

# Critical Analysis of the “Implied Term” of a Contract Set Out in Sale of Goods Act 1979 in 1995

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## ABSTRACT

This paper centred, among many other things, matters which broadly affect the standard of goods in relation to the concept of satisfactory quality introduced into the Sale of Goods Act 1979 in 1995, and its subject matter, the most and primary focus which will be the “ Implied Term” of a contract. This paper considered comments from various authors, precedent old and recent cases, as well as Law Commission Report. It is pertinent to mention that Commonwealth/non commonwealth countries have adopted the Act for all trades between themselves and UK. One of the good things about the Sale of Goods Act is its clarity and the shortness of the Act itself. It is easy to read and understood.

Also it is important to briefly note here the aspects of UK contract of law relevant to international business –Sale of Goods Act 1979, Sale and Supply of Goods Act 1994, Unfair Contract Terms Act 1977, general contractual issues relevant to business, such as discharge of a contract, frustration and privity of contract.

**Keywords:** Sale of Goods Act, Consumer Rights Act, Law Commission Report, Unfair Contract Terms Act and Implied Term.

## INTRODUCTION

The Sale of Goods Act 1979 applies to sale of goods contracts which are defined in the Act. Its provisions do not apply to any other types of contract. The sale of goods is one of the earliest forms of business transaction, existing from the time when money was first introduced to replace

barter. <sup>[1]</sup> The terms of contract define the rights and duties arising under the contract. These terms are either of two kinds, that is EXPRESS TERM AND IMPLIED TERM.

The sale of Goods Act, 1979, <sup>[2]</sup> sections 12-15 imply certain terms into contracts for the sale of goods which are for the protection of the buyer. For instance, S. 12 makes it an implied condition that the seller shall have title of the goods or a right to sell and an implied warranty that the buyer shall enjoy quiet possession and S.13 makes it an implied condition that the goods shall correspond with their descriptions. Then, S. 14 makes it an implied condition that goods shall be fit for its purpose.

The common law courts have reluctantly backed implied terms in the sales of goods, for fitness or quality and the principle of *caveat emptor* was the guiding principle for buyers. <sup>[3]</sup>

As earlier noted, that implied terms are supported by courts in contracts of sale, S. 14, <sup>[4]</sup> however, stands a great deal in protecting buyers from defective or fraudulent commodities. The Act provides, under S. 14(1) that: “*except as provided by this section and S. 15 below and subject to any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale*”.

The supply of goods, now supports all contracts to contain terms, implied by statute, which requires the goods delivered to be a of a certain standard and quality. <sup>[5]</sup>

Therefore, the main characteristics of implied terms are such that it arises automatically, by operation of law, and are thus relatively easy to prove.<sup>[6]</sup>

The Sale and Supply of Goods to Consumers Regulations<sup>[7]</sup> came into force On March 31, 2003 seeking to implement the Directive on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees. The Regulations in executing its Directive, thus only apply to sales. Also, the Regulations, in implementing these Directives, made significant amendments to the concept of satisfactory quality in relations contracts for the sale and supply of goods to buyers.<sup>[8]</sup>

In critically assessing whether goods are of satisfactory quality, Regulation 3 which amended the provision of s.14<sup>[9]</sup> by introducing a subsection (2D) thus provides *inter alia* that account should be taken of “any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling”. Again the Regulations provided for new buyers remedies in cases where the goods do not conform to the contract. This includes cases in which the goods are of unsatisfactory quality (or are in breach of the other implied terms contained in ss.13-15 of the Sale of Goods Act 1979; and cases where there was a breach of implied terms under the s.13 as to reasonable care and skill in the Supply of Goods and Services Act 1982. This also covers cases where there is a breach of any express term of the contract.<sup>[10]</sup> Although the remedies of rejection and damages still exist, provisions are now in place for new remedies such as repair, replacement, price reduction and rescission, which now co-exist together under the same Act.<sup>[11]</sup>

Historically, before the enactment of the Sale and Supply of Goods Act, the general impressions for describing the quality of goods which buyers in certain cases, was of ‘*merchantable quality*’, which tends to convey that, one merchant buying from another would have regarded the

goods as suitable, was extended to cover sales by business sellers to buyers, and was first defined by statute in the Supply of Goods (Implied Terms) Act<sup>[12]</sup> 1973.

