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Sale of Goods Act 1979

Sale of Goods Act 1979, as amended by the Sale and Supply of Goods Act 1994, (SGA).

Implied terms set out do not apply to consumer contracts (e.g. between a trader and a consumer) defined in Consumer Rights Act 2015. Similar terms but not the same.

Note that s 14(2) imposes strict liability.

Sections	Explanation
s 12	Provides for the implication that the seller has the right to sell the goods. Categorised as a condition of the contract.
s 13	Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description . Categorised as a condition pursuant to s 13(1A). But consider also s 15(A), breach so slight. So in reality more of a HK Fir style test.
s 14(2)	Where seller sells goods, implied term that goods supplied are of a satisfactory quality . Defined in terms of reasonable person test, taking into account description of goods, price etc (s 14(2A)). Satisfactory means fitness for purposes, appearance and finish, freedom from minor defects (if not examined/ highlighted in advance), safety, durability (s 14(2B)). Breach is a breach of condition (s 14(6)).
s 14(3)	Goods should be fit for purpose - whether or not that is a purpose for which such goods are commonly supplied, except where buyer does not rely/ cannot reasonably rely on skill/judgement of seller/credit-broker. Breach classified as a breach of a condition.
s 15	For sale by sample: bulk will correspond with the sample in quality, goods free from any defect not apparent on reasonable inspection of sample. Breach is breach of condition. If breach is so slight that unreasonable for buyer to reject the goods, breach should be treated as breach of warranty (and burden of proof on seller)
s 55	A seller's liability under above sections can be excluded and/or restricted by agreement of parties, subject to Unfair Contract Terms Act 1977 (UCTA). But UCTA pretty toothless.

Implied Terms as to Title – S 12

Section 12 provides for the implication that the seller has the right to sell the goods.

The term implied by subsection 12(1) is categorised as a condition of the contract. The distinction between conditions and warranties and the relevance of that distinction are not detailed in this element.

Correspondence with Description – S 13

Section 13(1) provides:

“Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description”

Where goods are described as having certain characteristics and specifications then they must correspond with that description.

The term implied by subsection 13(1) is categorised as a condition under s13(1A).

Satisfactory Quality – s14(2)

Section 14(2) of the Sale of Goods Act 1979 (as amended) provides:

“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”

According to s14(2A), the goods are of satisfactory quality if:

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

Section 14(2B) provides a checklist of what may be taken into account in assessing whether the goods are of satisfactory quality. 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.

If goods have a self-evident purpose, eg a hot-water bottle or a pair of underpants, this self-evident purpose will clearly be covered by s14(2B)(a) as a purpose for which the ‘goods of the kind in question are commonly supplied’.

The exceptions to the implied term as to satisfactory quality are to be found in s14(2C)(a) and (b). Thus, there is no condition as regards defects specifically drawn to the buyer’s attention before the contract was made, or, if the buyer examines the goods before the contract is made, as regards defects which that examination ought to have revealed. Nor will a condition be implied where the seller is not selling in the course of a business.

Breach of s14(2) is classified as breach of a condition by s14(6).

Fitness for a Particular Purpose – s14(3)

In addition to satisfactory quality, the goods should also be fit for purpose.

Section 14(3) states:

“Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known:

a) to the seller, or

b) where the purchase price or part of it is payable by instalments and the goods

were previously sold by a credit-broker to the seller, to that credit-broker, any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.”

The section above makes clear that no implied condition as to fitness for a particular purpose arises where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller’s skill or judgment.

Breach of s14(3) is classified as breach of a condition by s14(6).

Sale by Sample – S 15

Where a sale is by sample, two conditions are implied into the contract by the Sale of Goods Act 1979 by virtue of s15(2):

- (a) that the bulk will correspond with the sample in quality;
- (b) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

Breach of s15(2) is classified as breach of a condition by s15(3), but the remedies available are subject to s15A SGA 1979 (see later in this element).

Modification of remedies for breach of condition - s15A

Although a breach of ss13, 14(2), 14(3) and 15 is breach of a condition, as stated above, this is subject to s15A.

Section 15A provides that if the breach is so slight that it would be unreasonable for the buyer to reject the goods and repudiate the contract, the breach should be treated as a breach of warranty, which will only entitle the buyer to claim damages.

