1) [Repealed]
- (2) This section does not apply to Scotland.
- (3) Paragraph 8 of Schedule 1 below applies in relation to a contract under which goods were sold before 1 January 1968 or (in the application of this Act to Northern Ireland) 29 August 1967.

### **23 Sale under voidable title**

When the seller of goods has a voidable title to them, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

### **24 Seller in possession after sale**

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the

previous sale, has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

### **25 Buyer in possession after sale**

- (1) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (2) For the purposes of subsection (1) above –
  - (a) the buyer under a conditional sale agreement is to be taken not to be a person who has bought or agreed to buy goods, and
  - (b) “conditional sale agreement” means an agreement for the sale of goods which is a consumer credit agreement within the meaning of the Consumer Credit Act 1974 under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.
- (3) Paragraph 9 of Schedule 1 below applies in relation to a contract under which a person buys or agrees to buy goods and which is made before the appointed day.
- (4) In subsection (3) above and paragraph 9 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument.

### **26 Supplementary to sections 24 and 25**

In sections 24 and 25 above “mercantile agent” means a mercantile agent having in the customary course of his business as such agent authority either –

- (a) to sell goods, or
- (b) to consign goods for the purpose of sale, or
- (c) to buy goods, or
- (d) to raise money on the security of goods.

## **PART IV PERFORMANCE OF THE CONTRACT**

### **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.

### **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.

### **29 Rules about delivery**

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.
- (2) Apart from any such contract, express or implied, the place of delivery is the seller’s place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.



- (3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (3A) Subsection (3) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 28 of that Act).
- (4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.
- (5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.
- (6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

### 30 Delivery of wrong quantity

- (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 so delivered 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.
- (2A) A buyer may not –
- (a) where the seller delivers a quantity of goods less than he contracted to sell, reject the goods under subsection (1) above, or
  - (b) where the seller delivers a quantity of goods larger than he contracted to sell, reject the whole under subsection (2) above, if the shortfall or, as the case may be, excess is so slight that it would be unreasonable for him to do so.
- (2B) It is for the seller to show that a shortfall or excess fell within subsection (2A) above.
- (2C) Subsections (2A) and (2B) above do not apply to Scotland.
- (2D) Where the seller delivers a quantity of goods –
- (a) less than he contracted to sell, the buyer shall not be entitled to reject the goods under subsection (1) above,
  - (b) larger than he contracted to sell, the buyer shall not be entitled to reject the whole under subsection (2) above, unless the shortfall or excess is material.
- (2E) Subsection (2D) above applies to Scotland only.
- (3) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell and the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.
- (4) [Repealed]
- (5) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.
- (6) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 25 of that Act).

### 31 Instalment deliveries

- (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.
- (2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole