Commercial Law Concentrate: Law Revision and Study Guide (6th edn)
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2. Statutory implied terms

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Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter examines the significance of the terms implied into sale of goods contracts under the Sale of Goods Act 1979 and the statutory rights that are implied in a contract between trader and consumer by virtue of the Consumer Rights Act 2015. It explains the seller's right to sell the goods, the goods being free from encumbrances and the buyer enjoying quiet possession of them, sales by sample, and the description and quality of the goods, as well as their fitness for purpose. Digital content is also discussed in relation to consumer transactions. The chapter also considers the terms implied into other kinds of contract by different statutes, including the terms implied by the Supply of Goods and Services Act 1982.

Keywords: sale of goods, contracts, seller's rights, sales by sample, satisfactory quality, sales by description, fitness for purpose, Supply of Goods and Services Act 1982, implied terms, digital content

Key facts

- Having explained what constitutes a contract of sale of goods, this chapter sets out and explains the significance of the terms implied into these contracts by operation of law.
- The **Sale of Goods Act 1979** (hereafter referred to as the **SGA**) implies into contracts of sale of goods certain implied terms:
- the seller's right to sell the goods (**s 12(1) SGA**);
- the goods being free from encumbrances and the buyer enjoying quiet possession of them (**s 12(2) SGA**);
- the description of the goods (**s 13(1) SGA**);

- the quality of the goods (**s 14(2) SGA**);
- the fitness for purpose of the goods (**s 14(3) SGA**); and
- sales by sample (**s 15 SGA**).

- The terms implied by **ss 14(2)** and **14(3) SGA** apply only where the seller sells goods in the course of a business. If the seller does not sell the goods in the course of a business, then **ss 14(2)** and **14(3)** will not apply but **ss 12**, **13**, and **15** will.
- We will also consider the terms implied into other kinds of contract by different statutes.
- Where the **Consumer Rights Act 2015** applies, we will consider the statutory rights that are to be treated as included in a contract between trader and consumer.

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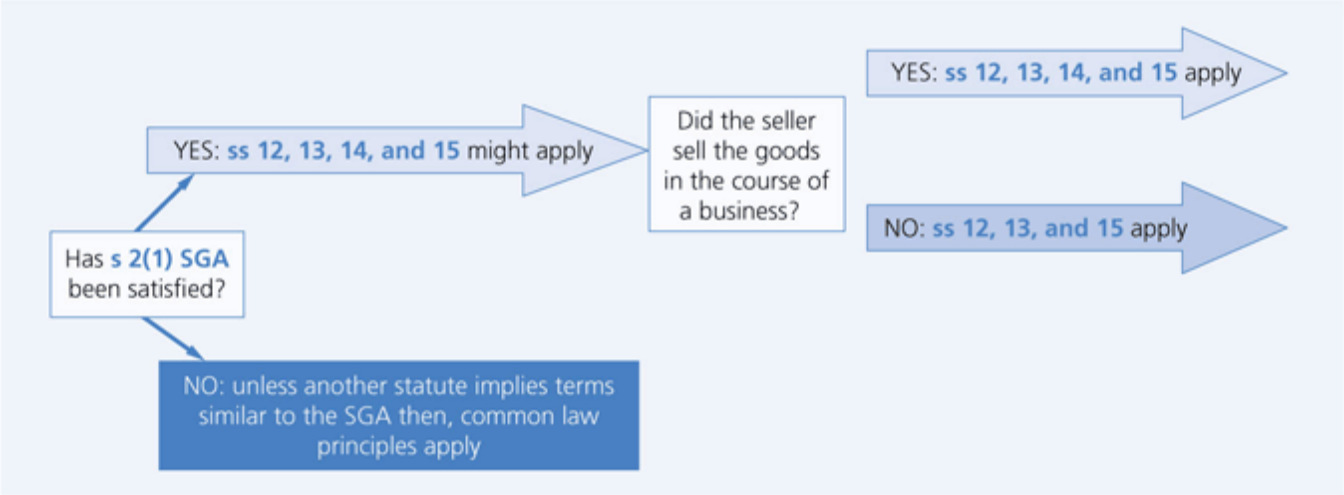
Chapter overview

Is the transaction a contract of sale of goods and what are the consequences?



The position of the consumer buyer is dealt with at the end of the chapter.

Introduction

The terms of a contract set out the obligations of the parties to it. Contractual terms can either be **express** or **implied**. An express term is one that has been expressly agreed by the parties, either in writing or orally. As well as express terms, further terms may be implied into the contract by the court. A typical example of when a court might imply a term into a contract is when it can be assumed that both parties would have agreed to such a term had they thought about it at the time the contract was made. Terms may also be implied by custom, trade usage, or operation of law.

In this chapter, we will be looking at terms implied by the **SGA**. As we saw in Chapter 1, 'Introduction to contracts of sale of goods', the **SGA** implies certain terms into contracts of sale of goods. These terms will be implied irrespective of the parties' intentions.

The position of the consumer buyer will be dealt with at the end of the chapter.

Classification of terms

Contractual terms (whether express or implied) will vary as to their importance. For example, if I offer to sell you my car, we might agree on the following terms:

- that the bodywork is in good condition;
- that the tyres are new; and
- that the car will be washed before delivery.

Let us say that I have breached all three of these **express terms** in that the bodywork is full of rust, the tyres are worn out, and I did not wash the car before delivery. Clearly, you will be more ↵ troubled by the first two breaches than the third one. It is for this reason that the law classifies terms according to their importance. There are three classifications of a term. It may either be:

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1. a **condition**;
2. a **warranty**; or
3. an **innominate term**.

Revision tip

The terms implied by the **SGA** have been classified in the **SGA** as either conditions or warranties. There is no room, therefore, for them to be classified as innominate terms.

Do not forget that in respect of contracts of sale of goods these terms may *only* be implied if **s 2(1) SGA** has been satisfied. In respect of other types of transaction (e.g. **hire purchase**), we will also identify the appropriate provisions in other statutes that imply similar terms to the **SGA**.

Implied terms as to title: s 12 SGA

Section 12 SGA sets out three different terms as to title:

1. a ***condition*** that the seller has the right to sell the goods (**s 12(1)**);
2. a ***warranty*** that the goods are free from any charge or encumbrance (**s 12(2)(a)**); and
3. a ***warranty*** that the buyer will enjoy quiet possession of the goods (**s 12(2)(b)**).

Section 12(1): a condition that the seller has the right to sell the goods

This is one of the most important **implied terms** in the **SGA** as it imposes a duty on the seller to pass a good title to the goods.

s 12(1) SGA:

... 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.

Looking for extra marks?

Note that **s 12(1) SGA** does not require that the seller should also be the owner, nor does the section require them to acquire title before transferring the goods to the buyer (***Karlshamns Oljefabriker v Eastport Navigation Corporation (1982)***).

p. 18 ↵ A situation might arise where there exists a doubt as to a person's title to goods. This might happen if, for example, a person finds goods and sells them. A person who finds goods has what is known as a 'possessory title' to them, but this is strictly subject to the title of the owner who can reclaim them. A finder who fails to disclose to the buyer that they only have a possessory title to the goods will be in breach of **s 12 SGA**. If they do disclose the true position, then they are protected by **s 12(3)** and **s 12(5) SGA**, which provide that where it appears from the contract or is to be inferred from its circumstances that there is an intention that the seller should transfer only such title as they (or a third person) may have, then there is an implied warranty that none of the following persons will disturb the buyer's quiet possession of the goods and the seller will not be in breach of **s 12(1)**:

- the seller;
- 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; and
- 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.

A breach of **s 12(1) SGA** (being a condition) will entitle the innocent party to treat the contract as at an end. This is subject to the rule in **s 11(4)** that, in the case of a contract of sale of goods, a buyer cannot generally terminate the contract for breach of condition once they have accepted the goods (see Chapter 8, 'Acceptance', p 125, for rules on **acceptance**) and can only generally bring an action for damages for breach of warranty. However, in ***Rowland v Divall (1923)***, Atkin LJ held that the buyer's right to terminate the contract for a breach of **s 12(1) SGA** was not lost just because they might have accepted the goods by their extensive use of them. In ***Rowland***, the contract was for the purchase of a car which the seller had no right to sell as, unbeknown to him, it had earlier been stolen. As the entire purpose of a contract of sale is to transfer

ownership in the goods to the buyer, there was in this case a total failure of consideration because the buyer could never have obtained title as the seller had no right to sell. There was therefore no proper **acceptance**, even though he had use of the car for several months before the true facts came to light.

