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Sale of Goods Act 1979

1979 CHAPTER 54

U.K.

An Act to consolidate the law relating to the sale of goods. [6th December 1979]

Commencement Information

I1 Act wholly in force at 1.1.1980, see s. 64(2)

PART I U.K.

CONTRACTS TO WHICH ACT APPLIES

1 Contracts to which Act applies. U.K.

(1) This Act applies to contracts of sale of goods made on or after (but not to those made before) 1 January 1894.

(2) In relation to contracts made on certain dates, this Act applies subject to the modification of certain of its sections as mentioned in Schedule 1 below.

(3) Any such modification is indicated in the section concerned by a reference to Schedule 1 below.

(4) Accordingly, where a section does not contain such a reference, this Act applies in relation to the contract concerned without such modification of the section.

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PART II U.K.

FORMATION OF THE CONTRACT

Contract of sale

2 Contract of sale. U.K.

(1) A contract of sale of goods 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.

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.

(5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.

(6) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

3 Capacity to buy and sell. U.K.

(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

(2) Where necessaries are sold and delivered **[**[F1]to a minor or**]** to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price for them.

(3) In subsection (2) above "necessaries" means goods suitable to the condition in life of the **[**[F1] minor or other**]** person concerned and to his actual requirements at the time of the sale and delivery.

Textual Amendments

F1 Words in s. 3(2)(3) repealed (S.) (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10, 11(2), **Sch. 2**

Formalities of contract

4 How contract of sale is made. U.K.

(1) Subject to this and any other Act, a 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.

(2) Nothing in this section affects the law relating to corporations.

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Subject matter of contract

5 Existing or future goods. U.K.

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or 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.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

6 Goods which have perished. U.K.

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.

7 Goods perishing before sale but after agreement to sell. U.K.

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.

The price

8 Ascertainment of price. U.K.

(1) 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.

(2) Where the price is not determined as mentioned in sub-section (1) above the buyer must pay a reasonable price.

(3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

9 Agreement to sell at valuation. U.K.

(1) 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.

(2) 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.

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Conditions and warranties

10 Stipulations about time. U.K.

(1) 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.

(2) Whether any other stipulation as to time is or is not of the essence of the contract depends on the terms of the contract.

(3) In a contract of sale "month" prima facie means calendar month.

11 When condition to be treated as warranty. U.K.

(1) Subsections (2) to (4) and (7) below do not apply to Scotland and subsection (5) below applies only 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) 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.

(5) In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.

(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. U.K.

(1) In a contract of sale, other than one to which subsection (3) below applies, there is 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 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 warranty that—

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(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 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.

(5) In a contract to which subsection (3) above applies there is also an implied warranty 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.

(6) Paragraph 3 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

13 Sale by description. U.K.

(1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods will correspond with the description.

(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.

14 Implied terms about quality or fitness. U.K.

(1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied condition or warranty 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 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

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(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—

(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 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 skill or judgment of the seller or credit-broker.

(4) An implied condition or warranty 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) Goods of any kind are of merchantable quality within the meaning of subsection (2) above 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.

(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.

Modifications etc. (not altering text)

C1 Power of appointment conferred by s. 14(8) fully exercised: 19.5.1985 appointed by S.I. 1983/1572, **art. 2**

Sale by sample

15 Sale by sample. U.K.

(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 condition—

(a) that the bulk will correspond with the sample in quality;

(b) that the buyer will have a reasonable opportunity of comparing the bulk with the sample;

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(c) that the goods will be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(3) In subsection (2)(c) above "unmerchantable" is to be construed in accordance with section 14(6) above.

(4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973.

VALID FROM 03/01/1995

[F2 Miscellaneous]

Textual Amendments

F2 Cross-heading preceding s. 15A inserted (3.1.1995) by 1994 c. 35, **ss. 4(1)**, 8(2) (with s. 8(3)).

[F3 15A Modification of remedies for breach of condition in non-consumer cases. E +W+N.I.

(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,

then, 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.

(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.**]**

Textual Amendments

F3 S. 15A inserted (3.1.1995) by 1994 c. 35, **ss. 4(1)**, 8(2) (with s. 8(3)).

[F4 15B Remedies for breach of contract as respects Scotland. S

(1) Where in a contract of sale the seller is in breach of any term of the contract (express or implied), the buyer shall be entitled—

(a) to claim damages, and

(b) if the breach is material, to reject any goods delivered under the contract and treat it as repudiated.