The burden of proving that the breach is so slight and therefore unreasonable for the buyer to reject the goods falls on the seller.

Contracting out of the implied terms under the Sale of Goods Act 1979 (as amended)

Section 55 indicates that a seller's liability under ss12, 13, 14 and 15 of the SGA 1979 can be excluded and/or restricted by agreement of the parties, subject to the Unfair Contract Terms Act 1977 (UCTA).

UCTA does in fact significantly limit the ability to exclude / restrict these terms.

Under s 6(1)(a) of UCTA, the implied undertaking as to title contained in s 12 SGA 1979 cannot be excluded or restricted.

Under s6(1A) of UCTA, the implied undertakings as to description, quality, fitness for purpose or sample contained in ss13-15 of the SGA can be excluded / restricted subject to the requirement of reasonableness. The detail of this is not addressed in this element.

Supply of Goods and Services Act 1982

Provides for the implication of terms in

- Certain contracts for transfer of property in goods
- Contracts for hire of goods
- Contracts for supply of services

Implied terms do not apply to consumer contracts defined in Consumer Rights Act 2015.

Contracts for Transfer of Property in Goods

A contract under which one person transfers or agrees to transfer to another the property in goods, **other than** any of the following (s 1):

- Contract of sale of goods
- Hire purchase agreement
- Contract under which property in goods is or is to be transferred in exchange for trading stamps
- Transfer made by deed for which there is no consideration other than presumed consideration
- Contract intended to operate by way of security

In any contract for transfer of goods, terms will be implied corresponding to those implied in case of contracts for sale of goods (title (s 2), description (s 3), quality and fitness of purpose (s 4), transfer by sample where applicable (s 5)).

Contracts for Hire of Goods

Means a contract under which one person bails or agrees to bail goods to another by way of hire (s 6) other than the following:

- Hire purchase agreement, and
- Contract under which goods bailed in exchange for trading stamps

In any contract for hire of goods, terms will be implied corresponding to those implied in the case of contracts for the sale of goods, including

- implied terms about the right to transfer possession (s 7)
- implied terms where hire is by description (s 8)
- implied terms about quality or fitness (s 9)
- implied terms where hire is by sample (s 10)

Contracts for the Supply of Services

SGSA provides implied terms:

- **Care and skill:** where supplier acting in course of business, implied term that the supplier will carry out service with reasonable care and skill (s 13)
- **Time of performance:** where supplier acting in course of business and time for service not fixed by contract, implied term that supplier will carry out service within a reasonable time. What is a reasonable time is a question of fact. (s 14)
- **Consideration:** where consideration for service not determined by contract, implied term that party contracting with supplier will pay a reasonable charge. What is a reasonable charge is a question of fact. (s 15)

Contracting Out These Terms

- For contracts for transfer of goods or hire of goods, under s 11 the supplier may negative or vary these terms, subject to provisions of Unfair Contract Terms Act 1977.
- For contracts for supply of services, under s 16, a party may contract out implied terms set out, subject to provisions of UCTA.
- But UCTA pretty toothless

Classification of Terms

s 13 SGSA is an **innominate term**.

Unfair Contract Terms Act 1977

Purpose

From preamble of UCTA 1977:

An Act to impose further limits on the extent to which ... liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise.

Provisions ensure:

- Certain types of exemption clause have no effect

- Other types of exemption clause are effective only so far as they satisfy the requirements of reasonableness

Scope

Consumer Contracts

Provisions do not apply to ‘consumer contracts’; these are instead governed by [Consumer Rights Act 2015].

Business Liability

s 1(3):

In the case of both contract and tort, sections 2 to 7 apply (except where the contrary is stated in section 6(4)) only to ==business liability==, that is liability for breach of obligations or duties arising—

- (a) from things done or to be done by a person in the course of a business (whether his own business or another’s); or
- (b) from the occupation of premises used for business purposes of the occupier;

The effect of this is:

Number of parties acting in the course of a business	Statutory regime applicable
Both parties	UCTA
One party	CRA 2015
Neither party	Neither statutory regime applies

Unfair Clauses

Also note, UCTA **only applies to exemption clauses** (those which limit or exclude liability, either directly or indirectly), not to all ‘unfair’ clauses.