Looking for extra marks?

The decision in ***Rowland v Divall*** has been criticised. Notwithstanding the fact that the buyer only had use of the car rather than ownership, which he had contracted for, the result meant that he had several months' use of it for nothing. As a result, the car was worth less when he returned it than when he 'bought' it. Applying this principle to the following situation illustrates the problem. Suppose A buys a case of wine from B and then drinks it before finding out that B had unwittingly bought the wine from a thief. Could it really be said that A has suffered a total failure of **consideration**? According to the decision in ***Rowland v Divall***, they have because they could never own the wine, even though they have consumed it and would be entitled to the return of the price they had paid to B. The true owner of the wine could sue A or B (or, if they could find them, the thief) for damages in the tort of conversion. If the true owner sues B, it will mean that B will be liable to them for the value of the wine as well as having to return to A the price A originally paid them, whereas A will have benefited by having had the wine for nothing.

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Revision tip

Do not confuse ownership of the goods with the right to sell them. A person may sell goods even if they don't themselves own them, as in the case of an agent (see Chapter 12, 'The creation of agency', p 195). Conversely, a person may own the goods but not the right to sell them. This can be seen from the following case:

Niblett Ltd v Confectioners' Materials Co Ltd [1921] 3 KB 387

D sold a quantity of tins of condensed milk, some of which were labelled 'Nissly'. The buyer was informed by Nestlé that this infringed its trade mark. The buyer brought an action against D for breach of **s 12(1) SGA**. It was held that even though D owned the goods, they were in breach of **s 12(1)** because they had no right to sell them.

Sections 12(2)(a) and 12(2)(b): warranties that the goods are free from any charge or encumbrance and that the buyer will enjoy quiet possession of the goods

In ***Microbeads AG v Vinhurst Road Markings Ltd (1975)***, the seller sold some road-marking machinery. Shortly after the sale, an unconnected company obtained a patent relating to road-marking machines which entitled it to bring an action against the buyer to enforce its patent. As a result, the buyer brought an action against the seller for breach of the condition as to their right to sell the machines and also for breach of the warranty of quiet possession. The Court of Appeal held that there was no breach of the implied condition as to the seller's right to sell because that condition related to the time when the contract was made, which predated the third party's patent. The seller therefore had the right to pass good title in the machines. However, there was a breach of the implied **warranty** that the buyer will enjoy quiet possession of the goods as the words 'will enjoy' related to the future use of the goods.

Revision tip

Don't forget that because the implied terms in **ss 12(2)(a)** and **12(2)(b) SGA** are classed as warranties, any breach of them will not give the buyer the right to treat the contract as at an end but only to claim damages.

Contracts other than of sale of goods

Revision tip

Don't forget Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, which identifies the corresponding implied terms in other types of contract.

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Sales by description: s 13(1) SGA

Where the contract is for a sale of goods by description, there is an implied condition in **s 13(1) SGA** that the goods will correspond with the description. This condition applies whether or not the seller sells the goods in the course of a business. By default, the term is a condition (**s 13(2)**) and applies unless a contrary intention appears in, or is to be implied from, the contract (**s 55**). Hence, it is always open to the parties to agree that the implied term does not apply, or is not a condition, or is to have a different effect. Parties will often seek to exclude this implied term and the attendant right to terminate and reject goods if they do not comply with the contract description.

What is a sale of goods by description?

There is no statutory definition of the phrase 'a contract for the sale of goods by description' and it is therefore important to look to the ordinary meaning of the words and the decided cases for guidance as to its meaning. There is unlikely to be much difficulty in applying this phrase in the case of a sale of **unascertained** or **future goods** because there can be no contract for the sale of goods of these categories except by reference to a description of some sort.

The difficulty is likely to arise in cases where the sale is of **specific goods**. A contract for the sale of specific goods is *capable* of falling within **s 13(1) SGA** but, if it is to do so, it has to be a contract for sale '*by* description'.

Looking for extra marks?

Even though there is no statutory definition of the phrase 'a contract for the sale of goods by description', it is clear from **s 13(3) SGA** that a sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, the goods are selected by the buyer. Therefore, sales of goods in self-service supermarkets could be sales by description.

In ***Beale v Taylor (1991)***, Taylor advertised his car for sale, which he believed to be a 1961 Triumph Herald 1200. The advertisement read 'Herald convertible, white, 1961 ... '. Beale bought the car and shortly afterwards found that it was in fact made up of two cars welded together. The rear portion consisted of a 1961 Triumph Herald 1200 model, but the front portion consisted of an earlier 1948 model. The Court of Appeal held that there could be a sale by description of a specific chattel, even where the chattel was displayed and inspected by the buyer, so long as it was sold not merely as the specific thing but as a thing corresponding to a description so that the buyer relied at least in part on a description. When Beale made his offer for the car, he relied on the description given in the advertisement and on the badge showing that it was a 1961 Triumph Herald 1200. It was therefore a sale by description. Since the car did ↵ not correspond with its description, Beale was entitled to damages for breach of the condition implied by **s 13**.

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In ***Beale***, the entire car was not what the description claimed it to be. However, this case should be contrasted with the following case, where the car was accurately described as being vintage but some of its components were not. In ***Brewer v Mann (2012)***, Mann advertised for sale a '1930 Bentley Speed Six' car. Brewer obtained the car on **hire purchase**. Brewer later argued that the car did not conform to this description because the engine was not an original Bentley engine but a Bentley engine that had been modified to Speed Six specifications. Brewer further argued that the bodywork had been altered. The Court of Appeal held that the description of the car in the hire purchase contract did not require it to be an original 1930 Bentley Speed Six. Consequently, alterations to its engine and bodywork did not constitute a breach of its description. The identity of a vintage car was to be ascertained by the normal customs of the vintage car trade, and, on the evidence of both experts, the car did correspond with its description as a '1930 Bentley Speed Six'.

The description must amount to a term in the contract

Just because a description has been attributed to the goods (either during negotiations or in the contract) it does not necessarily mean that the contract is one of sale by description. A court will only hold that a contract is one for the sale of goods *by* description if it is able to impute to the parties a common intention that it shall be a term of the contract that the goods will correspond with the description (***Harlingdon and Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd (1991)***).

At one time, it was relatively easy to reject goods for breach of this condition. This earlier approach can be seen in cases such as ***Re Moore and Landauer (1921)***, where the seller contracted to sell a quantity of tinned fruit which was to be packaged in cases each containing 30 tins. The overall correct quantity was delivered, but some of the tins were packed in cases containing 24 tins. The Court of Appeal held that this was a sale of goods by description and that the statement in the contract that the goods were to be packed 30 tins to a case was part of the description. As some of the goods tendered did not correspond with that description, the buyer was entitled to reject the entire consignment.

For the description to fall within s 13, it must be a 'substantial ingredient of the identity of the thing sold'

The decision in ***Re Moore and Landauer*** was doubted by Lord Wilberforce in ***Reardon Smith Line Ltd v Hansen-Tangen (1976)***, where he described the decision as 'excessively technical'. The dispute in ***Reardon Smith Line*** concerned a vessel which the contract stated would be built in shipyard Osaka 354, but which was in fact built in shipyard Oshima 004 because of its size. By ↵ the time the vessel was ready for delivery, the market had collapsed and the charterers sought to escape from their obligation by rejecting the vessel on the ground that the vessel tendered did not correspond with the contractual description in that it was an Oshima 004 rather than an Osaka 354 vessel. The House of Lords held that it was important to ask whether a particular item in a description constituted a 'substantial ingredient of the identity of the thing sold', and only if it did could it be treated as a condition. In the present case, it was plain that the hull or yard number of the vessel had no special significance for the parties so as to raise it to a matter of fundamental obligation.

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The description must be relied upon by the buyer

The Court of Appeal held in ***Harlingdon and Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd (1991)*** that there is no sale by description where it was not within the reasonable contemplation of the parties that the buyer was relying on the description. The buyer must then have placed reliance on the description.

Summary of s 13 SGA

See Figure 2.1.