(2) Where a contract of sale is a consumer contract, then, for the purposes of subsection (1)(b) above, breach by the seller of any term (express or implied)—

(a) as to the quality of the goods or their fitness for a purpose,

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(b) if the goods are, or are to be, sold by description, that the goods will correspond with the description,

(c) if the goods are, or are to be, sold by reference to a sample, that the bulk will correspond with the sample in quality,

shall be deemed to be a material breach.

(3) This section applies to Scotland only.**]**

Textual Amendments

F4 S. 15B inserted (3.1.1995) by 1994 c. 35, **ss. 5(1)**, 8(2) (with s. 8(3)).

PART III U.K.

EFFECTS OF THE CONTRACT

Transfer of property as between seller and buyer

16 Goods must be ascertained. U.K.

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. U.K.

(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. U.K.

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

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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 custodier (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.

19 Reservation of right of disposal. U.K.

(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 custodier 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 Risk prima facie passes with property. U.K.

(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.

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(3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

VALID FROM 19/09/1995

[F5 20A Undivided shares in goods forming part of a bulk. U.K.

(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.**]**

Textual Amendments

F5 Ss. 20A, 20B inserted (19.9.1995) by 1995 c. 28, **ss. 1(3)**, 3(2).

VALID FROM 19/09/1995

[F6 20B Deemed consent by co-owner to dealings in bulk goods. U.K.

(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;

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(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.**]**

Textual Amendments

F6 Ss. 20A, 20B inserted (19.9.1995) by 1995 c. 28, **ss. 1(3)**, 3(2).

Transfer of title

21 Sale by person not the owner. U.K.

(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. U.K.

(1) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

(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.

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23 Sale under voidable title. U.K.

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. U.K.

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. U.K.

(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 [M1]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.

Modifications etc. (not altering text)

C2 Power of appointment conferred by s. 25(4) fully exercised: 19.5.1985 appointed by S.I. 1983/1572, **art. 2**

Marginal Citations

M1 1974 c. 39.

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26 Supplementary to sections 24 and 25. U.K.

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 U.K.

PERFORMANCE OF THE CONTRACT

27 Duties of seller and buyer. U.K.

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. U.K.

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. U.K.

(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.

(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.

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30 Delivery of wrong quantity. U.K.

(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.

(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) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(5) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

31 Instalment deliveries. U.K.

(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 contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

32 Delivery to carrier. U.K.

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

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33 Risk where goods are delivered at distant place. U.K.

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless (unless otherwise agreed) take any risk of deterioration in the goods necessarily incident to the course of transit.

34 Buyer's right of examining the goods. U.K.

(1) Where goods are delivered to the buyer, and he has not previously examined them, he is not deemed to have accepted them until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of 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.

35 Acceptance. U.K.

(1) The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or (except where section 34 above otherwise provides) 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, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

(2) Paragraph 10 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.

VALID FROM 03/01/1995

[F7 35A Right of partial rejection. U.K.

(1) If the buyer—
  (a) 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
  (b) 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.

(2) In the case of a buyer having the right to reject an instalment of goods, subsection (1) above applies as if references to the goods were references to the goods comprised in the instalment.

(3) For the purposes of subsection (1) above, goods are affected by a breach if by reason of the breach they are not in conformity with the contract.

(4) This section applies unless a contrary intention appears in, or is to be implied from, the contract.]

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Textual Amendments

F7 S. 35A inserted (3.1.1995) by 1994 c. 35, **ss. 3(1)**, 8(2) (with s. 8(3)).

36 Buyer not bound to return rejected goods. U.K.

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.

37 Buyer's liability for not taking delivery of goods. U.K.

(1) When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V U.K.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Preliminary

38 Unpaid seller defined. U.K.

(1) The seller of goods is an unpaid seller within the meaning of this Act—
  (a) when the whole of the price has not been paid or tendered;
  (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Act "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid (or is directly responsible for) the price.

39 Unpaid seller's rights. U.K.

(1) Subject to this and any other Act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—
  (a) a lien on the goods or right to retain them for the price while he is in possession of them;
  (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
  (c) a right of re-sale as limited by this Act.

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(2) Where the property in goods has not passed to the buyer, the unpaid seller has (in addition to his other remedies) a right of withholding delivery similar to and co-extensive with his rights of lien or retention and stoppage in transit where the property has passed to the buyer.

[F8 40 Attachment by seller in Scotland. U.K.

In Scotland a seller of goods may attach them while in his own hands or possession by arrestment or poinding; and such arrestment or poinding shall have the same operation and effect in a competition or otherwise as an arrestment or poinding by a third party.]