Under the implementation of the *caveat emptor* principle, the protection offered to buyers were seen to be fragile, unless an express term was inserted into the contract, to protect their interest in the supply of goods.

### Merchantable Quality

The Law Commission<sup>[13]</sup> proposed that “*Merchantable quality*”, in relation to the implied terms of a contract should be redesigned in order to create more clarity to its applicability to “*minor defect and the durability of the goods*”. According to the report,<sup>[14]</sup>

*“One of the modifications to the 1893 Act is a matter which we are concerned about in this report, namely the implied promise on the part of the seller that the goods will be of merchantable quality. The implied term relating to quality was slightly amended in 1973 by the introduction of a statutory definition of “merchantable quality...”*

The original meaning of merchantable quality was defeated when its scopes were extended and defined under the Sale and Supply of Goods (Implied Terms) Act 1973, to cover sales by business sellers to buyers, in what later became S. 14(6) of the Sale of Goods Act 1979.<sup>[15]</sup> Again, it was noted that there were some uncertainties which had raised criticisms as to the scope of implied term in relation to quality, in the Sale of Goods Act cover “minor defect”.<sup>[16]</sup> This led to a Private Member’s Bill that was introduced into parliament in 1978, with the aim of altering the definition of merchantable quality. This became apparent, as the extended notion of neither the word ‘merchantable’ nor the reference to fitness for purpose adequately conveyed the concept of acceptable quality, although there was considerable difficulty in finding an appropriate substitute.<sup>[17]</sup>

As earlier discussed, the 1893 Act did not provide a definition for

‘merchantable quality’, and the present definition under S. 14(6) was not introduced until 1973, however, prior to these date, true meaning and definition by merchantable quality had been attempted by two main approaches. [18] Firstly, there was the “Acceptability Test” [19] and then the “Usability Test”, [20] which clearly illustrate some of the difficulties inherent in trying to define the nature of quality of goods. [21]

The Law Commissions 1968, in its consultative document [22] proposed some amendments to the Sale of Goods Act, which cautiously recommended an extended and better design of the acceptability test. This consultation paper described merchantable quality as: [23]

“... means that the goods tendered in performance of the contract shall be of such type and quality and in such condition that having regard to all the circumstances, including the price and description under which the goods are sold...”

Although the Law Commission opted for other options, in the 1994 Act, the label ‘satisfactory’ was adopted. The Supply of Goods (Implied Terms) Act 1973, first made some response to the demand for reform and simplification by providing a statutory definition of the term ‘merchantable quality’, and this together with some minor amendments made by the same Act, was eventually incorporated in the 1979 Act: [24]

“...goods of any kind are of merchantable quality within the meaning of subs. (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought....”

The Commission, however, accepted the criticisms that accompanied these test, due to the fact that it is circular and very complicated. [25]

However, S. 14 of the Sales of Goods Act in its amended form, provided a general standard of quality and then sets out a non- exhaustive list of matters which in appropriate cases are to be considered aspects of the quality of goods. [26]

### **Implied Term**

The implied term which requires goods to be of satisfactory quality, are of two terms, firstly, that the goods shall be of satisfactory quality, and that:

“Where.... the buyer, expressly or by implication, makes known ....any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose”. [27]

The provision of implied term under S. 14(2) applies only to goods transacted between parties in the course of business, especially in professional capacity, activities of government or public authority [28] but does not cover private sale [29] which requires conformity with description.

Due to the fact that the implied term as to satisfactory quality is a condition, it only implied if the goods are sold “in the course of a business”. It was noted that these words are new in S. 14 by virtue of the Supply of Goods Act 1973, which was meant to distinguish between sales done in the course of a seller’s business and a purely private sale outside the confines of any business. [30]

Although the decision in *Stevenson & Anor v. Rogers* [31] created series of doubt upon an earlier decision, [32] the court of Appeal in a much recent case of *Feldarol Founding Plc v. Hermes Leasing (London) Ltd* [33] noted that the decision in *Stevenson’s* case was not consistent with the R & B Customs.