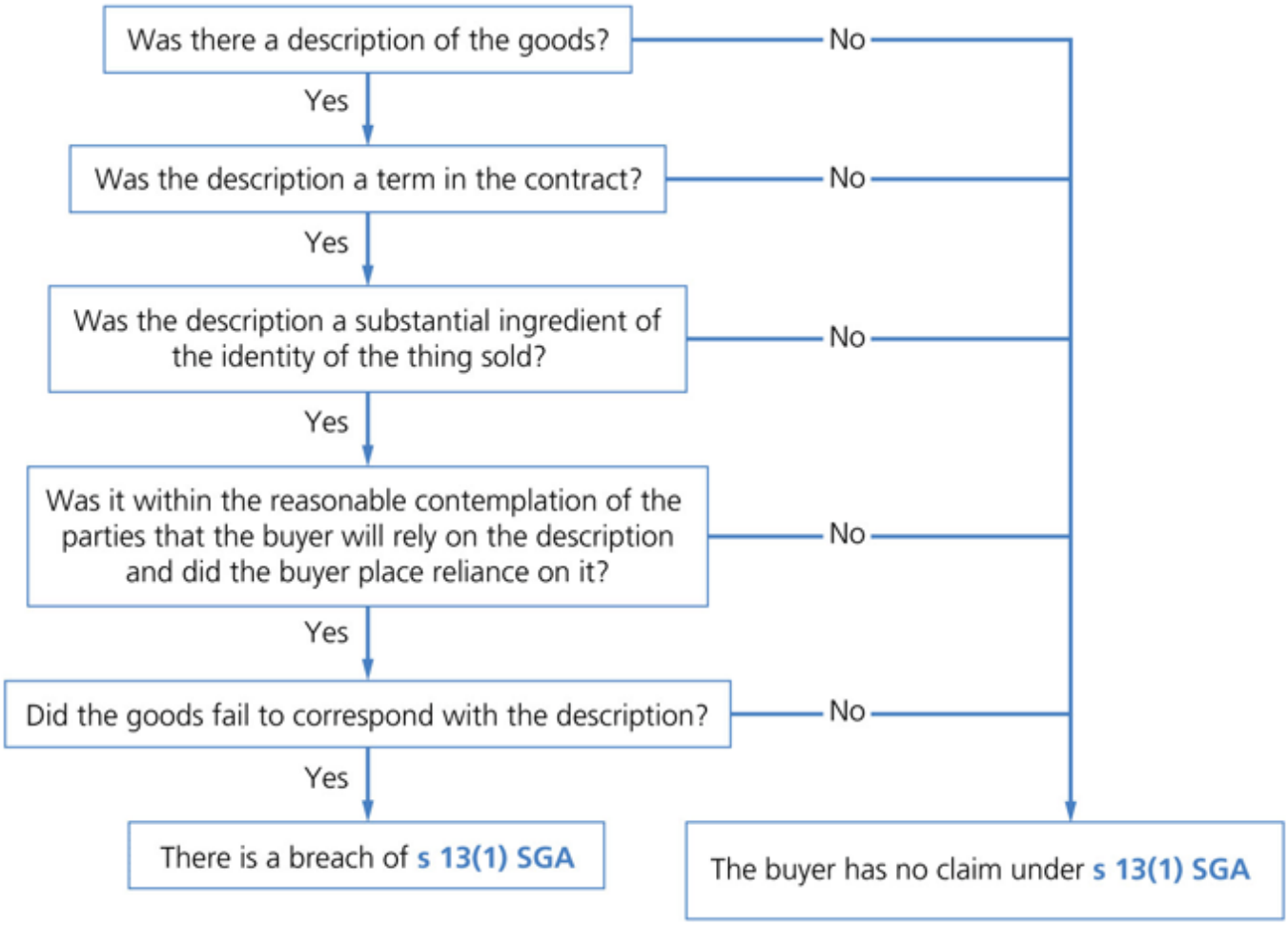

Figure 2.1 Breach of s 13(1) SGA

Contracts other than of sale of goods

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Revision tip

Don't forget Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, which identifies the corresponding implied terms in other types of contract.

Satisfactory quality: s 14(2) SGA

Where the seller sells the goods in the course of a business, **s 14(2) SGA** implies a condition that the goods supplied under the contract should be of satisfactory quality. Note that the section (as well as **s 14(3) SGA**) talks about the goods 'supplied' rather than the goods 'sold'. This therefore includes all goods supplied pursuant to the contract, whether sold or not: see, ***Geddling v Marsh (1920)*** and ***Wilson v Rickett Cockerell & Co***

Ltd (1954) discussed at p 42. Furthermore, where the goods are defective, they are not of satisfactory quality and will not become so simply because they are capable of being used in some way ***(Rogers v Parish (Scarborough) Ltd (1987)***).

Revision tip

Don't forget that, unlike the condition implied by **s 13 SGA**, which applies whether or not the seller sells the goods in the course of a business, the condition implied by **s 14(2)** applies only where the seller sells the goods in the course of a business.

Looking for extra marks?

1. Satisfactory quality was, until 1994, known as merchantable quality. The **Sale and Supply of Goods Act 1994** amended **s 14(2) SGA**, replacing 'merchantable quality' with 'satisfactory quality'.
2. Liability under **s 14(2) SGA** is strict and arises if the seller sells goods in the course of a business that are not of satisfactory quality. The seller need not be at fault.

In the course of a business

Albeit for the purposes of the **Unfair Contract Terms Act 1977**, the expression 'in the course of a business' required the transaction to be an integral part of the business (***R & B Customs Brokers Ltd v United Dominions Trust Ltd (1988)***). However, in ***Stevenson v Rogers (1999)***, ↵ the Court of Appeal held that for the purposes of **s 14 SGA** a sale by a business is a sale in the course of a business irrespective of whether or not it is incidental to the business.

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Revision tip

In any sale of goods question, you should first consider whether the sale was made in the course of the seller's business. Only if this was the case will the implied conditions of satisfactory quality (**s 14(2) SGA**) and fitness for purpose (**s 14(3) SGA**) apply. If the sale was a private sale, then the buyer cannot rely on these implied conditions and, unless any other statute applies, there will be no implied terms about the quality or fitness for any particular purpose of goods supplied under a contract of sale. The parties could, of course, expressly agree such terms.

What is meant by 'satisfactory quality'?

The goods will be 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' (**s 14(2A) SGA**). The words 'reasonable person' tell us that this is an entirely objective test. Therefore, the views of the *particular* buyer or the *particular* seller are irrelevant, as are the views of a *reasonable* buyer or *reasonable* seller. The goods will be satisfactory if a reasonable *person* considers them to be satisfactory having the knowledge of the particular transaction and considering this against **s 14(2A)** and **s 14(2B) SGA**. Thus, in ***Egan v Motor Services (Bath) Ltd (2007)*** it was held that the fact that the vehicle was unsatisfactory to the purchaser is not enough: it is only unsatisfactory for the purposes of **s 14(2) SGA** if it does not meet the standard that a reasonable person would regard as satisfactory.

The other factors noted in **s 14(2A)** are also important. Price is likely to be a relevant factor in many transactions. A reasonable person is likely to expect goods costing more to be of a higher quality than their cheaper counterparts. 'All the other relevant circumstances' would include, where appropriate, the fact that the goods are second-hand rather than new or the fact that the goods were sold for scrap rather than for general use.

Whilst **s 14(2A)** sets out the general definition of satisfactory quality, it is **s 14(2B)** that lists five matters that are in appropriate cases aspects of the quality of the goods. These are:

1. fitness for all the purposes for which goods of the kind in question are commonly supplied;
2. appearance and finish;
3. freedom from minor defects;
4. safety; and
5. durability.

p. 25 ↵ It should be remembered that these 'aspects of quality' will only be relevant in appropriate cases. They must not be considered to be absolute requirements of quality. For example, goods sold as scrap might not satisfy any of the five aspects, yet a reasonable person would nevertheless consider them to be satisfactory.

If the buyer wishes goods of a higher than satisfactory quality, irrespective of the price agreed, then they should set this out in the contract (***Phoenix Interior Design Ltd v Henley Homes plc and Union Street Holdings Ltd (2021)***).

It should also be noted that goods only need to be of satisfactory quality and not necessarily perfect. However, 'in 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' (per Hale LJ in ***Clegg v Olle Andersson, t/a Nordic Marine (2003)***).

Looking for extra marks?

When discussing the phrase 'in the course of a business', you should explain that a different meaning is given to it depending on whether it is used in the **SGA** or the **Unfair Contract Terms Act 1977 (UCTA)**. This is summarised in Table 2.1. This so-called 'dual meaning' of the same phrase was confirmed as correct by the Court of Appeal in ***Feldarol Foundry plc v Hermes Leasing (London) Ltd (2004)***.