Textual Amendments

F8 S. 40 repealed (S.) by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(3), **Sch. 8**

Unpaid seller's lien

41 Seller's lien. U.K.

(1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:—
- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(2) The seller may exercise his lien or right of retention notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

42 Part delivery. U.K.

Where an unpaid seller has made part delivery of the goods, he may exercise his lien or right of retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

43 Termination of lien. U.K.

(1) The unpaid seller of goods loses his lien or right of retention in respect of them—
- (a) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver of the lien or right of retention.

(2) An unpaid seller of goods who has a lien or right of retention in respect of them does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

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Stoppage in transit

44 Right of stoppage in transit. U.K.

Subject to this Act, when the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

45 Duration of transit. U.K.

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee or custodier for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee or custodier.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

46 How stoppage in transit is effected. U.K.

(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are.

(2) The notice may be given either to the person in actual possession of the goods or to his principal.

(3) If given to the principal, the notice is ineffective unless given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

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(4) When notice of stoppage in transit is given by the seller to the carrier or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller; and the expenses of the re-delivery must be borne by the seller.

Re-sale etc. by buyer

47 Effect of sub-sale etc. by buyer. U.K.

(1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented to it.

(2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who take it in good faith and for valuable consideration, then—
   (a) if the last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transit is defeated; and
   (b) if the last-mentioned transfer was made by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

Rescission: and re-sale by seller

48 Rescission: and re-sale by seller. U.K.

(1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transit.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transit re-sells the goods, the buyer acquires a good title to them as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves the right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is rescinded but without prejudice to any claim the seller may have for damages.

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VALID FROM 31/03/2003

[F9PART 5A U.K.

ADDITIONAL RIGHTS OF BUYER IN CONSUMER CASES

Textual Amendments

F9 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

F10 48A Introductory U.K.

(1) This section applies if—

(a) the buyer deals as consumer or, in Scotland, there is a consumer contract in which the buyer is a consumer, and

(b) the goods do not conform to the contract of sale at the time of delivery.

(2) If this section applies, the buyer has the right—

(a) under and in accordance with section 48B below, to require the seller to repair or replace the goods, or

(b) under and in accordance with section 48C below—

(i) to require the seller to reduce the purchase price of the goods to the buyer by an appropriate amount, or

(ii) to rescind the contract with regard to the goods in question.

(3) For the purposes of subsection (1)(b) above goods which do not conform to the contract of sale at any time within the period of six months starting with the date on which the goods were delivered to the buyer must be taken not to have so conformed at that date.

(4) Subsection (3) above does not apply if—

(a) it is established that the goods did so conform at that date;

(b) its application is incompatible with the nature of the goods or the nature of the lack of conformity.

Textual Amendments

F10 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

F11 48B Repair or replacement of the goods U.K.

(1) If section 48A above applies, the buyer may require the seller—

(a) to repair the goods, or

(b) to replace the goods.

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(2) If the buyer requires the seller to repair or replace the goods, the seller must—
- (a) repair or, as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer;
- (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The buyer must not require the seller to repair or, as the case may be, replace the goods if that remedy is—
- (a) impossible, or
- (b) disproportionate in comparison to the other of those remedies, or
- (c) disproportionate in comparison to an appropriate reduction in the purchase price under paragraph (a), or rescission under paragraph (b), of section 48C(1) below.

(4) One remedy is disproportionate in comparison to the other if the one imposes costs on the seller which, in comparison to those imposed on him by the other, are unreasonable, taking into account—
- (a) the value which the goods would have if they conformed to the contract of sale,
- (b) the significance of the lack of conformity, and
- (c) whether the other remedy could be effected without significant inconvenience to the buyer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined by reference to—
- (a) the nature of the goods, and
- (b) the purpose for which the goods were acquired.

Textual Amendments

F11 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

[F12]48C Reduction of purchase price or rescission of contract U.K.

(1) If section 48A above applies, the buyer may—
- (a) require the seller to reduce the purchase price of the goods in question to the buyer by an appropriate amount, or
- (b) rescind the contract with regard to those goods,

if the condition in subsection (2) below is satisfied.

(2) The condition is that—
- (a) by virtue of section 48B(3) above the buyer may require neither repair nor replacement of the goods; or
- (b) the buyer has required the seller to repair or replace the goods, but the seller is in breach of the requirement of section 48B(2)(a) above to do so within a reasonable time and without significant inconvenience to the buyer.

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(3) For the purposes of this Part, if the buyer rescinds the contract, any reimbursement to the buyer may be reduced to take account of the use he has had of the goods since they were delivered to him.

Textual Amendments

F12 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

[F13]48D Relation to other remedies etc. U.K.