Commentators, such as Twigg-Flesner also noted that the recent court of appeal decision in *Feldarol’s* case may be described as an unremarkable and predictable application of established law. [34] Also, noted was the fact that there exists some mileage in the policy argument; the companies should never be treated as consumers, a fact recognised in other (European Union inspired) measures to which are restricted to natural persons. [35]

In case of *Stevenson & Anor. V. Rogers*, [36] the trial judge held, as a preliminary issue in the first instance, that the sale had not been made in the course of

a business and the buyer’s case was however rejected.

The judge in the *Stevenson’s* case held at first instance that this was not a sale ‘in the course of a business’ because it did not have an element of regularity.<sup>[37]</sup> The court of appeal, however, decided that habitual dealing in the type of goods sold was not a requirement of the section; it sufficed that the sale was in the course of a business. In reaching this decision, the court had relied upon cases which suggested that a narrow construction should be given to the words “in the course of a business”.<sup>[38]</sup>

According to Brown, the scope for determining the phrase ‘in the course of business’ seems to be relatively straight forward, but has proven to be contentious in a very wide form of statutory contexts. Furthermore, the intractable difficulties that occurred on the margins of the definition, in relation to sporadic transactions may not be regarded within the ‘course’ of a business and ‘*fortion*’, it is arguable that an isolated transaction which is disparate from those principally carried on by the business does not amount to “business” at all.<sup>[39]</sup>

However, it is important to note that the intention of the Law Commission. (Exemption Clauses in Contracts) in changing the words, by the Supply of Goods (Implied Terms) Act 1973, was to extend the application of the implied terms to all business sales so as to increase buyers protection.<sup>[40]</sup> Although this phrase, ‘in the course of business’ appears in a number of other statutory in which it was repeatedly been given a narrower interpretation so that a sale will only be regarded as being in the course of a business whether either, the transaction as an integral part of the business or, there is sufficient regularity of similar transactions.<sup>[41]</sup>

Also S.14(5) provides that when a private seller does business through to a reputable agent to make a sale on his behalf, with the condition that such agent execute the sale in the course, consequently the private seller be treated as if he were selling in the course of a business. Furthermore, if

the buyer knew that such sale was being done by the private seller or reasonable steps were being taken to bring this fact to the buyer’s attention, then the sale is not done ‘in the course of a business’.<sup>[42]</sup>

Therefore, the House of Lords<sup>[43]</sup> held that under S.14(5), where a buyer purchases goods from an agent acting for an undisclosed principal for breach of the implied conditions set out under S.14(2) and (3) in respect of the sale.<sup>[44]</sup> In line with the above situation, this has resulted into a private transaction which requires such buyer to sue for damages and return of the goods.

Currently, the implied terms of S. 14 applies to the ‘*goods supplied under the contract*’, thus sub (1) provides that:

“*Except as provided by this section and S. 15 below and subject to any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under the contract of sale*”.

However, the most important part of this section and centre issue of this paper, is the sub. (2), which now states that:<sup>[45]</sup>

“*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*”.

### **Provision of Section 14**

The provision of S. 14 however had an important role in the legislation dealing with contracts for the supply of goods. The satisfactory quality term, which applies to all contracts made after 3 January, 1995, was a result of an amendment to the Sale of Goods Act 1979 effected by S.7 of the Sale and Supply of Good Act 1994, which has replaced the implied term of ‘*merchantable quality*’.<sup>[46]</sup>

More so, the provision of S. 14(2) has made classifications to the effect that implied of satisfactory quality and its dealings with the *fitness factor*, now applies only to sales in the course of a business, although, as a result of *Stevenson v. Rogers*,<sup>[47]</sup> the satisfactory quality had attracted a

wider meaning and applies to all sales by those in business. [48]

The requirement of satisfactory quality standard under s.14(2) involves goods to 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*”. In addition to the guidelines of the 2003 Regulation, ‘quality’ is also to be determined by reference to the state and condition of the goods, fitness for all the purposes for which goods of that kind are commonly supplied, appearance and finish, freedom from minor defects, safety, and durability. [49] The Regulations amend the satisfactory quality obligation. It is now provided that where the buyer deals as a consumer, the ‘relevant circumstances’ mentioned above “*include any public statements on the specific characteristics of the goods made about them by the seller, the producer, or his representative, particularly in advertising or in labelling*”. [50]

In accordance with the Law Commission’s recommendations, [51] of a list of factors to be considered when deciding whether goods are of satisfactory quality, the requirement that the goods should be of ‘satisfactory quality’ in s. 14(2) is amplified by new ss 14(2A) and 14(2B) which contains a definition of ‘satisfactory quality’ [52] and recently regarded as the new test of S. 14(2). Thus, S. 14(2A) provides that:

“..... goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of the description of the goods, the price (if relevant) and all the other relevant circumstances”.

