



# Sale of Goods Act 1979

## 1979 CHAPTER 54

### PART II

#### FORMATION OF THE CONTRACT

##### *Contract of sale*

#### **2 Contract of sale.**

- (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.**

- (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 [<sup>F1</sup>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.

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

- (3) In subsection (2) above “necessaries” means goods suitable to the condition in life of the [<sup>F1</sup> 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- F1** Words in s. 3(2)(3) repealed (S.) (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss. 10, 11(2), [Sch. 2](#)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.**

- (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.

#### *Subject matter of contract*

#### **5 Existing or future goods.**

- (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.**

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.**

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.

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

## *The price*

### **8 Ascertainment of price.**

- (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.**

- (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.

*[<sup>F2</sup>Implied terms etc.]*

#### **Textual Amendments**

**F2** Heading preceding ss. 10-14 substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(10)** (with s. 8(3)).

### **10 Stipulations about time.**

- (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.**

[<sup>F3</sup>(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

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

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) [<sup>F4</sup>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.

<sup>F5</sup>(5) .....

- (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.

#### Textual Amendments

**F3** S. 11(1) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(2)(a)** (with s. 8(3)).

**F4** Words in s. 11(4) inserted (3.1.1995) by 1994 c. 35, ss. 3(2), 8(2) (with s. 8(3)).

**F5** S. 11(5) repealed (3.1.1995) by 1994 c. 35, ss. 7, 8(2), **Sch. 2 para. 5(2)(b), Sch.3** (with s. 8(3)).

## 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 [<sup>F6</sup>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 [<sup>F6</sup>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 [<sup>F6</sup>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 [<sup>F6</sup>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;

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

- (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.

[<sup>F7</sup>(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.

#### Textual Amendments

- F6** Words in s. 12(1)(2)(4)(5) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(3)(a)** (with s. 8(3)).
- F7** S. 12(5A) inserted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(3)(b)** (with s. 8(3)).

### 13 Sale by description.

- (1) Where there is a contract for the sale of goods by description, there is an implied [<sup>F8</sup>term] that the goods will correspond with the description.

[<sup>F9</sup>(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.

#### Textual Amendments

- F8** Word in s. 13(1) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(4)(a)** (with s. 8(3)).
- F9** S. 13(1A) inserted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(4)(b)** (with s. 8(3)).

### 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 [<sup>F10</sup>term] about the quality or fitness for any particular purpose of goods supplied under a contract of sale.

[<sup>F11</sup>(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.

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

- (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 all 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 [F10 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 [F10 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.
- [F12(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.

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

#### Textual Amendments

- F10** Words in s. 14(1)(3)(4) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(5)(a)** (with s. 8(3)).
- F11** S. 14(2)(2A)-(2C) substituted for s. 14(2) (3.1.1995) by 1994 c. 35, **ss. 1(1), 8(2)** (with s. 8(3)).
- F12** S. 14(6) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(5)(b)** (with s. 8(3)).

#### 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.

- (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 [<sup>F13</sup>term]—
- (a) that the bulk will correspond with the sample in quality;
  - <sup>F14</sup>(b) . . . . .
  - (c) that the goods will be free from any defect, [<sup>F15</sup>making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample.
- [<sup>F16</sup>(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.

#### Textual Amendments

- F13** Word in s. 15(2) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(6)(a)** (with s. 8(3)).
- F14** S. 15(2)(b) repealed (3.1.1995) by 1994 c. 35, ss. 7, 8(2), Sch. 2 para. 5(6)(a), **Sch.3** (with s. 8(3)).
- F15** Words in s. 15(2)(c) substituted (3.1.1995) by 1994 c. 35, **ss. 1(2), 8(2)** (with s. 8(3)).
- F16** S. 15(3) substituted (3.1.1995) by 1994 c. 35, ss. 7(1), 8(2), **Sch. 2 para. 5(6)(b)** (with s. 8(3)).

### *[<sup>F17</sup> Miscellaneous]*

#### Textual Amendments

- F17** Cross-heading preceding s. 15A inserted (3.1.1995) by 1994 c. 35, **ss. 4(1), 8(2)** (with s. 8(3)).

## [<sup>F18</sup>15A Modification of remedies for breach of condition in non-consumer cases.

- (1) Where in the case of a contract of sale—

*Status: Point in time view as at 03/01/1995.*

*Changes to legislation: There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II. (See end of Document for details)*

- (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**

**F18** S. 15A inserted (3.1.1995) by 1994 c. 35, ss. 4(1), 8(2) (with s. 8(3)).

**[<sup>F19</sup> 15B Remedies for breach of contract as respects Scotland.**

- (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,
  - (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**

**F19** S. 15B inserted (3.1.1995) by 1994 c. 35, ss. 5(1), 8(2) (with s. 8(3)).



**Status:**

Point in time view as at 03/01/1995.

**Changes to legislation:**

There are currently no known outstanding effects for the Sale of Goods Act 1979, Part II.