Negligence Liability

s 1(1):

For the purposes of this Part of this Act, “negligence” means the breach—

- (a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract;
 - (b) of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
- (a) covers duties of care imposed by contract (e.g., a breach of s 13 of Supply of Goods and Services Act 1982, to carry out a service in the course of business with reasonable skill and care). (b) is the tort of negligence!

Exempting Liability for Losses Resulting From Negligence

s 2(1):

A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for **death or personal injury** resulting from negligence.

Accordingly, any attempt to exclude or restrict liability for death or personal injury resulting from negligence will be void.

s 2(2):

In the case of **other loss or damage**, a person cannot so exclude or restrict his liability for negligence, except in so far as the term or notice satisfies the requirement of reasonableness.

Exempting Liability for Breach of Statutory Implied Terms About Quality of Goods

s 6(1a):

Liability for breach of s 13-15 of [Sale of Goods Act 1979] (conformity with description or sample, quality or fitness for a particular purpose),

[...] cannot be excluded or restricted by reference to a contract term except in so far as the term satisfies the requirement of **reasonableness**.

Exempting Liability Arising in Contract

s 3:

(1) This section applies as between contracting parties where one of them deals ... on the other's ==written standard terms== of business.

(2) As against that party, the other cannot by reference to any contract term - (a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or - (b) claim to be entitled— - (i) to render a contractual performance substantially different from that which was reasonably expected of him, or - (ii) in respect of the whole or any part of his contractual obligation, to render no performance at all, except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of **reasonableness**.

‘Written standard terms of business’ is not defined, but the court uses a common sense approach. In [[St Albans City Council v. International Computers Ltd [1995] FSR 686]] held that even where a party's general terms had been the subject of negotiation, they were still dealing on standard terms for purposes of UCTA as terms remained effectively untouched.

Recently: if exemption clauses are from one party's standard terms, then even if the other party negotiates other clauses, UCTA will apply ([[Commercial Management (Investments) Ltd v Mitchell Design and Construct Ltd [2016] EWHC 76 (TCC)]]).

Key requirement here is for dealing on ‘written standard terms’. So, exclusions/ limitations of liability for breach of contract in individually negotiated business to business contracts are generally not regulated by UCTA. That is, unless they are regulated by other areas of UCTA, such as attempts to limit liability for death or personal injury caused by negligence.

Reasonableness Test

Set out in s 11(1). To pass the test, the term:

[...] shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties ==when the contract was made==.

“Fair and reasonable” is a difficult test to apply. According to s 11(2), when applied to s 6-7, this should be considered alongside matters specified in Schedule 2 of the Act. Courts have clarified that Schedule 2 guidelines may be used more widely, at any time the UCTA reasonableness test is being applied ([[Stewart Gill Ltd v Horatio Myer & Co. Ltd [1992] 1 QB 600]]).

Guiding factors in Schedule 2:

- (a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer's requirements could have been met;
- (b) whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having a similar term;
- (c) whether the customer knew or ought reasonably to have known of the existence and the extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) where the term excludes or restricts any relevant liability if some condition was not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
- (e) whether the goods were manufactured, processed or adapted to the special order of the customer.

Reasonableness in case law: [[George Mitchell (Chester Hall) Ltd v Finney Lock Seeds Ltd (1983) 2 AC 803]]. Lord Bridge emphasised that the question of whether an exemption clause is reasonable was largely down to judicial discretion. So

“the appellate court should treat the original decision [of the trial judge] with the utmost respect and refrain from interference with it unless satisfied that it proceeded on some erroneous principle or was plainly and obviously wrong.”

This suggests that there will be little precedent value in decisions themselves.

Summary

For business-to-business agreements, under UCTA 1977:

Type of liability	Limitation	Reference
Death or personal injury resulting from negligence	Void	s 2(1)
Other loss resulting from negligence	Valid if reasonable	s 2(2)
Breach of statutory implied term about quality of goods	Valid if reasonable	6(1A)(a)
Breach of contract if express term limiting liability is in a negotiated agreement	Valid	s 3
Breach of contract if express term limiting liability is in a party's 'standard terms'	Valid if reasonable	s 3

Consumer Rights Act 2015

Three parts:

Part of Act	Description
[CRA 2015 Part 1]	Deals with consumer contracts for goods, digital content, and services
[CRA 2015 Part 2]	Regulates unfair terms (in consumer contracts)
CRA 2015 Part 3	Miscellaneous

Applies to contracts between a [[Trader]] and a [[Consumer]].

s 2(4) says that where a trader claims that an individual was not acting for purposes wholly or mainly outside the individual's trade, business, craft or profession, then it is for the trader to prove it.