Furthermore, S. 14(2B) provides that:

“*The quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods....*”

Fitness for all the purpose which goods of the kind in question are commonly supplied;

Appearance and finish;  
Freedom from minor defects;  
Safety and  
Durability”.

However, it is important to note that the matters listed under S. 14(2B) are not absolute requirements but merely factors to be considered in ‘appropriate cases’. [53]

It has been noted that the ‘standard test of a reasonable person’ is a qualifying factor of determining the satisfactory quality of any good. Thus this has been noted by authors as follows: [54]

“...*This is an objective standard and it appears to be how the judges confronted by the definition have applied it though they have generally not thought it necessary to spell this out. The reasonable person is considered as “not an expert...”*

Also in *Jewson Ltd v Boyhan*, [55] the Court of Appeal judges noted at paragraph. [1] that:

“...*the function of s. 14(2) was to establish a general standard which goods were required to reach, whereas the function of s. 14(3) was to impose a particular (higher) standard which was appropriate where the buyer (to the knowledge of the seller) bought the goods for a particular purpose and relied on the seller’s skill and judgment for that purpose; goods were satisfactory if they met the standard which a reasonable person would regard as satisfactory; in determining the standard that a reasonable person would regard as satisfactory, the circumstances which had to be taken into account were any description of the goods, the price and all the other relevant circumstances; in appropriate circumstances, certain defined features might be regarded as aspects of the quality of the goods, including fitness for all purposes for which goods of the kind in question were commonly supplied...*”

It was also emphasized by Hale L.J in *Clegg v. Anderson (t/a Nordic Marine)*, [56] at para. [72], the manner in which the objective test

of S. 14(2) should be implemented in that:<sup>[57]</sup>

*“The test is whether a reasonable person would think the goods satisfactory, taking into account their description, the price (if relevant) and all other relevant circumstances.... The question, as the joint Report of the Law Commission and the Scottish Law Commission explained, is ‘not whether the reasonable person would find the goods acceptable; it is an objective comparison of the state of the goods with the standard which a reasonable person would find acceptable’.”*

In taking into account the relevant factors, in relevant circumstances, goods of any kind that have more than one common purpose, then it should be satisfactory for all those common purposes. The court of appeal in *Roger v. Parish (Scarborough) Ltd.*,<sup>[58]</sup> held that, in the cases of motor vehicles those purposes include not merely the purpose of driving but also includes so with the appropriate degree of comfort, ease of handling and pride in the vehicle’s outward and interior appearance. More so, such appropriate degree varies with the price, the description and other relevant factors.<sup>[59]</sup>

Although it is noted that the s.14(3) concerned with fitness for purpose but the provision of subsection deals more with goods required for some particular purpose which has been made to the seller. Thus, s.14 (2) on the other hand, concerns fitness for ordinary purposes, which do not have to be specially made to the seller.<sup>[60]</sup> As the court of Appeal<sup>[61]</sup> has noted that s. 14 (6) requires goods to be ‘as fit for the purpose or purposes for which good of that kind are commonly bought’ as it was reasonable to expect.