Table 2.1 Meaning of 'in the course of a business'

SECTION	MEANING	CASE
s 12(1) UCTA	The purchase must be an integral part of the business, or if the goods are bought as a 'one-off' purchase, they must have been bought with the intention of selling them on for a profit, or if the goods purchased are of a kind which the business has bought with some degree of regularity	***R & B Customs Brokers Ltd v United Dominions Trust Ltd (1988)***
s 14 SGA	A sale by a business is a sale in the course of a business	***Stevenson v Rogers (1999)***

The condition as to satisfactory quality will not be implied in the following situations

In addition to where the seller does not sell the goods in the course of a business, the implied condition as to satisfactory quality does not extend to any matter making the quality of the goods unsatisfactory:

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↵ **s 14(2C)(a)**	which is specifically drawn to the buyer's attention before the contract is made. A generalised statement indicating that there may be some defect in the goods will not protect the seller.
s 14(2C)(b)	where the buyer examines the goods before the contract is made, which that examination ought to reveal. There is no obligation on the part of the buyer to examine the goods before the contract is made, but if they do so and fail to notice a defect which their examination ought to have revealed, they cannot later complain that that particular defect renders the goods unsatisfactory.
s 14(2C)(c)	in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

Looking for extra marks?

It might appear odd that a buyer who does not examine the goods before agreeing to buy them should be in a stronger position than a buyer who does examine them. But that is the effect of **s 14(2C)(b) SGA**. See ***Bramhill v Edwards (2004)*** on p 41 for an example where **s 14(2C)(b)** disentitled the buyer from relying on any breach that might have been held to exist on the ground that they had examined the goods before purchase and that examination should have revealed the defect alleged. For this reason, a buyer would be well advised either not to examine the goods at all or to ensure that their examination is as thorough as is reasonably possible. However, a buyer might not be expected to notice every defect and this rule may depend on the nature of the examination. For example, a buyer who examines the bodywork of a car they are looking to buy is likely to be expected to notice any defects in the bodywork, but unless they examine the car mechanically, it might not be reasonable to expect mechanical defects to be revealed.

Summary of s 14(2) SGA

See Figure 2.2.

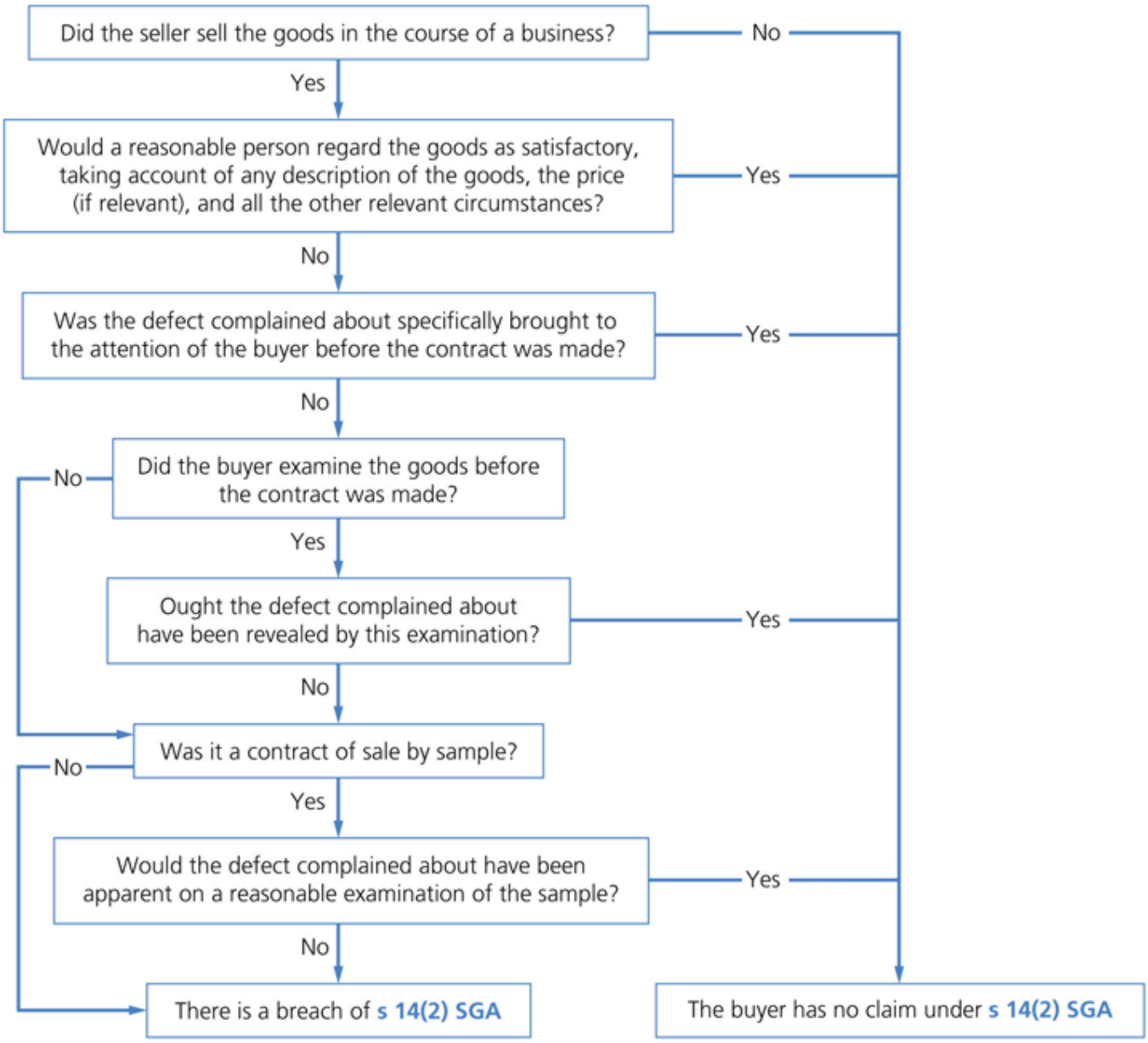

Figure 2.2 Breach of s 14(2) SGA

Contracts other than of sale of goods

Revision tip

Don't forget Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, which identifies the corresponding implied terms in other types of contract.

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Fitness for purpose: s 14(3) SGA

Where the seller sells goods in the course of a business and the buyer, either expressly or by implication, makes known 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 them to rely, on the skill or judgement of the seller.

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Revision tip

As we saw with **s 14(2) SGA** earlier, the condition implied by **s 14(3)** applies only where the seller sells the goods in the course of a business. ***Stevenson v Rogers (1999)*** applies here in the same way as it did in **s 14(2)**.

Looking for extra marks?

As with **s 14(2) SGA**, liability under **s 14(3)** is strict. The seller need not be at fault.

Where the buyer buys the goods for their usual (and possibly only) use

In the majority of cases, a buyer will buy the goods for their usual (and possibly only) purpose. For example, a buyer is likely to buy a coat to keep them warm and dry. In this situation, by the mere fact of making the purchase, the buyer will be taken to have made known to the seller the purpose for which they bought the goods and the requirement in **s 14(3) SGA** about knowledge will be satisfied (***Grant v Australian Knitting Mills Ltd (1936)***).

Revision tip

The words in **s 14(3) SGA** '*the buyer, either expressly or by implication, makes known any particular purpose for which the goods are being bought*' do not mean that a buyer must communicate to the seller the particular purpose for which they require the goods. When goods are produced for a single purpose (e.g. the coat in the above example), it will be easy for the court to infer that the goods have been bought for that purpose and therefore must be reasonably fit for that purpose. Nothing needs communicating unless the buyer requires the goods for a particular or unusual purpose or has a particular idiosyncrasy.

Where the buyer requires the goods for a particular or unusual use or has a particular idiosyncrasy

In this kind of situation, it is essential for the buyer to make known to the seller the specific use or idiosyncrasy (***Griffiths v Peter Conway Ltd (1939)***; ***Slater v Finning Ltd (1997)***; ***Jewson Ltd v Kelly (2003)***).

As noted earlier, **s 14(3) SGA** will not apply in cases where the buyer does not rely, or where it is unreasonable for them to rely, on the skill or judgement of the seller. Such reliance, ↵ however, may be partial. In ***Ashington Piggeries Ltd v Christopher Hill Ltd (1972)***, the House of Lords held that there may be cases where the buyer relies on their own skill or judgement for some purposes and on that of the seller for others.