Contracts between a consumer and business entered into prior to 1/10/15 governed by Sales of Goods Act 1979, Supply of Goods and Services Act 1982 and Unfair Contract Terms Act 1977.

s 48(2) states that contracts of employment are **not** covered by the Act.

CRA 2015 Part 1

Implied Terms

Contracts for Goods

Rights:

- Goods should be of a **satisfactory quality** (s 9)
- Goods should be **reasonably fit for any purpose** which the consumer makes known to the trader that the consumer intends to use the goods for (s 10)
- Where goods are sold by description, the goods should match that **description** (s 11)

Contracts for Digital Content

Digital content:

- Should be of **satisfactory quality** (s 34)
 - i.e., should meet the standard that a reasonable person would consider satisfactory (s 34(2))
 - RP would consider description, price, all other relevant circumstances
 - Such circumstances include 'any public statement about specific characteristics of the digital content made by the trader, the producer, or any representative of the trader or producer' (s 34(5))
- Should be reasonably **fit for purpose** (s 35)
- Should match the **description** of it given by trader to consumer (s 36)

Contracts for Services

Rights:

- Service performed with **reasonable care and skill** (s 49)
- (where a price not agreed) a **reasonable price** is to be paid (s 51)
- (where a time not fixed) service is to be provided in **reasonable time** (s 52)

s 50(1) provides that anything said or written to the consumer, on or on behalf of trader, about trader or service is to be included as a term where it is taken into account by the consumer either

- when deciding to enter into contract, or
- when making any decision about the service after entering into the contract

Additional Remedies

CRA 2015 specifies remedies for consumers when terms breached. These sit alongside remedies available to the consumer under general law.

Contracts for Goods

Where goods sold to consumer fail to meet requirements of s 9, s 10 or s 11, then goods required as non-conforming. Three remedies available to consumer:

- Short term right to reject
 - Usually available for 30 days from time
 - * That ownership has passed, and
 - * The goods have been delivered, and
 - * In cases where trader required to install goods/ take other setup steps, trader has notified consumer that required steps have been taken (s 22)
- Right to repair or replacement
 - Available unless impossible or disproportionate (unreasonable cost to trader relative to consumer interests and other remedies) (s 23)
- Right to price reduction or final right to reject
 - Not entitled to both
 - In either case, can only be exercised where
 - * After one repair or replacement, goods do not conform to contract
 - * Consumer cannot request repair or replacement since impossible/ disproportionate
 - * Consumer has required trader to repair or replace goods, but trader in breach of requirement to do so in reasonable time without significant inconvenience to consumer (s 24)
 - * General rule: where final right to reject exercised within 6 months (clock running as with short term right to reject), should be full refund with no deduction for use (s 24(10)). Does not apply to motor vehicles and some other exceptions.

Consumers cannot treat the contract as at an end as a result of a breach of a term implied by s 9, 10 or 11, save to the extent set out above. So implied terms are neither conditions nor warranties; the extent to which breach gives rise to the right to treat contract as at an end set out in the Act.

Contracts for Digital Goods

s 42: Where digital content is non-conforming in breach of terms implied by s 34, s 35 or s 36: two remedial options available:

- Right to repair or replacement
 - Within reasonable time and without significant inconvenience (s 43(2)(a)) (judged by nature and purpose of digital content (s 43(5)))
 - When not impossible/ disproportionate (s 43(3))
- Right to price reduction
 - Only exercisable where consumer cannot require repair or replacement (impossible or disproportionate), or where trader has failed to replace/repair within reasonable time and without significant inconvenience (s 44)

s 45: Consumer has a right to receive a refund of all money paid for the digital content. Refund must be given in 14 days, using same payment method, without imposing any fee.

Digital content which does not conform to the contract at any time within 6 months, beginning with the day on which supplied, must be taken not to have conformed to the contract when it was supplied (s 42(9)).

Similar to with goods, consumers cannot treat the contract as at an end as a result of a breach of a term.

s 46: Where

- Trader supplies digital content to consumer under contract
- Digital content causes damage to device or other digital content
- Device or digital content damaged belongs to consumer
- Damage of a kind which would not have occurred if trader had exercised reasonable care and skill then consumer entitled to repair/ compensatory payment.