(1) If the buyer requires the seller to repair or replace the goods the buyer must not act under subsection (2) until he has given the seller a reasonable time in which to repair or replace (as the case may be) the goods.

(2) The buyer acts under this subsection if—

(a) in England and Wales or Northern Ireland he rejects the goods and terminates the contract for breach of condition;

(b) in Scotland he rejects any goods delivered under the contract and treats it as repudiated;

(c) he requires the goods to be replaced or repaired (as the case may be).

Textual Amendments

F13 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

[F14]48E Powers of the court U.K.

(1) In any proceedings in which a remedy is sought by virtue of this Part the court, in addition to any other power it has, may act under this section.

(2) On the application of the buyer the court may make an order requiring specific performance or, in Scotland, specific implement by the seller of any obligation imposed on him by virtue of section 48B above.

(3) Subsection (4) applies if—

(a) the buyer requires the seller to give effect to a remedy under section 48B or 48C above or has claims to rescind under section 48C, but

(b) the court decides that another remedy under section 48B or 48C is appropriate.

(4) The court may proceed—

(a) as if the buyer had required the seller to give effect to the other remedy, or if the other remedy is rescission under section 48C

(b) as if the buyer had claimed to rescind the contract under that section.

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(5) If the buyer has claimed to rescind the contract the court may order that any reimbursement to the buyer is reduced to take account of the use he has had of the goods since they were delivered to him.

(6) The court may make an order under this section unconditionally or on such terms and conditions as to damages, payment of the price and otherwise as it thinks just.

Textual Amendments
F14 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

[F15]48F Conformity with the contract U.K.

For the purposes of this Part, goods do not conform to a contract of sale if there is, in relation to the goods, a breach of an express term of the contract or a term implied by section 13, 14 or 15 above.**]**

Textual Amendments
F15 Pt. 5A (ss. 48A-48F) inserted (31.3.2003) by S.I. 2002/3045, **reg. 5**

PART VI U.K.

ACTIONS FOR BREACH OF THE CONTRACT

Seller's remedies

49 Action for price. U.K.

(1) Where, under a contract of sale, the property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

(3) Nothing in this section prejudices the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be.

50 Damages for non-acceptance. U.K.

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

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(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.

Buyer's remedies

51 Damages for non-delivery. U.K.

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or (if no time was fixed) at the time of the refusal to deliver.

52 Specific performance. U.K.

(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the plaintiff's application, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The plaintiff's application may be made at any time before judgment or decree.

(3) The judgment or decree may be unconditional, or on such terms and conditions as to damages, payment of the price and otherwise as seem just to the court.

(4) The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

53 Remedy for breach of warranty. U.K.

(1) Where there is a breach of warranty by the seller, or where the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—
   (a) set up against the seller the breach of warranty in diminution or extinction of the price, or
   (b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

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(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5) Nothing in this section prejudices or affects the buyer's right of rejection in Scotland as declared by this Act.

VALID FROM 03/01/1995

[F16 53A Measure of damages as respects Scotland. S

(1) The measure of damages for the seller's breach of contract is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach.

(2) Where the seller's breach consists of the delivery of goods which are not of the quality required by the contract and the buyer retains the goods, such loss as aforesaid is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the contract.

(3) This section applies to Scotland only.**]**

Textual Amendments

F16 S. 53A inserted (3.1.1995) by 1994 c. 35, **ss. 5(3)**, 8(2) (with s. 8(3)).

Interest, etc.

54 Interest, etc. U.K.

Nothing in this Act affects the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VII U.K.

SUPPLEMENTARY

55 Exclusion of implied terms. U.K.

(1) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may (subject to the [M2]Unfair Contract Terms Act 1977) be negatived or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract.

(2) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it.

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(3) Paragraph 11 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before 1 February 1978, and paragraph 12 in relation to one made before 18 May 1973.

Marginal Citations

M2 1977 c. 50.

56 Conflict of laws. U.K.

Paragraph 13 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before 1 February 1978, so as to make provision about conflict of laws in relation to such a contract.

57 Auction sales. U.K.

(1) Where goods are put up for sale by auction in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner; and until the announcement is made any bidder may retract his bid.

(3) A sale by auction may be notified to be subject to a reserve or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(4) Where a sale by auction is not notified to be subject to a right to bid by or on behalf of the seller, it is not lawful for the seller to bid himself or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.

(5) A sale contravening subsection (4) above may be treated as fraudulent by the buyer.

(6) Where, in respect of a sale by auction, a right to bid is expressly reserved (but not otherwise) the seller or any one person on his behalf may bid at the auction.