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‘Reasonably fit’

The words ‘reasonably fit’ in **s 14(3) SGA** tell us that the standard of the goods does not need to be of an exceptionally high quality. The quality that a buyer can expect will depend on all the circumstances of the sale. For example, second-hand goods may not need to be of the same quality as new ones. But it will be for the claimant to prove on the balance of probabilities that the goods sold were not fit for their purpose (***Leicester Circuits Ltd v Coates Brothers plc (2003)***).

Not only do the goods need to be reasonably fit for purpose at the time of delivery, but they must also continue to be so for a reasonable time after delivery. The condition in **s 14(3)** is a continuing obligation (***Lambert v Lewis (1982)***).

Relationship between ss 14(2) and 14(3) SGA

Notwithstanding the overlap between the implied conditions in **ss 14(2)** and **14(3) SGA**, they do serve different purposes. The relationship between these sections was considered by the Court of Appeal in ***Jewson Ltd v Kelly (2003)***. As Sedley LJ explained:

> Section 14(2) is directed principally to the sale of substandard goods. This means that the court’s principal concern is to look at their intrinsic quality, using the tests indicated in subsection (2A), (2B) and (2C). Of these, it can be seen that the tests postulated in paragraphs (a) and (d) of subsection (2B), and perhaps others too, may well require regard to be had to extrinsic factors. These will typically have to do with the predictable use of the goods. But the issue is still their quality: neither these provisions nor the residual category of ‘all the other relevant circumstances’ at the end of subsection (2A), make it legitimate, as a general rule, to introduce factors peculiar to the purposes of the particular buyer. It is section 14(3) which is concerned with these.

Summary of s 14(3) SGA

See Figure 2.3.

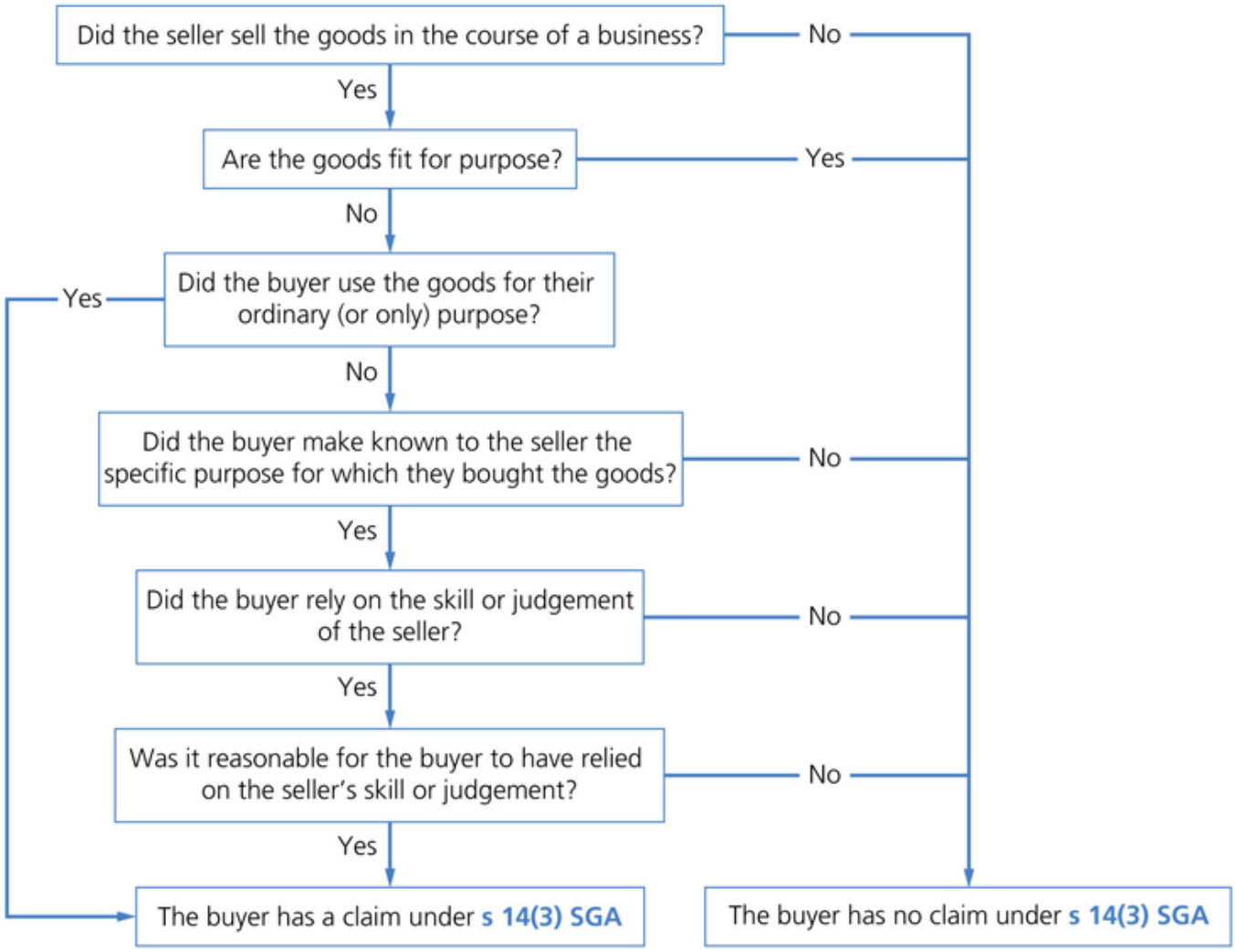

Figure 2.3 Breach of s 14(3) SGA

Contracts other than of sale of goods

Revision tip

Don't forget Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, which identifies the corresponding implied terms in other types of contract.

p. 30

Sales by sample: s 15 SGA

Rather unhelpfully, **s 15(1) SGA** tells us that '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'.

It can be seen from **s 15(1)** that a sale by sample is one where there is a term to that effect in the contract. With written contracts, it will be easy to determine whether or not the sale is by sample because there will be a written term to that effect. The House of Lords explained the function of a sample in ***Drummond & Sons v Van Ingen & Co (1887)*** in terms that a sample presents to the eye the real meaning and intention of the parties with regard to the subject matter of the contract which, owing to the imperfection of language, it may be difficult or impossible to express in words.

In the case of a contract for sale by sample, there are two implied conditions:

Section 15(2)(a): that the bulk will correspond with the sample in quality

A seller will not have a defence just because the bulk can easily be made to correspond with the sample. So, in ***E & S Ruben Ltd v Faire Bros & Co Ltd (1949)***, it was no defence that the crinkly material supplied could have been made soft as per the sample by a simple process of warming.

Section 15(2)(c): that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample

A buyer will not have a claim under **s 15(2)(c) SGA** if the defects complained about would have been apparent on a reasonable examination of the sample. Unlike under **s 14(2)**, where there is no requirement for a buyer to examine the goods, the whole purpose of a sale *by* sample is that the buyer should examine them, and they will be deemed to have done so. The effect of **s 15(2)(c)** is that if the bulk of the goods is defective, rendering their quality unsatisfactory, the buyer will only be able to succeed if the defect complained about would not have been apparent on a reasonable examination of the sample.

In ***Godley v Perry (1960)***, a young child bought a toy catapult from a shop and was seriously injured when it broke as he was firing it. The retailer had tested a sample before ordering a quantity from the wholesaler, who had also tested a sample before ordering a batch from an importer. In the boy's action against the retailer, the retailer joined in the wholesaler, who in turn joined in the importer, each claiming breaches of **ss 14** and **15 of the 1893 SGA**. As the catapult was held not to have been of merchantable quality, the retailer was liable to the child under **s 14**. The sales by the wholesaler to the retailer and by the importer to the wholesaler were sales by sample. As the defect was not apparent on reasonable examination of the sample, both were in breach of **s 15(2)(c) SGA**.

Revision tip

Many sales are concluded by the seller showing the buyer a sample of the goods. This will not, by itself, amount to a sale by sample (because there is no 'bulk') unless the parties agree that it is to be such a sale. However, it is likely that the court will imply a term into such contracts that the goods supplied should be identical to the ones shown.

p. 32

Summary of s 15 SGA

See Figure 2.4.