Contracts for Services

Where services non-conforming in breach of s 49 (reasonable care and skill), two remedial options available:

- Right to require repeat performance

- Reasonable time and without significant inconvenience (s 55(2)(a))
- Not if impossible (s 55(3))
- Right to price reduction (s 56(3))
 - When repeat performance impossible
 - Or when trader has failed to provide repeat performance within reasonable time and without significant inconvenience to consumer

Where the services are non-conforming in breach of the term implied by s 52 (performance within a reasonable time) the remedial option is the right to a price reduction.

CRA 2015 Part 2

Scope

CRA regulates unfair terms in two areas:

- It regulates attempts to exclude/ limit liability for breach of contract (similar to [Unfair Contract Terms Act 1977], just for consumer contracts)
- It regulates unfair terms more generally

There is no distinction here between contracts on standard terms and those that have been individually negotiated.

Breach of Contract Liability

Negligence defined in s 65(4) as breach of:

- (a) Any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract,
 - (b) A common law duty to take reasonable care or exercise reasonable skill,
 - (c) The common duty of care imposed by the Occupiers' Liability Act 1957
- (b) is the tort of negligence, (a) is duties of care imposed by contract. Recall, s 49 [CRA 2015 Part 1] implies a term into a contract for the supply of a service that the supplier will carry out the service with reasonable skill and care. So, breach of such a term would constitute negligence for purposes of CRA.

Death or Personal Injury Resulting From Negligence

s 65(1):

A trader cannot be a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence.

So any attempts to exclude liability like this will not be binding on the consumer.

Implied Terms About Goods

s 31 (1):

A term of a contract to supply goods is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions— - (a) section 9 (goods to be of satisfactory quality); - (b) section 10 (goods to be fit for particular purpose); - (c) section 11 (goods to be as described);

Implied Terms About Digital Content

s 47(1):

A term of a contract to supply digital content is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions— - (a) section 34 (digital content to be of satisfactory quality), - (b) section 35 (digital content to be fit for particular purpose), - (c) section 36 (digital content to be as described),

Implied Terms About Services

s 57(1):

A term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 49 (service to be performed with reasonable care and skill).

This section is complicated but:

- Any attempt to **entirely exclude** section 49 will **not** be binding
- Any attempt to **restrict/ limit liability** under section 49 will **not be binding to the extent that it would prevent consumer from recovering price paid**. So liability cannot be limited to less than price paid.

(interpret these in the logical way)

Regulation of Other Unfair Terms

s 62(1):

An unfair term of a consumer contract is not binding on the consumer.

Note this applies to **any** term. But this is limited by s 64(1):

A term of a consumer contract may not be assessed for fairness under section 62 to the extent that— - (a) it specifies the main subject matter of the contract, or - (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.

The above holds provided that the terms are **transparent** and **prominent** (s 64).

Unfairness if defined in s 62(4):

A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

This is judged at the time the contract is entered into.

Part 1 Schedule 2 contains a list of terms which 'may be regarded as unfair'. Interesting inclusion:

A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations.

Anti-avoidance Provisions

CRA restricts the parties' contractual freedom. Generally it tries to cover all the loopholes parties may try to use to get around this too, e.g.,

- Using a secondary separate contract containing terms pertaining to the restriction of liabilities (prohibited under s 72)

- Making the liability or its enforcement subject to certain onerous conditions (generally prohibited under s 31(2))

Summary

Type of term	Impact of CRA	Reference
Limitation of liability in relation to death or personal injury resulting from negligence	Not binding on consumer	s 65(1)
Limitation of liability in relation to breach of statutory implied terms under ss 9-11 about goods	Not binding on consumer	s 31(1)
Limitation of liability in relation to breach of statutory implied terms under ss 34-36 about digital content	Not binding on consumer	s 47(1)
Limitation of liability in relation to breach of statutory implied terms under s 49 about services	Not binding if preventing recovery of price paid	s 57
Transparent and prominent terms specifying main subject of content/ price	Cannot be assessed for fairness	s 64
Any other term	Not binding if contrary to the requirement of good faith it causes a significant imbalance in parties' rights and obligations under the contract, to the detriment of the consumer	s 62