58 Payment into court in Scotland. U.K.

In Scotland where a buyer has elected to accept goods which he might have rejected, and to treat a breach of contract as only giving rise to a claim for damages, he may, in an action by the seller for the price, be required, in the discretion of the court before which the action depends, to consign or pay into court the price of the goods, or part of the price, or to give other reasonable security for its due payment.

59 Reasonable time a question of fact. U.K.

Where a reference is made in this Act to a reasonable time the question what is a reasonable time is a question of fact.

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60 Rights etc. enforceable by action. U.K.

Where a right, duty or liability is declared by this Act, it may (unless otherwise provided by this Act) be enforced by action.

61 Interpretation. U.K.

(1) In this Act, unless the context or subject matter otherwise requires,—

"action" includes counterclaim and set-off, and in Scotland condescendence and claim and compensation;

"business" includes a profession and the activities of any government department (including a Northern Ireland department) or local or public authority;

"buyer" means a person who buys or agrees to buy goods;

"contract of sale" includes an agreement to sell as well as a sale;

"credit-broker" means a person acting in the course of a business of credit brokerage carried on by him, that is a business of effecting introductions of individuals desiring to obtain credit—

(a) to persons carrying on any business so far as it relates to the provision of credit, or

(b) to other persons engaged in credit brokerage;

"defendant" includes in Scotland defender, respondent, and claimant in a multiplepoinding;

"delivery" means voluntary transfer of possession from one person to another;

"document of title to goods" has the same meaning as it has in the Factors Acts;

"Factors Acts" means the [M3]Factors Act 1889, the [M4]Factors (Scotland) 1890, and any enactment amending or substituted for the same;

"fault" means wrongful act or default;

"future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale;

"goods" includes all personal chattels other than things in action and money, and in Scotland all corporeal moveables except money; and in particular "goods" includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

"plaintiff" includes pursuer, complainer, claimant in a multiplepoinding and defendant or defender counter-claiming;

"property" means the general property in goods, and not merely a special property;

"quality", in relation to goods, includes their state or condition;

"sale" includes a bargain and sale as well as a sale and delivery;

"seller" means a person who sells or agrees to sell goods;

"specific goods" means goods identified and agreed on at the time a contract of sale is made;

"warranty" (as regards England and Wales and Northern Ireland) means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives

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rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract.

(3) A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not.

(4) A person is deemed to be insolvent within the meaning of this Act if he has either ceased to pay his debts in the ordinary course of business or he cannot pay his debts as they become due, **[**[F17]whether he has committed an act of bankruptcy or not,**][**[F18]and whether he has become a notour bankrupt or not**]**.

(5) Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

(6) As regards the definition of "business" in subsection (1) above, paragraph 14 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before 1 February 1978, and paragraph 15 in relation to one made before 18 May 1973.

Textual Amendments

F17 Words repealed (E.W.) by Insolvency Act 1985 (c. 65, SIF66), ss. 235, 236(2), Sch. 9 para. 11, **Sch. 10 Pt. III**

F18 Words repealed (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(2), **Sch. 8**

Marginal Citations

M3 1889 c. 45.

M4 1890 c. 40.

62 Savings: rules of law etc. U.K.

(1) The rules in bankruptcy relating to contracts of sale apply to those contracts, notwithstanding anything in this Act.

(2) The rules of the common law, including the law merchant, except in so far as they are inconsistent with the provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, apply to contracts for the sale of goods.

(3) Nothing in this Act or the [M5]Sale of Goods 1893 affects the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed or amended by this Act or that.

(4) The provisions of this Act about contracts of sale do not apply to a transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(5) Nothing in this Act prejudices or affects the landlord's right of hypothec or sequestration for rent in Scotland.

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Marginal Citations
M5 1893 c. 71.

63 Consequential amendments, repeals and savings. U.K.

(1) Without prejudice to section 17 of the [M6]Interpretation Act 1978 (repeal and re-enactment), the enactments mentioned in Schedule 2 below have effect subject to the amendments there specified (being amendments consequential on this Act).

(2) The enactments mentioned in Schedule 3 below are repealed to the extent specified in column 3, but subject to the savings in Schedule 4 below.

(3) The savings in Schedule 4 below have effect.

Marginal Citations
M6 1978 c. 30.

64 Short title and commencement. U.K.

(1) This Act may be cited as the Sale of Goods Act 1979.

(2) This Act comes into force on 1 January 1980.

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SCHEDULES

SCHEDULE 1 U.K.

Section 1.

MODIFICATION OF ACT FOR CERTAIN CONTRACTS

Preliminary

1 (1) This Schedule modifies this Act as it applies to contracts of sale of goods made on certain dates.