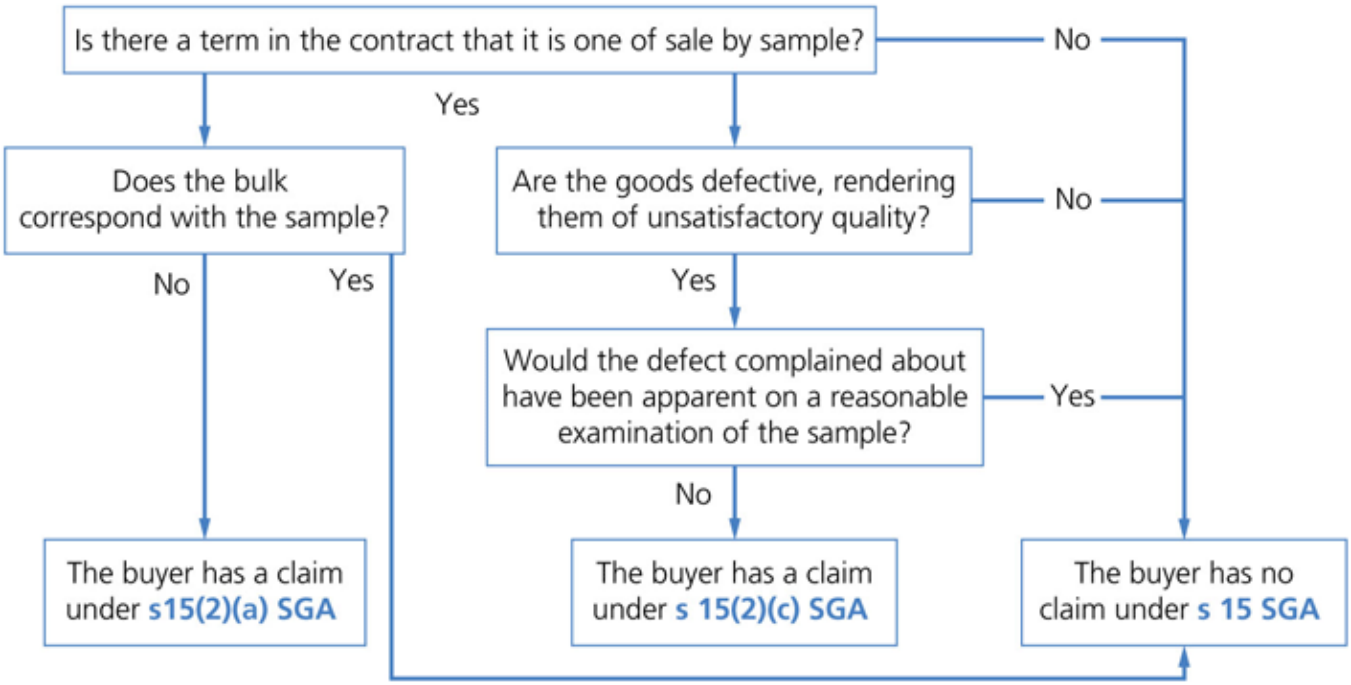

Figure 2.4 Breach of s 15 SGA

Contracts other than of sale of goods

Revision tip

Don't forget Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, which identifies the corresponding implied terms in other types of contract.

The Consumer Rights Act 2015

Where the **Consumer Rights Act 2015 (CRA)** applies (which is discussed in Chapter 1), similar terms to those implied under the **SGA** are treated as being included in the sales contract. These are known as 'statutory rights', many of which correspond in broad terms to those implied under the **SGA**, although there are a number of new requirements. These statutory rights can be found in **ss 9–17 CRA** and set out the requirements which either the goods supplied or the trader must reach.

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Looking for extra marks?

Before discussing these statutory rights, you should note that **s 18 CRA** (which corresponds to **s 14(1) SGA**) provides that unless the contract contains an express term regarding the quality or fitness for a particular purpose of the goods, or a term implied by another enactment, the contract should not be treated as including any such terms other than those set out in **ss 9**, **10**, **13**, and **16 CRA**.

Unlike the terms implied by the **SGA** which are classified by the **SGA** itself either as **conditions** or **warranties**, the terms to be treated as included in the contract under the **CRA** are not to be treated as **conditions**. We will see in Chapter 10, 'Remedies of the buyer', that the availability of the consumer's right to reject is dealt with separately as one of the specific remedies available under the **CRA**. There is no need, therefore, to pre-classify the terms as conditions.

The terms to be treated as included in the contract under the **CRA** can be summarised by Table 2.2.

Table 2.2 Terms to be treated as included in the contract under the CRA

SECTION	CONTENT	COMMENTS
9	Goods to be of satisfactory quality	Similar in effect to the corresponding implied term in **s 14(2) SGA**
10	Goods to be fit for particular purpose	Similar in effect to the corresponding implied term in **s 14(3) SGA**
11	Goods to be as described	Similar in effect to the corresponding implied term in **s 13 SGA**
12	Other pre-contract information included in contract	Treats as a term of the contract certain information provided by the trader to the consumer which, by virtue of **regs 9, 10,** or **13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**, the trader is required to provide before the contract became binding
13	Goods to match sample	Similar in effect to the corresponding implied term in **s 15 SGA**
14	Goods to match model seen or examined	This is a different statutory right from that provided under **s 13** above and has no corresponding implied term in the **SGA**. Section 14 applies to a contract to supply goods by reference to a model of the goods that is seen or examined by the consumer before entering into the contract.
15	Installation as part of conformity of the goods with the contract	Goods will not conform to the contract if their installation forms part of the contract, they are installed by the trader or under their responsibility, and they are installed incorrectly

SECTION	CONTENT	COMMENTS
16	Goods do not conform to contract if digital content does not conform	Goods (whether or not they conform otherwise to the contract) will not conform to it if they include digital content and the digital content does not conform to the contract to supply that content
17	Trader to have right to supply the goods etc	Similar in effect to the corresponding implied term in **s 12 SGA** and other relevant legislation
33–47	Digital content	These sections set out the digital content contracts that are covered and the statutory rights that arise, including satisfactory quality, fitness for purpose, and as described
48–57	Contracts for services	These sections set out the rights and obligations where a trader supplies a service to a consumer (but does not include a contract of employment or apprenticeship)

Digital content

Digital content was of little concern when the **SGA** was being drafted but now plays a significant part in sales transactions. **Sections 33–47 CRA** concern a contract where a trader agrees to supply digital content to a consumer and which is referred to as a 'contract to supply digital content' (**s 33(7) CRA**).

Digital content is defined in **s 2(9) CRA** as 'data which are produced and supplied in digital form'. This definition is wide enough to include things such as software, music, computer games, and other computer or device applications, commonly known as 'apps'. Also falling within the scope of the definition of digital content is digital content that is supplied and largely or wholly stored and processed remotely, such as software supplied via cloud computing, where some digital content will always be transmitted to the consumer's device to enable it to interact with the digital content product that they have contracted for with the trader. Digital content also covers the digital content supplied by a trader to a consumer as the result of a service to produce bespoke digital content such as a website design service. But this part of the **CRA** does not apply where the service provided by a trader merely enables consumers to access digital content such as with internet or mobile service provision.

Contracts covered

This part of the **CRA** applies to 'a contract for a trader to supply digital content to a consumer, if it is supplied or to be supplied for a price paid by the consumer' (**s 33(1)**). The provisions also apply to a contract for a trader to supply digital content to a consumer 'if it is supplied free with goods or services or other digital content for which the consumer pays a price' ↵ (**s 33(2)(a)**) and 'it is not generally available to consumers unless they have paid a price for it or for goods or services or other digital content' (**s 33(2)(b)**). This would include, for example, free software that is given away with a paid-for magazine. The references to the

p. 34

consumer paying a price include references to the consumer using, by way of payment, any facility for which money has been paid (**s 33(3)**). However, a trader does not supply digital content to a ↵ consumer for these purposes merely because they supply a service by which digital content reaches the consumer (**s 33(4)**).

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The statutory rights under a digital content contract

Many of the statutory rights under a digital content contract are similar to those already discussed in relation to a contract for the sale of goods.

Digital content to be of satisfactory quality

Section 34(1) CRA provides that every contract to supply digital content is to be treated as including a term that the quality of the digital content is satisfactory. **Section 34(2)** sets out that the quality of digital content is satisfactory if it meets the standard that a reasonable person would consider satisfactory, taking account of:

1. any description of the digital content;
2. the price (if relevant); and
3. all the other relevant circumstances.

The relevant circumstances include any public statement about the specific characteristics of the digital content made by the trader, the producer, or any representative of the trader or the producer (**s 34(5)**). This includes, in particular, any public statement made in advertising or labelling (**s 34(6)**). However, a public statement is not a relevant circumstance for these purposes if the trader shows that when the contract was made, they were not, and could not reasonably have been, aware of the statement (**s 34(7)(a)**); or, before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected (**s 34(7)(b)**); or, the consumer's decision to contract for the digital content could not have been influenced by the statement (**s 34(7)(c)**).

