



Supply of Goods (Implied Terms) Act 1973

1973 CHAPTER 13

Hire-purchase agreements

8 Implied terms as to title

- (1) In every hire-purchase agreement, other than one to which subsection (2) below applies, there is—
- (a) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass ; and
 - (b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the hirer before the agreement is made and that the hirer will enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed or known.
- (2) In a hire-purchase agreement, in the case of which there appears from the agreement or is to be inferred from the circumstances of the agreement an intention that the owner should transfer only such title as he or a third person may have, there is—
- (a) an implied warranty that all charges or encumbrances known to the owner and not known to the hirer have been disclosed to the hirer before the agreement is made; and
 - (b) an implied warranty that neither—
 - (i) the owner ; nor
 - (ii) in a case where the parties to the agreement intend that any title which may be transferred shall be only such title as a third person may have, that person; nor
 - (iii) anyone claiming through or under the owner or that third person otherwise than under a charge or encumbrance disclosed or known to the hirer before the agreement is made ;will disturb the hirer's quiet possession of the goods.

9 Letting by description

- (1) Where under a hire purchase agreement goods are let by description, there is an implied condition that the goods will correspond with the description ; and if under the agreement the goods are let by reference to a sample as well as a 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.
- (2) Goods shall not be prevented from being let by description by reason only that, being exposed for sale or hire, they are selected by the hirer.

10 Implied undertakings as to quality or fitness

- (1) Except as provided by this section and section 11 below and subject to the provisions of any other enactment, including any enactment of the Parliament of Northern Ireland, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods let under a hire-purchase agreement.
- (2) Where the owner lets goods under a hire purchase agreement in the course of a business, there is an implied condition that the goods are of merchantable quality, except that there is no such condition—
 - (a) as regards defects specifically drawn to the hirer's attention before the agreement is made ; or
 - (b) if the hirer examines the goods before the agreement is made, as regards defects which that examination ought to reveal.
- (3) Where the owner lets goods under a hire purchase agreement in the course of a business and the hirer, expressly or by implication, makes known to the owner or the person by whom any antecedent negotiations are conducted, any particular purpose for which the goods are being hired, there is an implied condition that the goods supplied under the agreement 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 hirer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the owner or that person.
- (4) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a hire-purchase agreement by usage.
- (5) The foregoing provisions of this section apply to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the owner as they apply to an agreement made by the owner in the course of a business, except where the owner is not letting in the course of a business and either the hirer knows that fact or reasonable steps are taken to bring it to the notice of the hirer before the agreement is made.
- (6) Section 58(3) and (5) of the Hire-Purchase Act 1965, section 54(3) and (5) of the Hire-Purchase (Scotland) Act 1965 and section 65(3) and (5) of the Hire-Purchase Act (Northern Ireland) 1966 (meaning of antecedent negotiations and related expressions) shall apply in relation to subsection (3) above as they apply in relation to each of those Acts.

11 Samples

Where under a hire-purchase agreement goods are let by reference to a sample, there is an implied condition—

- (a) that the bulk will correspond with the sample in quality; and
- (b) that the hirer will have a reasonable opportunity of comparing the bulk with the sample ; and
- (c) that the goods will be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

12 Exclusion of implied terms and conditions

- (1) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent therewith.
- (2) A term of a hire purchase agreement or any other agreement exempting from all or any of the provisions of section 8 above shall be void.
- (3) A term of a hire purchase agreement or any other agreement exempting from all or any of the provisions of section 9, 10 or 11 above shall be void in the case of a consumer agreement and shall, in any other case, not be enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.
- (4) In determining for the purpose of subsection (3) above whether or not reliance on any such terms 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 owner and hirer relative to each other, taking into account, among other things, the availability of suitable alternative products and sources of supply ;
 - (b) whether the hirer received an inducement to agree to the term or in accepting it had an opportunity of acquiring the goods or suitable alternatives without it from any source of supply;
 - (c) whether the hirer 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 9, 10 or 11 above if some condition is not complied with, whether it was reasonable at the time of the agreement to expect that compliance with that condition would be practicable ;
 - (e) whether the goods were manufactured, processed or adapted to the special order of the hirer.
- (5) Subsection (4) above shall not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 9, 10 or 11 above is not a term of the hire-purchase agreement.
- (6) In this section " consumer agreement" means a hire-purchase agreement where the owner makes the agreement in the course of a business and the goods to which the agreement relates—
 - (a) are of a type ordinarily supplied for private use or consumption ; and
 - (b) are hired to a person who does not hire or hold himself out as hiring them in the course of a business.
- (7) The onus of proving that a hire-purchase agreement falls to be treated for the purposes of this section as not being a consumer agreement shall lie on the party so contending.

- (8) 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 owner for breach of a condition or warranty implied by any provision of that section.
- (9) It is hereby declared that any reference in this section to a term of an agreement includes a reference to a term which although not contained in an agreement is incorporated in the agreement by another term of the agreement.

13 Conflict of laws

Where the proper law of a hire purchase agreement 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 agreement 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 8 to 12 above, those sections shall, notwithstanding that term, apply to the agreement.

14 Special provisions as to conditional sale agreements

- (1) Section 11(1)(c) of the principal Act (whereby in certain circumstances a breach of a condition in a contract of sale is treated only as a breach of warranty) shall not apply to conditional sale agreements which are agreements for consumer sales.
- (2) In England and Wales and Northern Ireland a breach of a condition (whether express or implied) to be fulfilled by the seller under any such agreement shall be treated as a breach of warranty, and not as grounds for rejecting the goods and treating the agreement as repudiated, if (but only if) it would have fallen to be so treated had the condition been contained or implied in a corresponding hire-purchase agreement as a condition to be fulfilled by the owner.

15 Supplementary

- (1) In sections 8 to 14 above and this section—
- " conditional sale agreement", " hire-purchase agreement ", " hirer " and " owner " have the same meanings respectively as in the Hire-Purchase Act 1965 or, as the case may be, the Hire-Purchase (Scotland) Act 1965 ;
 - " business " includes a profession and the activities of any government department 'including a department of the Government of Northern Ireland), local authority or statutory undertaker;
 - " consumer sale " has the same meaning as in section 55 of the principal Act, as amended by section 4 above; and
 - " condition " and " warranty ", in relation to Scotland, mean stipulation, and any stipulation referred to in sections 8(1)(a) 9, 10 and 11 above shall be deemed to be material to the agreement.
- (2) In the application of subsection (1) above to Northern Ireland—
- (a) "hirer" has the same meaning as in section 65(1) of the Hire Purchase Act (Northern Ireland) 1966; and

- (b) subject to paragraph (a) above, for the reference to the Hire-Purchase Act 1965 there shall be substituted a reference to the Hire-Purchase Act (Northern Ireland) 1966.
- (3) Goods of any kind are of merchantable quality within the meaning of section 10(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 ; and in section 11 above " unmerchantable " shall be construed accordingly.
- (4) In section 14(2) above "corresponding hire-purchase agreement" means, in relation to a conditional sale agreement, a hire-purchase agreement relating to the same goods as the conditional sale agreement and made between the same parties and at the same time and in the same circumstances and, as nearly as may be, in the same terms as the conditional sale agreement.
- (5) Nothing in sections 8 to 13 above shall prejudice the operation of any other enactment including any enactment of the Parliament of Northern Ireland or any rule of law whereby any condition or warranty, other than one relating to quality or fitness, is to be implied in any hire-purchase agreement.