(2) In this Schedule references to sections are to those of this Act and references to contracts are to contracts of sale of goods.

(3) Nothing in this Schedule affects a contract made before 1 January 1894.

Section 11: condition treated as warranty

2 In relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967, in section 11(4) after "or part of them," insert " or where the contract is for specific goods, the property in which has passed to the buyer, ".

Section 12: implied terms about title etc.

3 In relation to a contract made before 18 May 1973 substitute the following for section 12:—

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

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, 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 such a right at the time when the property is to pass;

(b) an implied warranty that the buyer will have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made."

Section 13: sale by description

4 In relation to a contract made before 18 May 1973, omit section 13(3).

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Section 14: quality or fitness (i)

5 In relation to a contract made on or after 18 May 1973 and before the appointed day, substitute the following for section 14:—

"**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 condition or warranty 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 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 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) Goods of any kind are of merchantable quality within the meaning of subsection (2) above 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.

(7) 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 includes a reference to the person by whom any antecedent negotiations are conducted; and section 58(3) and (5) of the [M7]Hire-Purchase Act 1965, section 54(3) and (5) of the [M8]Hire-Purchase (Scotland) Act 1965 and section 65(3) and (5) of the [M9]Hire-Purchase Act (Northern Ireland) 1966 (meaning of antecedent negotiations and related expressions) apply in relation to this subsection as 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."

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Marginal Citations

M7 1965 c. 66.
M8 1965 c. 67.
M9 1966 c. 42 (N.I.).

Section 14: quality or fitness (ii)

6 In relation to a contract made before 18 May 1973 substitute the following for section 14:—

"**14 Implied terms about quality or fitness.**

(1) Subject to this and any other Act, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, except that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.

(3) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality; but if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.

(4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by the usage of trade.

(5) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it."

Section 15: sale by sample

7 In relation to a contract made before 18 May 1973, omit section 15(3).

Section 22: market overt

8 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, add the following paragraph at the end of section 22(1):—

"Nothing in this subsection affects the law relating to the sale of horses."

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Section 25: buyer in possession

9 In relation to a contract under which a person buys or agrees to buy goods and which is made before the appointed day, omit section 25(2).

Section 35: acceptance

10 In relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967, in section 35(1) omit "(except where section 34 above otherwise provides)".

Section 55: exclusion of implied terms (i)

11 In relation to a contract made on or after 18 May 1973 and before 1 February 1978 substitute the following for section 55:—

"**55 Exclusion of implied terms.**

(1) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negatived or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract, but the preceding provision has 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 with it.

(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 above is 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 above is void in the case of a consumer sale and is, in any other case, not 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);

(d) where the term exempts from all or any of the provisions of section 13, 14 or 15 above 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;

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(e) whether the goods were manufactured, processed, or adapted to the special order of the buyer.

(6) Subsection (5) above does 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 above 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 lies 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) Nothing in this section prevents the parties to a contract for the international sale of goods from negativing or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 above.

(12) In subsection (11) above "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:—

(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."

Section 55: exclusion of implied terms (ii)

12 In relation to a contract made before 18 May 1973 substitute the following for section 55:—

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"**55 Exclusion of implied terms.**

Where a right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract."

Section 56: conflict of laws

13 (1) In relation to a contract made on or after 18 May 1973 and before 1 February 1978 substitute for section 56 the section set out in sub-paragraph (3) below.

(2) In relation to a contract made otherwise than as mentioned in sub-paragraph (1) above, ignore section 56 and this paragraph.

(3) The section mentioned in sub-paragraph (1) above is as follows:—

Conflict of laws.

"56 (1) 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 above, those sections shall, notwithstanding that term but subject to subsection (2) below, apply to the contract.

(2) Nothing in subsection (1) above prevents the parties to a contract for the international sale of goods from negativing or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 above.

(3) In subsection (2) above "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:—

(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."

Section 61(1): definition of "business" (i)

14 In relation to a contract made on or after 18 May 1973 and before 1 February 1978, in the definition of "business" in section 61(1) for "or local or public authority" substitute " , local authority or statutory undertaker ".

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Section 61(1): definition of "business" (ii)

15 In relation to a contract made before 18 May 1973 omit the definition of "business" in section 61(1).

[X1]SCHEDULE 2 U.K.

Section 63.

CONSEQUENTIAL AMENDMENTS

Editorial Information

X1 The text of Sch. 2 & Sch. 3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

[F19]1 . . . . . .