Section 34(3) CRA sets out that the quality of digital content includes its state and condition and the following aspects (among others) are, in appropriate cases, aspects of the quality of digital content:

1. fitness for all the purposes for which digital content of that kind is usually supplied;
2. freedom from minor defects;
3. safety; and
4. durability.

The reasonable person mentioned in **s 34(2) CRA** acknowledges that the test as to whether or not the digital content is satisfactory is an objective one. Furthermore, a reasonable person is likely to expect a music file to be free from minor defects so that a track which fails to play properly would not be of satisfactory quality. Conversely, given that it is quite usual to encounter some bugs in software, especially when first released, a reasonable person might not expect this type of digital content to be entirely free from minor defects and therefore such bugs might not render it to be unsatisfactory.

p. 36 ↵ The term in **s 34(1) CRA** requiring the quality of the digital content to be satisfactory does not cover anything which makes the quality of the digital content unsatisfactory in any of the following circumstances:

1. where it is specifically drawn to the consumer's attention before the contract is made (**s 34(4)(a)**);
2. where the consumer examines the digital content before the contract is made, which that examination ought to reveal (**s 34(4)(b)**); and
3. where the consumer examines a trial version before the contract is made, which would have been apparent on a reasonable examination of the trial version (**s 34(4)(c)**).

Looking for extra marks?

In a contract to supply digital content, a term about the quality of the digital content may be treated as included as a matter of custom (**s 34(8) CRA**).

Digital content to be fit for a particular purpose

Section 35(1) CRA provides that in a contract to supply digital content, if, before the contract is made, the consumer makes known to the trader (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content, then the contract is to be treated as including a term that the digital content is reasonably fit for that purpose, whether or not that is a purpose for which digital content of that kind is usually supplied (**s 35(3)**). An identical term will also apply to a contract to supply digital content if the digital content was previously sold by a credit broker to the trader (**s 35(2)(a)**) or the consideration or part of it is a sum payable by instalments (**s 35(2)(b)**) and, before the contract is made, the consumer makes known to the credit broker (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content (**s 35(2)(c)**).

The term requiring the digital content to be reasonably fit for purpose will not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgement of the trader or credit broker (**s 35(4)**).

Looking for extra marks?

A contract to supply digital content may be treated as making provision about the fitness of the digital content for a particular purpose as a matter of custom (**s 35(5) CRA**).

Digital content to be as described

Section 36(1) CRA provides that every contract to supply digital content is to be treated as including a term that the digital content will match any description of it given by the trader ↵ to the consumer. This is an important right in the digital content context, where consumers may not be able to view the digital content before purchasing or purchasing the full version. Where the consumer examines a trial version before the contract is made, it is not sufficient that the digital content matches (or is better than) the trial version if the digital content does not also match any description of it given by the trader to the consumer (**s 36(2)**).

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The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require traders to provide certain information to consumers before consumers are bound by a contract. The type of information that is required can be split into two categories: information about the digital content (the main characteristics, interoperability, and functionality) and other information (e.g. the trader's name and address).

Looking for extra marks?

In order to implement the obligation to enforce these information requirements, the **CRA** makes clear that pre-contractual information will form part of the contract. The former type of information, relating to the main characteristics of the digital content or the functionality or interoperability, also forms part of the description (**s 36(3)**). A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader (**s 36(4)**). The information on the trader's name and address also forms part of the contract between the trader and the consumer (**s 37(2)**).

No other requirement to treat term about quality or fitness as included

Section 38 CRA provides that, subject to provision made by any other enactment, except as provided by **ss 34** and **35** (satisfactory quality and fitness for purpose), a contract to supply digital content is not to be treated as including any term about the quality of the digital content or its fitness for any particular purpose, unless the term is expressly included in the contract.

Supply by transmission and facilities for continued transmission

Section 39 CRA concerns the rights that apply under a contract to supply digital content and, where that digital content is transmitted to the consumer, to enable them to access it. Digital content is typically 'transmitted' when it is not supplied on a tangible medium, such as a disk, or pre-loaded or embedded within other goods which rely on software for their operation. A typical operation of **s 39** is where digital content is purchased or used via the internet or satellite transmission. Where the section applies, the digital content must be of satisfactory quality (**s 39(6)(a)**), fit for a particular purpose (**s 39(6)(b)**), and as described (**s 39(6)(c)**) at the point when it reaches either the consumer's device (**s 39(2)(a)**) or, if earlier, when the content

reaches another trader (e.g. an internet service provider or mobile network operator) chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device (**s 39(2)(b)**).

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Quality, fitness, and description of content supplied subject to modifications

Section 40 CRA reflects the rather unique position with the supply of digital content, which is that manufacturers and traders are *technically* in a position to update or alter digital content after its initial provision. This is usually to the benefit of consumers as it often includes important updates to the digital content. The terms of the licence will usually set out the trader's or third party's rights to modify the digital content and it must be recognised that requiring a user's consent for every update would create problems for business due to the logistics of contacting every user and getting their consent. Problems might also arise when some users do not accept updates, which can result in several different versions of software in circulation and disputes with consumers when their digital content stops working due to lack of updates.

Section 40 addresses this situation by permitting the trader or third party (e.g. the digital content provider), subject to certain safeguards, to improve the digital content, provided that the contract or licence gives such a right to the trader or third party.

Trader's right to supply digital content

Section 41 CRA provides that every contract to supply digital content is to be treated as including the following terms:

1. in relation to any digital content which is supplied under the contract and which the consumer has paid for, that the trader has the right to supply that content to the consumer; and
2. in relation to any digital content which the trader agrees to supply under the contract and which the consumer has paid for, that the trader will have the right to supply it to the consumer at the time when it is to be supplied.

Looking for extra marks?

Section 41 CRA is similar, but not identical, to **s 17 SGA** in relation to goods. The differences reflect the fact that where a consumer buys digital content (as opposed to goods) from a trader, there will often be other parties who have rights (in particular intellectual property rights) over the digital content. Unless the contract states otherwise, the trader will not usually pass on all property rights of the digital content to the consumer and the ownership of these intellectual property rights will remain with the rights holder, usually the originator of the digital content. The trader will generally pass on to the consumer a limited right to use the digital content in certain specified circumstances.

The Supply of Goods and Services Act 1982 (SGSA 1982)

In the main, we have so far considered the terms implied by the **SGA** into contracts of sale of goods. Many of the terms implied by the **SGSA** are modelled on the **SGA**. The **SGSA** contains three different groups of implied terms:

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Sections 2–5 SGSA

These sections deal mainly with contracts of exchange or barter, as well as contracts where the main substance is the provision of a service. As noted in Chapter 1, 'Contracts other than of sale of goods', Table 1.1, p 7, contracts of exchange or barter are not contracts of sale of goods because there is no money consideration as required by **s 2(1) SGA**. Similarly, in a contract for the provision of a service, even though some goods might be supplied, the substance of the contract is the provision of the overall service rather than the transfer of property in the goods as required by **s 2(1) SGA**. However, terms are implied into these contracts by the **SGSA** that are almost identical to those implied into contracts of sale by the **SGA**.

Sections 6–11 SGSA

These sections deal with contracts of hire. Although under a contract of hire (also known as a contract of bailment), the hirer (or **bailee**) obtains possession of the goods, they do not obtain property (ownership) in them. Since **s 2(1) SGA** demands a transfer or agreement to transfer property in the goods, contracts of hire are not contracts of sale of goods and therefore the terms implied by the **SGA** do not apply. However, terms are implied into hire contracts by the **SGSA** that are similar to those implied into contracts of sale by the **SGA**.

Sections 12–16 SGSA

These sections deal with contracts where the supplier agrees to provide a service (whether or not they also agrees to supply goods). They apply to contracts where the supply of the service is deemed to be the substance of the contract as well as to contracts of hire and sale of goods where, notwithstanding that the substance of the contract is the hire or the transfer of property in the goods, the supplier also agrees to provide a service. These sections do not apply to contracts of employment or apprenticeships.

