

CHAPTER 9 DOMESTIC SALE OF GOODS

- Section 1 [Introduction and the Sale of Goods Act](#)
- Section 2 [Formalities and Elements of the Contract](#)
- Section 3 [Terms of the Contract](#)
- Section 4 [Passing of Property](#)
- Section 5 [Risk and Perishment of the Goods](#)
- Section 6 [Transfer of Title by Non-owner](#)
- Section 7 [Duties of the Seller and Buyer](#)
- Section 8 [Unpaid Seller's Real Remedies Against the Goods](#)
- Section 9 [Seller's Actions for Breach of Contract](#)
- Section 10 [Buyer's Actions for Breach of Contract](#)
- Section 11 [Consumer Protection in Sale Contracts](#)

SECTION 1 INTRODUCTION AND THE SALE OF GOODS ACT

Introduction

9.1.1 The law relating to the domestic sale of goods in Singapore is governed by the Sale of Goods Act, Cap 393 ('SGA'). This statute is a re-enactment of the English Sale of Goods Act 1979. It applies in the context of the general common law, and English cases are used extensively as authorities in the interpretation of the SGA. Unless otherwise stated, section numbers in this chapter refer to the SGA.

Scope of Application of SGA

9.1.2 The SGA applies to any contract for the sale of goods i.e. a contract in which the seller transfers or agrees to transfer property in goods to the buyer for a money consideration called the price. Goods are defined in section 61(1) to include all personal chattels apart from things in action and money. If some consideration other than money is supplied, for example where goods are exchanged for other goods, the SGA does not apply.

[Return to the top](#)

SECTION 2 FORMALITIES AND ELEMENTS OF THE CONTRACT

Formalities

9.2.1 There are no formal requirements for the creation of a contract of sale of goods. Such a contract can be made in writing, orally, partly in writing and partly orally, or it may be implied from the conduct of the parties.

Capacity

9.2.2 Capacity to enter into sale contracts is determined according to the general law relating to capacity to contract, but the SGA specifically provides that where necessaries are sold and delivered to a minor or to a person who is incompetent to contract because of mental capacity or drunkenness, he must pay a reasonable price for the goods.

The Price

9.2.3 The price of goods can be fixed by the contract, decided according to a course of dealing between the parties, or decided in the way agreed under the contract. Where the price cannot be decided by any of these methods, the buyer must pay a reasonable price.

The Goods

9.2.4 Goods under a contract of sale can be existing goods, which are owned or possessed by the seller, or future goods, which are to be manufactured or acquired by him after the contract of sale (section 5(1)).

9.2.5 Goods can also be classified into specific goods or unascertained goods. Specific goods are defined as "goods identified and agreed on at the time a contract of sale is made". Unascertained goods are not defined in the Act, but can be taken to be goods that are not identified nor agreed upon at the time the contract is made. Unascertained goods are generally of three main types: generic goods; goods not yet in existence; and an unidentified part of a specified whole (for example 100 out of the 1000 bottles of wine in this cellar). When unascertained goods are identified and appropriated to the contract, they become ascertained goods.

[Return to the top](#)

SECTION 3 TERMS OF THE CONTRACT

Classification of Terms

9.3.1 Two types of contractual terms are specifically mentioned in the SGA, conditions and warranties. Breach of a condition will give the innocent party the right to terminate the contract, whereas breach of a warranty gives rise to a right to claim damages but not to end the contract. Under the general law of contract, there is a third type of term, namely, the innominate or intermediate term, a breach of which will entitle the innocent party to end the contract only if such breach deprives him of substantially the whole benefit of the contract. The classification of a term is usually

a matter of construction of the contract, but it can sometimes be provided for by statute.

9.3.2 Section 10(1) specifically provides that stipulations as to time of payment are not of the essence of the contract unless a different intention appears from the contract. Under section 10(2), whether other time stipulations are of the essence of the contract depend on the terms of the contract. Case law has established that clauses regarding the time of delivery in ordinary commercial contracts of sale of goods are usually of the essence (*Himatsing & Co v P R Joitaram* [1970] 2 MLJ 246).

Implied Terms

9.3.3 Sections 12 to 15 contain terms that are implied in a contract for the sale of goods. Some are implied conditions, others implied warranties.

Seller's Right to Sell the Goods

9.3.4 Under section 12(1), there is an implied condition in a contract of sale that the seller has the right to sell the goods. This condition would be breached where, for example, the seller does not have title to the goods and is unable to pass a good title to the buyer. However, the condition does not apply where the parties agree that the seller should transfer only such title in the goods as he might have. Where section 12(1) has been breached in a pure contract of sale of goods (as opposed to one which involves elements of service as well, such as a contract to build and deliver a ship), the buyer would be able to terminate the contract and get his money back for total failure of consideration without accounting to the seller for any use that he might have had of the goods (*Rowland v Divall* [1923] 2 KB 500).