Textual Amendments

F19 Sch. 2 para. 1 the entry relating to the War Risks Insurance Act 1939 repealed by Statute Law (Repeals) Act 1981 (c. 19), s. 1(1), **Sch. 1 Pt. XI**

Law Reform (Frustrated Contracts) Act 1943 (6 & 7 Geo. 6 c. 40)

2 In section 2(5)(c) of the Law Reform (Frustrated Contracts) Act 1943 for "section seven of the Sale of Goods Act 1893" substitute " section 7 of the Sale of Goods Act 1979 ".

Frustrated Contracts Act (Northern Ireland) 1947 (c. 2)

3 In section 2(5)(c) of the Frustrated Contracts Act (Northern Ireland) 1947 for "section seven of the Sale of Goods Act 1893" substitute " section 7 of the Sale of Goods Act 1979 ".

Hire-Purchase Act 1964 (c. 53)

4 In section 27(5) of the Hire-Purchase Act 1964 (as originally enacted and as substituted by Schedule 4 to the [M10]Consumer Credit Act 1974)—

(a) in paragraph (a) for "section 21 of the Sale of Goods Act 1893" substitute " section 21 of the Sale of Goods Act 1979 ";

(b) in paragraph (b) for "section 62(1) of the said Act 0f 1893" substitute " section 61(1) of the said Act of 1979 ".

Marginal Citations

M10 1974 c. 39.

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Hire-Purchase Act 1965 (c. 66)

5 In section 20 of the Hire-Purchase Act 1965—

(a) in subsection (1) for "Section 11(1)(c) of the Sale of Goods Act 1893" substitute " Section 11(4) of the Sale of Goods Act 1979 ";

(b) in subsection (3) for "sections 12 to 15 of the Sale of Goods Act 1893" substitute " sections 12 to 15 of the Sale of Goods Act 1979 "

6 In section 54 of the Hire-Purchase At 1965 for "section 25(2) of the Sale of Goods Act 1893" substitute " section 25(1) of the Sale of Goods Act 1979 ".

7 In section 58(1) of the Hire-Purchase Act 1965 for "the Sale of Goods Act 1893" substitute " the Sale of Goods Act 1979 ".

Hire-Purchase (Scotland) Act 1965 (c. 67)

8 In section 20 of the Hire-Purchase (Scotland) Act 1965 for "1893" substitute " 1979 ".

9 In section 50 of the Hire-Purchase (Scotland) Act 1965 for "section 25(2) of the Sale of Goods Act 1893" substitute " section 25(1) of the Sale of Goods Act 1979 ".

10 In section 54(1) of the Hire-Purchase (Scotland) Act 1965 for "the Sale of Goods Act 1893" substitute " the Sale of Goods Act 1979 ".

Hire-Purchase Act (Northern Ireland) 1966 (c. 42)

11 In section 20 of the Hire-Purchase Act (Northern Ireland) 1966—

(a) in subsection (1) for "Section 11(1)(c) of the Sale of Goods Act 1893" substitute " Section 11(4) of the Sale of Goods Act 1979 ";

(b) in subsection (3) for "1893" substitute " 1979 ".

12 In section 54 of the Hire-Purchase Act (Northern Ireland) 1966 for "section 25(2) of the Sale of Goods Act 1893" substitute " section 25(1) of the Sale of Goods Act 1979 ".

13 In section 62(5) of the Hire-Purchase Act (Northern Ireland) 1966 (as originally enacted and as substituted by Schedule 4 to the Consumer Credit Act 1974)—

(a) in paragraph (a) for "1893" substitute " 1979 ";

(b) in paragraph (b) for "section 62(1) of the said Act of 1893" substitute " section 61(1) of the said Act of 1979 ".

14 In section 65(1) of the Hire-Purchase Act (Northern Ireland) 1966 for "the Sale of Goods Act 1893" substitute " the Sale of Goods Act 1979 ".

Uniform Laws on International Sales Act 1967 (c. 45)

15 For section 1(4) of the Uniform Laws on International Sales Act 1967 substitute the following:—

"(4) In determining the extent of the application of the Uniform Law on Sales by virtue of Artticle 4 thereof (choice of parties)—

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(a) in relation to a contract made before 18 May 1973, no provision of the law of any part of the United Kingdom shall be regarded as a mandatory provision within the meaning of that Article;

(b) in relation to a contract made on or after 18 May 1973 and before 1 February 1978, no provision of that law shall be so regarded except sections 12 to 15, 55 and 56 of the Sale of Goods Act 1979;

(c) in relation to a contract made on or after 1 February 1978, no provision of that law shall be so regarded except sections 12 to 15 of the Sale of Goods Act 1979".