The present provision requires ‘fitness for all the purposes for which goods of the kind in question are commonly supplied’ so that if the seller knows that goods are not fit for one of the purposes for which goods of the kind are commonly supplied, he must make this known to the

buyer.<sup>[62]</sup> However, it is important to note that, this is a change in the law, that previously held that the test of merchantable quality was satisfied, as long as it satisfies any one of the purposes, even if unfit for the other purposes.<sup>[63]</sup>

The legal viewpoint of the relationship between the implied term as to quality and fitness was also consider by the Court of Appeal in *Jewson Ltd v. Boyhan* (as Personal Representative of Thomas Michael Kelly),<sup>[64]</sup> where the buyer refused to pay, arguing that the seller breached ss 14(2) and 14(3) as the energy efficiency rating of the boilers was such that the flats were unsalable.<sup>[65]</sup> The trial judge held that the boiler were not of satisfactory quality, and stated at [82] that:<sup>[66]</sup>

*“The fact that the boilers intrinsically worked satisfactorily was not sufficient for them to be of satisfactory quality since a reasonable person would have said that a new form of electric boiler claiming to provide efficient low-cost heating in residential dwellings ought to being shown to meet such a claim...”*

Appearance and quality are both included in S. 14(2B) as ‘aspect of quality’ due to the main reason for the introduction of the new formulation that the statutory definition of merchantable quality, with its emphasis on ‘usability’ did not correspond with the expectations of consumers, in need of goods, not only for its uses but also to be free of ‘minor’ defects.<sup>[67]</sup> The authoritative ruling in *Rogers v. Parish*,<sup>[68]</sup> made it clear that defect in appearance, if of sufficient degree, could render a vehicle un-merchantable, which also applies in the definition of Satisfactory Quality.<sup>[69]</sup>

Also appearance and finish, and freedom from minor defects must be taken into account in order to determine whether goods are of satisfactory quality. These features are more likely to apply to new rather than second-hand goods. A major uncertainty of the old law is thus removed.<sup>[70]</sup> The result is, to quote the Law Commissions' report, that:<sup>[71]</sup>

“ dents, scratches, minor blemishes and discolorations, and small malfunctions will in appropriate cases be breaches of the implied term as to quality, provided they are not so trifling as to fall within the principle that matters which are quite negligible are not breaches of contract at all.”

Under the old law, the issue of minor defects, rendering goods unmerchantable proved very troublesome.<sup>[72]</sup> The issue of minor defects and motor vehicles was recently litigated in Egan v. Motor Services (Bath) Ltd<sup>[73]</sup> where an Audi TT displayed ‘a tendency to ‘veer’, ‘deviate’ or ‘drift’ to the nearside’, and amongst other defects, which was argued to be sufficient to constitute a breach of satisfactory quality under S. 14(2B)(C)-freedom from minor defects.<sup>[74]</sup> Although, the court of appeal rejected this argument, when Smith, L.J stated:<sup>[75]</sup>

“However, it seems to me unlikely that a buyer will be entitled to reject goods simply because he can point to a minor defect. He must also persuade the judge that a reasonable person would think that the minor defect was of sufficient consequence to make the goods unsatisfactory...”

Again appearance and finish and freedom from minor defects have been noted to be likely to be relevant mainly to consumer transactions. Indeed, as Hale L.J. pointed out *obiter* in Clegg v Anderson,<sup>[76]</sup> that:

“ [i]n some cases, such as a high priced quality product, the customer may be entitled to expect that it is free from even minor defects, in other words perfect or nearly so”.

An obvious element of quality, is the safety of the good purchased. In principle, goods which are unsafe are not of satisfactory quality. In *Bernstein v. Pamson Motors*,<sup>[77]</sup> Rougier J held that the car was un-merchantable despite the seller’s argument that the defect was easily repairable and therefore ‘minor’, emphasized the potentially disastrous effects

of a car seizing whilst being driven at speed.<sup>[78]</sup>

Safety was the central factor in *Clegg v Andersson*,<sup>[79]</sup> as the fact of the case involves purchase of a new ocean-going yacht costing £250,000 that was delivered to the buyer with a keel that was substantially heavier than the manufacturers’ specification. It was noted that evidence showed that this would render the rigging unsafe and, in this circumstances, the Court of Appeal had no difficulty in finding that the yacht did not meet the satisfactory quality standard.<sup>[80]</sup>

Finally, durability of the goods is also an important factor to be considered, as this raises the contentious issue of the length of time for which a buyer can expect goods to remain of satisfactory quality.<sup>[81]</sup> However, the test to be applied is that of the reasonable man, that is, an objective test.<sup>[82]</sup>

