

common law, and to a lesser extent to imply a term by custom, in this course we can confine ourselves to looking at the usual way of implying terms into a contract; by statute.

Note that it is not always necessary to have full information about the deal agreed by the parties and the circumstances in which it was made in order to know what the implied terms of the contract are. It may be enough simply to know what **type** of contract the parties have entered into. For example, if you know that it is a contract for the sale of goods, this of itself will tell you that certain terms have been (or are likely to have been) implied. This is because contracts for the sale of goods are governed by the Sale of Goods Act 1979, which implies a number of important terms into sale of goods contracts.

## 5.1 The Sale of Goods Act 1979

**Note:** ‘Goods’ is both singular and plural. In this context, there is no such thing as ‘a good’.

### 5.1.1 Terms implied by the Sale of Goods Act 1979

Terms implied into sale of goods contracts have a long history of statutory background. Sale of goods contracts are now governed by the Sale of Goods Act 1979 (as amended). However, the Sale of Goods Act 1979 originally started life as the Sale of Goods Act 1893 and, although a number of amendments eventually resulted in the present consolidating Act in 1979, the plan of the original 1893 Act has survived surprisingly unscathed. Even later amendments to the 1979 Act have still left a number of the original 1893 provisions untouched.

Two sections of the Sale of Goods Act 1979 are relied upon in practice more than any others to provide buyers of goods with their rights and as we shall see, these will be important for Aisha. In the next activity, you will examine these two sections.

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## ACTIVITY 50

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### **Sale of Goods Act 1979** (allow 15 minutes)



Online

Using the internet (for example, LexisLibrary or Westlaw) please find and read ss. 13 and 14 of the Sale of Goods Act 1979.

#### **What terms do these sections imply into contracts for the sale of goods?**

You might find it helpful to bear the following points in mind as you read the two sections: s. 13 applies to all sales of goods by description. However, s. 14 only applies where the seller is selling in the course of a business. It is very important to understand that only the seller needs to be in business for the s.14 terms to be implied. It is immaterial who the buyer is. In practice this is often misunderstood. Many people think that the s. 14 terms only protect consumers (broadly speaking, in sale of goods law, a consumer is a person who is not buying for business purposes; we will see a full definition of ‘consumer’ when we look at the Unfair Contract Terms Act 1977 later in this Unit).

It is in fact true that increasingly, the law on sale of goods **does** provide extra rights for consumers when compared to commercial buyers, and we will look at this development (in outline) later. However, it is not correct to think that the law only protects consumers. All buyers, whether they be consumer or commercial buyers, are protected under s. 14, as long as the seller is in business.

**COMMENT**

*Inter alia*, s. 13 of the 1979 Act implies into sales of goods by description a term that the goods will correspond with that description, and s. 14 implies two terms: that the goods will be of satisfactory quality, and that the goods will be reasonably fit for any particular purpose disclosed by the buyer to the seller. All these terms are conditions (s. 14(6)): we will look at the significance of this at paragraph 4.1.4 below.

As with most other contract terms, liability for breach of ss. 13 and 14 is strict. The customer has a right to expect e.g., satisfactory goods, and the seller has a duty to provide them. If the seller fails to do so, it is no excuse that this failure may be beyond the seller's control. This may seem harsh on the seller, but the reason is so that the buyer can go back to the seller (e.g. a shopkeeper) for a remedy, and is not required to take the matter up with the manufacturer. Otherwise, the buyer might have difficulty tracing the manufacturer; for example, the manufacturer may not be in the same town, or even country. It might be too easy for the manufacturer to ignore the buyer if he telephoned or wrote. It is potentially more difficult for the manufacturer to ignore the seller like this.

Note that the seller is not left without a remedy: if he has to reimburse the buyer, he can in turn sue the person who sold the goods to him (who may be a wholesaler, or the manufacturer itself) in order to be reimbursed. When dealing with his seller, the shopkeeper is now a buyer, and can therefore expect, e.g. satisfactory goods from his own seller with the right to sue for breach of s. 14(2) if this term has been breached. Remember that the ss. 13 and 14 conditions will be implied even if the buyer is in business.

We will now look a little more closely at some examples of the circumstances in which ss. 13 and 14 are likely to operate.

### 5.1.2 Section 13 of the Sale of Goods Act 1979

You may have wondered what s. 13 means by a 'sale by description'; there is no clear definition in s. 13 itself (although you may have spotted that s. 13(3) does say in effect that a sale is not prevented from being a sale by description simply because the goods have been 'exposed for sale . . .' and the buyer has selected them).

In an introductory module like this, you need not be too concerned about the subtleties of where s. 13 will operate, but the following examples of sales by description may be useful:

- where the buyer has not seen the goods, and is relying purely on a description (e.g. a newspaper advertisement describing the goods, where the buyer agrees to buy the goods without actually going to see them)
- where the buyer has seen the goods, but is still relying on the description, usually because it is difficult to verify just from looking at the goods that they are what they appear to be (e.g. a sign above a display of briefcases in a shop stating 'Genuine leather briefcases').

The effect of s. 13(3) (mentioned above) is that the vast majority of sales in shops and supermarkets are likely to be sales by description. If the goods do not then correspond with the description (e.g. the briefcase is not leather) there is a breach of s. 13.

### 5.1.3 Section 14 of the Sale of Goods Act 1979

It is important to remember that, as long as the sale is in the course of a business, s. 14 will imply two conditions into the contract; satisfactory quality and reasonable fitness for any particular purpose which the buyer may have made known to the seller (note the rather elaborate wording of s. 14(3), and that as a result of s. 14(2A)–(2C), there is quite an extensive statutory definition of 'satisfactory quality').