Supply of Goods (Implied Terms) Act 1973 (c. 13)

16 In section 14(1) of the Supply of Goods (Implied Terms) Act 1973 (as originally enacted and as substituted by Schedule 4 to the [M11]Consumer Credit Act 1974) for "Section 11(1)(c) of the principal Act" substitute " Section 11(4) of the Sale of Goods Act 1979 ".

Marginal Citations

M11 1974 c. 39

17 For the definition of "consumer sale" in section 15(1) of the Supply of Goods (Implied Terms) Act 1973 substitute—

"consumer sale" has the same meaning as in section 55 of the Sale of Goods Act 1979 (as set out in paragraph 11 of Schedule 1 to that Act).

Consumer Credit Act 1974 (c. 39)

18 In section 189(1) of the Consumer Credit Act 1974, in the definition of "goods", for "section 62(1) of the Sale of Goods Act 1893" subsitute " section 61(1) of the Sale of Goods Act 1979 ".

Unfair Contract Terms Act 1977 (c. 50)

19 In section 6 of the Unfair Contract Terms Act 1977—

(a) in subsection (1)(a) for "section 12 of the Sale of Goods Act 1893" substitute " section 12 of the Sale of Goods Act 1979 ";

(b) in subsection (2)(a) for "section 13, 14 or 15 of the 1893 Act" substitute " section 13, 14 or 15 of the 1979 Act ".

20 In section 14 of the Unfair Contract Terms Act 1977, in the definition of "goods", for "the Sale of Goods Act 1893" subsitute " the Sale of Goods Act 1979 ".

21 In section 20(1)(a) and (2)(a) of the Unfair Contract Terms Act 1977 for "1893" substitute (in each case) " 1979 ".

22 In section 25(1) of the Unfair Contract Terms Act 1977, in the definition of "goods", for "the Sale of Goods Act 1893" substitute " the Sale of Goods Act 1979 ".

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[X2]SCHEDULE 3 U.K.

Section 63

REPEALS

Editorial Information

X2 The text of Sch. 2 & Sch. 3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short title	Extent of repeal
56 & 57 Vict. c. 71.	Sale of Goods Act 1893.	The whole Act except section 26.
1967 c. 7.	Misrepresentation Act 1967.	Section 4.
		In section 6(3) the words "except section 4(2),".
1967 c. 14 (N.I.)	Misrepresentation Act (Northern Ireland) 1967.	Section 4.
1973 c. 13.	Supply of Goods (Implied Terms) Act 1973.	Sections 1 to 7.
		Section 18(2).
1974 c. 39.	Consumer Credit Act 1974.	In Schedule 4, paragraphs 3 and 4.
1977 c. 50.	Unfair Contract Terms Act 1977.	In Schedule 3, the entries relating to the Sale of Goods Act 1893.

SCHEDULE 4 U.K.

Section 63.

SAVINGS

Preliminary

1 In this Schedule references to the [M12]1893 Act are to the Sale of Goods Act 1893.

Marginal Citations

M12 1893 c. 71.

Orders

2 An order under section 14(8) or 25(4) above may make provision that it is to have effect only as provided by the order (being provision corresponding to that which could, apart from this Act, have been made by an order under section 192(4) of

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the [M13]Consumer Credit Act 1974 bringing into operation an amendment or repeal making a change corresponding to that made by the order under section 14(8) or 25(4) above).

Marginal Citations

M13 1974 c. 39.

Offences

3 Where an offence was committed in relation to goods before 1 January 1969 or (in the application of this Act to Northern Ireland) 1 August 1969, the effect of a conviction in respect of the offence is not affected by the repeal by this Act of section 24 of the 1893 Act.

1893 Act, section 26

4 The repeal by this Act of provisions of the 1893 Act does not extend to the following provisions of that Act in so far as they are needed to give effect to or interpret section 26 of that Act, namely, the definitions of "goods" and "property" in section 62(1), section 62(2) and section 63 (which was repealed subject to savings by the [M14]Statute Law Revision Act 1908).

Marginal Citations

M14 1908 c. 49.

Things done before 1 January 1894

5 The repeal by this Act of section 60 of and the Schedule to the 1893 Act (which effected repeals and which were themselves repealed subject to savings by the Statute Law Revision Act 1908) does not affect those savings, and accordingly does not affect things done or acquired before 1 January 1894.

6 In so far as the 1893 Act applied (immediately before the operation of the repeals made by this Act) to contracts made before 1 January 1894 (when the 1893 Act came into operation), the 1893 Act shall continue so to apply notwithstanding this Act.

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