



Sale of Goods Act 1893

1894 CHAPTER 71 56 and 57 Vict

PART I

FORMATION OF THE CONTRACT

Contract of Sale

1 Sale and agreement to sell

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) 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; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.
- (4) 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.

2 Capacity to buy and sell

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property:

Provided that where necessaries are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

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Formalities of the Contract

3 Contract of sale, how made

Subject to the provisions of this Act and of any statute in that behalf, 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. Provided that nothing in this section shall affect the law relating to corporations.

4 Contract of sale for ten pounds and upwards

- (1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.
- (2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.
- (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.
- (4) The provisions of this section do not apply to Scotland.

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 the seller 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 upon 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.

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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 thereby avoided.

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 manner thereby agreed, or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. 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 such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.
- (2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties

10 Stipulations as to time

- (1) Unless a different intention appears from the terms of the contract stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.
- (2) In a contract of sale “month ” means prima, facie calendar month.

11 When condition to be treated as warranty

- (1) In England or Ireland—
 - (a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating -the contract as repudiated:
 - (b) 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

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on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract:

- (c) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any 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 be a term of the contract, express or implied, to that effect.
- (2) 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.
 - (3) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

12 Implied undertaking as to title, &c

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (1) 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 that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass:
- (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods:
- (3) An implied warranty that the goods shall 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.

13 Sale by description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be 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.

14 Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

- (1) 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 be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided 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:

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- (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed:
- (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade:
- (4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by Sample

15 Sale by sample

- (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
- (2) In the case of a contract for sale by sample—
 - (a) There is an implied condition that the bulk shall correspond with the sample in quality:
 - (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample:
 - (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.