

## TERMS IMPLIED BY STATUTE

### **SALE OF GOODS ACT 1979**

#### **Implied terms about title**

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Section 12 provides:

- (1) In a contract of sale ... there is an implied term 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.
- (2) In a contract of sale ... there is also an implied term that-
  - (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made, and
  - (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner of or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

The term implied by s12(1) is a condition and the term implied by s12(2) is a warranty: s12(5A).

#### **Sale by description**

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Section 13 provides:

- (1) 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.
  - (1A) ... the term implied by subsection (1) above is a condition.
- (2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

#### **Implied terms about quality or fitness**

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Section 14 provides:

- (2) 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.
  - (2A) ... 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 other relevant circumstances.
  - (2B) ... the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods –
    - (a) fitness for the purposes for which goods of the kind in question are commonly supplied,
    - (b) appearance and finish,
    - (c) freedom from minor defects,
    - (d) safety, and
    - (e) durability.

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(2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory –

- (a) which is specifically drawn to the buyer's attention before the contract is made,
- (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or
- (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known –

- (a) to the seller ...

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 ...

The terms implied by sections 14(2) and (3) are conditions: s14(6)

## **Sale by sample**

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Section 15 provides:

- (2) In the case of a contract for sale by sample there is an implied term –
  - (a) that the bulk will correspond with the sample in quality;
  - (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.

The term implied by s15(2) is a condition: s15(3).

## **Modification of remedies for breach of condition in non-consumer cases**

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Section 15A provides:

- (1) Where in the case of a contract of sale –
  - (a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by sections 13, 14 or 15 above, but
  - (b) the breach is so slight that it would be unreasonable for him to reject them,

then, if the buyer does not deal as a consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.

(2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.

(3) It is for the seller to show that a breach fell within subsection (1)(b) above.

## **SUPPLY OF GOODS AND SERVICES ACT 1982**

### **Implied term about care and skill**

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Section 13 provides:

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.

### **Implied term about time for performance**

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Section 14 provides:

(1) 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.

(2) What is reasonable time is a question of fact.

### **Implied term about consideration**

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(1) 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.

(2) What is a reasonable charge is a question of fact.

## **SALE AND SUPPLY OF GOODS AND SERVICES ACT 1994**

See separate Handout.