Probably the most important of these terms is **s 13 SGSA**, which is entirely different to the implied terms considered thus far. Section 13 provides that in a contract for the supply of a service, where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

It is essential to note the following points about **s 13 SGSA**:

- It will only apply in cases where the supplier is acting in the course of a business.
- Unlike the term implied by **s 14 SGA**, which imposes strict liability on the part of the seller, the term implied by **s 13 SGSA** will require the supplier to be at fault. It is tort-based and requires the supplier to exercise reasonable care and skill. This means that unlike **s 14 SGA**, where the seller can be liable

without being at fault, a supplier who is not at fault will not be in breach of the term implied by **s 13 SGSA**. This can be seen in ***Thake v Maurice (1986)***, where the Court of Appeal held that a surgeon could not be said to have guaranteed that surgery would achieve a particular result and although the contract between him and his patient required him to exercise all proper skill and care, the fact that the desired result was not achieved did not, of itself, mean that the surgeon was in breach of the contract.

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- Unlike the terms implied by the **SGA** which pre-classify them either as **conditions** or **warranties**, the term implied by **s 13 SGSA** is neither classified as a condition nor a warranty. It is, therefore, an **innominate term**. An innominate term is one where the consequences or seriousness of the breach determine whether or not it takes effect as a condition or a warranty. In this way, if the consequences of the breach are so fundamental that the innocent party has been deprived of substantially the entire benefit of the contract, they will be entitled to treat the contract as **repudiated** and sue for damages. If the effects of the breach are only minor, it will only be treated as a breach of warranty (see ***Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962)***).

Section 14 SGSA

Section 14 SGSA provides that where, under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not fixed by the contract, left to be fixed in a manner agreed by the contract, or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time. What is a reasonable time is a question of fact.

Section 15 SGSA

Section 15 SGSA provides that where, under a contract for the supply of a service, the consideration for the service is not determined by the contract, left to be determined in a manner agreed by the contract, or determined by the course of dealing between the parties, there is an implied term that the party contracting with the supplier will pay a reasonable charge. What is a reasonable charge is a question of fact. It should be noted that this implied term applies whether or not the supplier was acting in the course of a business.

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Key cases

CASE	FACTS	HELD/PRINCIPLE
Bramhill v Edwards [2004] EWCA Civ 403	The buyer purchased a motor-home from D. It was 102 inches wide, which was two inches wider than that permitted under the relevant road regulations. They had inspected, but not measured, the vehicle before purchase. It was only after they had used the vehicle for about six or seven months that they measured it and found it to be 102 inches wide. It	The Court of Appeal held that the vehicle was of satisfactory quality. Although the test is objective, the reasonable person referred to in **s 14(2A)** must be one who is in the position of the buyer with knowledge of all relevant background facts. The buyer was knowledgeable

CASE	FACTS	HELD/PRINCIPLE
	was then some months later that they formally complained about its width. The main issues for the court were whether, because it was too wide to be driven legally on the roads in the UK, it was of satisfactory quality **(s 14(2)**) and, if not, whether **s 14(2C)(b)** disentitled them from relying on any such breach that might be found on the ground that they examined it before purchase and that their examination should have revealed its unlawfully excessive width. The seller accepted that the vehicle was in excess of the maximum permitted width and therefore could not be driven lawfully on the roads in the UK. However, they said that the relevant authorities turned a blind eye to such minor infringements of the Regulations.	about motor-homes and was aware that the authorities turned a blind eye to the illegality. This was a common occurrence. The court also considered (*obiter* because of the finding that the vehicle was of satisfactory quality) that **s 14(2C)(b)** would have disentitled the buyer from relying on any breach that might have been found because they had examined the vehicle before purchase and their examination, had they gone on to measure it, should have revealed its unlawfully excessive width.
Egan v Motor Services (Bath) Ltd [2007] EWCA Civ 1002	E purchased an expensive car. He found that it had a tendency to veer to the left and tried to reject it on the ground it was not of satisfactory quality. The judge found that although E perceived that the car was pulling to the left, it handled normally for this kind of vehicle, although the wheel alignment was outside the manufacturer's specification. As a result, he found that a reasonable person would not have regarded it as unsatisfactory. The vehicle was therefore of satisfactory quality and there was no breach of **s 14(2) SGA**.	The fact that the vehicle was unsatisfactory to the purchaser is not enough: it is only unsatisfactory for the purposes of **s 14(2) SGA** if it does not meet the standard that a reasonable person would regard as satisfactory. This is a wholly objective test. As to the defect in the wheel alignment, Smith LJ stated that it was unlikely that a buyer would be entitled to reject goods because of such a minor defect unless they were able to show that a reasonable person would think that the minor defect was of sufficient consequence to render the goods unsatisfactory.
Geddling v Marsh [1920] 1 KB 668	A bottle containing a drink burst, causing injury. It was held that the drink as well as the bottle were 'supplied' under a contract of sale and both had to comply with the requirements of **s 14 SGA**.	The conditions implied by **s 14(2)** apply not only to the goods bought but also to the 'goods supplied' under the contract.
p. 42 ↵ ***Grant v Australian Knitting Mills Ltd [1936] AC 85 (PC)***	The buyer contracted dermatitis as a result of wearing new woollen underpants which, when purchased from the retailer, were in a defective condition owing to the presence of excess sulphites which had been negligently left in during the process of manufacture. One aspect of the claim was that the garment was not fit for purpose. A question for the court was whether the buyer,	The reason the purpose needs to be made known to the seller is so as to show that the buyer relies on the seller's skill or judgement. This reliance must be brought home to the mind of the seller, expressly or by implication. The reliance will seldom be express: it will usually arise by implication from the circumstances. With a purchase made

CASE	FACTS	HELD/PRINCIPLE
	either expressly or by implication, had made known any particular purpose for which the goods were bought as was required under **s 14(3) SGA**.	from a retailer, the reliance will in general be inferred from the fact that a buyer goes to the shop in the confidence that the retailer has selected their stock with skill and judgement. There is no need to specify in terms the particular purpose for which the buyer requires the goods if it is the only purpose for which anyone would ordinarily want the goods.
Rogers v Parish (Scarborough) Ltd [1987] QB 933	R bought a new Range Rover, which had a number of serious defects on delivery. During a six-month period, he drove the car about 5,500 miles while a number of (generally unsuccessful) attempts were made to rectify the defects. He then brought a claim arguing that the vehicle was neither of satisfactory quality nor fit for purpose.	Where a vehicle is sold as new but is seriously defective, it is not to be taken as being of satisfactory quality or fit for its purpose just because it is capable of being driven and the defects repaired. The court held that where goods as delivered are defective, they are not of satisfactory quality and do not become so simply because they are capable of being used in some way. The car was not fit for its purpose as R expected and he was entitled to reject it. The Court of Appeal added that when a new car is bought, the purchaser is entitled to get it to give the pleasure, pride, and performance they expected. Defects which might be acceptable in a second-hand vehicle would not be acceptable in a new car.
Wilson v Rickett Cockerell & Co Ltd [1954] 1 QB 598	C ordered a ton of Coalite from D. When it was delivered, she made up a fire. The delivery inadvertently contained an explosive which exploded, causing damage. C claimed that the fuel was not fit for purpose or alternatively that it was not of merchantable quality. It was held that the entire consignment was defective because it was all potentially dangerous.	The words ‘goods supplied’ mean the goods delivered in purported pursuance of the contract. **Section 14 SGA** applies to all goods supplied, whether or not they conform to the contract. It did not matter that the explosive was not what C had ordered or (in the literal sense) ‘sold’ by D.

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Key debates

Topic	**The relationship between satisfactory quality and fitness for purpose**
Author/ academic	Christian Twigg-Flesner
Viewpoint	Discusses the Court of Appeal's decision in ***Bramhill v Edwards (2004)*** and its views on **s 14(2C) (b) SGA**.
Source	(2005) 121 *Law Quarterly Review* 205
Topic	**Examination prior to purchase: a cautionary note**
Author/ academic	Christian Twigg-Flesner
Viewpoint	Discusses the Court of Appeal's decision in ***Jewson Ltd v Kelly (2003)***, where it sought to clarify the relationship between the terms implied by **s 14(2)** and **(3) SGA**. Discusses the distinction between satisfactory quality and fitness for purpose.
Source	(2004) 63(1) *Cambridge Law Journal* 22

Exam questions

Questions on the statutory implied terms and the remedies available will frequently be asked together. For this reason, please see Chapter 10, 'Exam questions', p 165.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- multiple-choice questions *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-2-multiple-choice-questions?options=showName>*;
- key facts checklists *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-2-key-facts-checklists?options=showName>*;
- interactive flashcards of key cases *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-2-interactive-flashcards-of-key-cases?options=showName>*.

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