The court of appeal in *Bramhill v. Edwards*,<sup>[83]</sup> applying this objective test held that there was no breach of S. 14(2) of the 1979 Act. The fact of the case involves Mr and Mrs Bramhill purchasing a motor vehicle (MV) from Mr and Mrs Edwards, which turns out to be 102 inches wide, above the 100 inches width requirement by the regular UK regulations. They however, instigated a proceeding and the judge found for the defendant, that there was no breach of S. 14(2). The trial judge accepted that the motor vehicle was not of satisfactory quality, but held that the buyer’s examination of the motor vehicle before the purchase ought to have revealed the problem and the seller could rely on S. 14(2C)(B).The claimant appealed. The decision of the court of Appeal dealt with issues as to whether the good is of unsatisfactory quality under S. 14(2). Although the buyers had inspected the interior of the motor vehicle, they however did not measure its outside width.

The court of appeal, however in dismissing the appeal held that the good (motor vehicle) had not been shown to be of unsatisfactory quality due to the fact that by applying the test in S. 14 (2A) of the Sale of

Goods Act, the claimants had not discharged the burden of establishing that a reasonable person would regard the good as unsatisfactory in the relevant circumstances such that the authorities had turned a ‘blind eye’ to the illegality, regardless of their non-compliance with the regulations.<sup>[84]</sup> As Auld L.J stated at [30]:

*“..... But in my view, looked at through the eyes of the reasonable person as required by S. 14(2A), the issue as to insurability flows from that of illegality and cannot sensibly be considered separately from it....”*

Also, he noted at [34] that:

*“.... but the question is whether a reasonable person knowing of the illegality would regard the vehicle as not of satisfactory quality. This depends on their perception of and attitude to the risk of prosecution.... I find, therefore, that a reasonable person knowing of the breach of the regulations would regard such a vehicle as not satisfactory.....”*

Although the court of appeal, disagreeing with the trial judge’s opinion; since the buyers did not provide sufficient evidence to support his conclusion. This was due to the fact that the court should have observed this issue as a matter of public policy, instead of an issue of proof.<sup>[85]</sup>

Also, the issue of misrepresentation was dealt with by the court, and the provision of S. 14(2C) of the Act was considered as a defense by the seller even if, as noted, this part of the section was irrelevant to the outcome of the case.

Again, the court considered the issue of the claimant’s examination of the good, in this case,<sup>[86]</sup> before the purchase and the fact that they were fully aware of the spaciousness of its interior and that a vehicle in excess of 100 inches would breach the regulations. The court, however, noting such examination, noted that it should include the measurement of the exterior and this should have revealed its true width.<sup>[87]</sup>

As earlier noted, there are remedies available for the buyer where the seller is in breach of any term of the contracts; the buyer can, however suing for damages. Thus where there is a breach of condition, a buyer is usually entitled to the right to reject the goods and recover the price.

Furthermore, international sale of Goods Act (RSBC 1996) Chapter 236 Section 2, article 35, stipulates that; the seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract. Also where the parties have agreed otherwise, the goods do not conform with the contract unless they; 1) are fit for the purpose for which goods of the same description would ordinarily be used; 2) possess the quality of goods which the seller has held out to the buyer as a sample or model and 3) are contained or packaged in the manner usual for such goods.

Chapter 3, Article 53 is very important because it provides that buyer must pay the price for the goods and take delivery of them as required by the contract and this “convention”.

## CONCLUSION

The decision of the Court of Appeal in *Bramhill v. Edwards* has been commented to be an amazing one, although the provision of s. 14 (2c) was not applicable to the outcome since an examination of the vehicle which included measuring its width would have revealed the defect, such an examination was not carried out. Consequently, clearly, S. 14(2C) presents, in slightly different language, two qualifications in the Act. Firstly, the term extends to any matter ‘which is specifically drawn to the buyer’s attention before the contract is made.’ This involves that the factor must be specifically brought to the buyer’s attention. Secondly, ‘where the buyer examines the goods before the contract is made, in which the examination ought to reveal’, are relied upon to prove



that the goods are not of satisfactory quality. In case of a contract for sale by a sample, a reasonable examination of the sample would have been apparent.

In addition, the buyer did lose their right to remedy, to reject or rescind the contract even if there had been a misrepresentation or breach of condition. However, since the parties failed to raise the issue of the illegality of contracts and that the contract was contrary to public policy, the court was right not to deal or raise it on their behalf.

