

Implied terms under Sale of Goods Act 1979

Introduction

In contracts for the sale of goods & supply of services certain basic provisions are implied by statute in order to provide protection to purchasers.

The main provisions derive from the **Sale of Goods Act 1979**. The **Sale of Goods Act** protects purchasers where the seller does not have the right to sell the goods (s.12). Where the goods are sold by description there is an implied term that the goods will correspond to that description (s.13). Businesses must ensure that the goods they sell are of satisfactory quality and fit for their purpose (s.14). Where the goods are sold by sample there is an implied term that the goods will correspond to the sample in quality (s.15).

Where the goods are supplied along with a service then the **Supply of Goods and Services Act 1982** applies. This implies the identical provisions as the **Sale of Goods Act** in relation to the goods supplied. In addition there are implied terms that the service must be carried out with reasonable care and skill (s.13), that the service will be carried out within a reasonable time (s.14) and where no price is agreed a reasonable price will be paid (s.15).

1. S. 12 implied terms as to title (Sales of Goods Act 1979)

S. 12 applies to all contracts for sale of goods so it will cover private sales in addition to where goods have been purchased from a shop or other business.

- a) **S.12(1)** implies a term that the seller has the right to sell the goods. This covers situations where the seller is selling stolen goods (whether the actual thief or a subsequent sale in the chain). This term is a condition in all sales.

A buyer who treats the contract as repudiated is entitled to return of the full purchase price even if they have enjoyed use of the goods for some time.

Rowland v Divall [1923] 2 KB 500 (Case summary) → Facts: Claimant, a car dealer, bought a car from defendant for £334. He painted the car & put it in his show room & sold it to a customer for £100. Two months later the car was impounded by police as it had been stolen. It was then returned to the original owner. Both claimant & defendant were unaware that the car had been stolen. Claimant returned the £400 to the customer & brought a claim against the defendant under Sale of Goods Act. Held: Defendant did not have the right to sell the goods as he did not obtain good title from the thief. Ownership remained with original owner. Defendant had 2 months use of the car which he did not have to pay for & claimant was not entitled to any compensation for the work carried out on the car.

In addition to applying to stolen goods **S.12(1)** also applies where the seller does not have the right to sell the goods where to do so would be breach of trademark, patent or copyright:

Niblett v Confectioners' Material [1921] 3 KB 387 (Case summary) → Facts: Claimant purchased 1,000 tins of condensed milk from defendant. The tins were labelled 'Nissly'. Nestle told the claimant that if they attempted to sell these on, they would apply for an injunction to prevent the sale as the label was very similar to Nestle's labels for their condensed milk. Claimants agreed not to sell them and brought an action against the sellers. Held: The sellers did not have the right to sell the goods and therefore the buyers were entitled to repudiate the contract.

- b) **S.12(2)(a)** implies a term that the goods are free from any undisclosed charge or encumbrance. This applies where for example goods which are still subject to hp terms have been sold without telling purchaser of hp agreement or where any other debt has been secured on the goods. This term is only a warranty so whilst the purchaser can claim for any loss caused by the charge or encumbrance they cannot end the contract.

S.12 (2)(b) implies a term that the purchaser will enjoy quiet possession of the goods. This acts as an ongoing assurance that no one will interfere with the buyer's right to possess or use the goods. This term is a warranty.

Microbeads v Vinehurst Road Markings [1975] 1 WLR (Case summary) → Claimant purchased some road marking machines from defendant. After the purchase a 3rd party was granted a patent right in the machines. This meant the claimant couldn't use the machines unless they were granted a license to do so. There was no breach of **S.12(1)** as at the time of the sale the seller had the right to sell the goods. However, there was a breach of **S.12(2)** in that the buyer couldn't enjoy quiet possession of the goods.