Finally, sale of Goods Act is widely adopted outside UK because it is efficient (through lower bargaining costs) and legal certainty. Therefore it is part and parcel of International Trade Law.

#### FOOT NOTES

1. R. Goode, *Commercial Law*, 3<sup>rd</sup> edition, (London: Penguin, 2004), pg 183
2. As amended by the sale and supply of Goods Act 1994
3. Goode, *Commercial Law*, pg 298
4. Sale of Goods Act 1979
5. R. Bradgate, *Commercial Law*, 3<sup>rd</sup> edition, (Oxford: Oxford University Press, 2003), p. 271
6. *ibid*
7. SI 2002/3045
8. C Willet *et al*, “The Sale and Supply of Goods to Consumer Relations”, *Journal of Business Law*, (2004) Jan, pp. 94-120.
9. Sale of Goods Act 1979
10. Sale of Goods Act 1979, S.48(F)
11. Willet *et al*, “The Sale and Supply of Goods to Consumer Relations”, p.95
12. Goode, *Commercial Law*, P. 299
13. Sale and Supply of Goods (Law Comm No. 160)
14. *Ibid*, para 1.10
15. Goode, *Commercial Law*, p 299
16. Sale and Supply of Goods (Law Comm No. 160), para 1.10
17. Goode, *Commercial Law*, p 299
18. Sale and Supply of Goods (Law Comm No. 160), 2.6
19. *Australian Knitting Mills Ltd v. Grant [1936]*
20. *Henry Kendall and Sons v. William Lillico and Sons Ltd [1968]2 All E.R; [1969]2 AC, per Lord Reid; B.S. Brown and Sons Ltd v. Craiks Ltd [1970]1 All E.R*
21. Sale and Supply of Goods (Law Comm No. 160), para 2.6
22. Working Paper No 8 (1968); Consultative Memorandum No7; para. 23
23. Sale and Supply of Goods (Law Comm No. 160), para. 2.8
24. Atiyah *et al*, *The Sale of Goods*, 11<sup>th</sup> edition, (London: Person Education Ltd, 2005), p.165
25. Sale and Supply of Goods (Law Comm No. 160), para. 2.8
26. Goode, *Commercial Law*, p. 299
27. E. W. ERVINE, “Satisfactory Quality: What Does It Mean?”, (2004) 11, *Journal of Business Law*, pp. 684-703
28. S. 61(1), Sale of Good Act
29. Except under S.13 of the Act
30. P. Dobson and R. Stokes, *Commercial Law*, 7<sup>th</sup> edition, (London: Sweet and Maxwell), p. 110
31. [1999] QB 1028
32. *R & B Customs Broker v. UDT [1988]1 WLR 321*
33. [2004] EWCA CIV, 747
34. C. Twigg- Flesner, “Companies dealing as Consumer” – a missed opportunity?” (2005) Vol. 121, *Law Quarterly Review*, pp. 94-120
35. *ibid*
36. [1992] QB 1028
37. I. Brown, “Sale of Goods in the course of a business”, (1999) 115(7), *Law Quarterly Review*, pp. 384-389
38. J. De Lacy, “Business Sellers’ Liability for the Implied Terms Under the Sale of Goods Act 1979”, (2000) 1(Jan) *Insolvency Lawyer*, p. 27-32
39. Brown, “Sale of Goods in the course of a business”, p. 384
40. Bradgate, *Commercial Law*, p. 282
41. *ibid*
42. S. 14(5), Sale of Goods Act 1979
43. *Boyer v. Thomson [1995]2 AC 628*
44. L. Sealy and R. Hooley, *Commercial Law*, 4<sup>th</sup> edition, (Oxford: Oxford, 2009), p. 182
45. Sale of Goods Act 1979, S. 14 (2); This implied term, by virtue of S.14(6), is classified as a condition in England and Wales
46. Bradgate, *Commercial Law*, p 284
47. [1999] QB 1028
48. Ervine, “Satisfactory Quality”, p 685

49. Sale of Goods Act 1979, s.14(2b); Regulation 15(1)
50. Willet et al, “The Sale and Supply of Goods to Consumer Relations”, p.96
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