9.3.5 Sections 12(2)(a) and 12(2)(b) provide for implied warranties that the goods sold are free from any encumbrances unknown to the buyer, and that the buyer will enjoy quiet possession of the goods.

Correspondence with Description

9.3.6 Section 13 provides that where there is a sale of goods by description, there is an implied condition that the goods correspond with the description. Even where the goods are exposed for sale and are selected by the buyer, it is still possible for this implied condition to apply. However, not every contract in which descriptive words are used would be a sale of goods by description under this section. For example, the section would not apply if the buyer did not rely on the seller's descriptive statement (*Harlingdon & Lienster Enterprises Ltd v Christopher Hull Fine Art Ltd* [1991] 1 QB 564), or if the words did not relate to a substantial ingredient as to the identity of the thing sold (*Reardon Smith Lines v Hansen Tangen* [1976] 1 WLR 989).

9.3.7 The implied condition must generally be complied with strictly. For instance, in the English case of *Arcos Ltd v E A Ronaasen & Son* ([1933] KB 470), section 13 was breached when wooden staves that were nine-sixteenth of an inch thick were delivered under a contract describing them as being half an inch thick, even though the deviation did not affect their intended use for making barrels. On the other hand,

a defect in the goods may not take them outside their description if this does not alter their character, for instance, if the goods are contaminated (*Ashington Piggeries Ltd v Christopher Hill Ltd* [1972] AC 441). If so, section 13 would not be breached.

Satisfactory Quality

9.3.8 Where a seller sells goods in the course of a business, section 14(2) provides that there is an implied condition that the goods are of satisfactory quality. However, this condition does not apply to any defect which is specifically drawn to the buyer's attention before the contract is made, nor if the buyer examines the goods before the contract, to any defect which that examination ought to have revealed.

9.3.9 Under section 14(2A), goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price (if relevant) and all other relevant circumstances. The quality of goods includes their state and condition, and aspects of quality may include, in appropriate cases, their fitness of all the purposes for which the goods of the kind in question are commonly supplied, their appearance and finish, freedom from minor defects, safety and durability. The test of satisfactory quality is therefore a flexible one where the various factors have to be balanced and evaluated against each other. For instance, a car that has minor scratches may be subjected to different standards depending on whether it is sold as a new car or as a second hand car at a correspondingly lower price; and a car that cannot be driven safely might nevertheless be of satisfactory quality if its description, price or the circumstances show that it was sold as scrap metal and not a roadworthy vehicle.

Fitness for Purpose

9.3.10 Where the seller sells goods in the course of a business and the buyer makes known expressly or by implication to the seller any particular purpose for which the goods are being bought, section 14(3) provides that there is an implied condition that the goods supplied are reasonably fit for that purpose. This is regardless of whether that is a purpose for which such goods are commonly supplied. The implied condition does not apply where the circumstances show that the buyer does not rely on the skill and judgement of the seller or that it would be unreasonable for him to do so.

Sale by Sample

9.3.11 Section 15 provides that where goods are sold by sample, there is an implied condition that the bulk will correspond with the sample in quality, and that the goods will be free from any defect making their quality unsatisfactory, that would not have been apparent on a reasonable examination of the sample. If the sale is by sample as well as by description, the goods must correspond with both the sample as well as the description.

Exclusion of Implied Terms

9.3.12 The ability of a seller to exclude or restrict any liability that might otherwise arise under the implied terms in sections 12 to 15 of the SGA is controlled by section 6 of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed). The terms implied by section 12 (the right to sell, freedom from encumbrance and quiet enjoyment) cannot be excluded at all, whilst the conditions implied under sections 13, 14 and 15 (correspondence with description, satisfactory quality, fitness for purpose and sale by sample) cannot be excluded or restricted as against a person dealing as a consumer. In the case of a buyer who is not dealing as a consumer, the operation of sections 13 to 15 may be excluded or restricted by a contract term only if it satisfies the requirement of reasonableness.

Limitation of Right to Reject Goods for Breach of Implied Conditions

9.3.13 The innocent party's right to terminate a contract for a breach of condition is a general feature of Singapore contract law. This would mean that a breach of any of the implied conditions imposed by the SGA would entitle the buyer to reject the goods and terminate the contract, even if the consequences of the breach are trivial. This might lead to unfairness, and amendments were made to the SGA in 1996 (based on similar amendments in the UK) to address the problem in certain circumstances.

9.3.14 Under section 15A, a buyer who does not deal as a consumer may not be able to reject goods for any breach of the conditions implied by sections 13, 14 and 15 (correspondence with description, satisfactory quality, fitness for purpose and sale by sample) if the breach is so slight as to make it unreasonable for him to reject the goods. In such a case, he can treat the breach of condition as a breach of warranty. However, section 15A does not apply where a contrary intention appears in, or is to be implied from, the contract, in which case the implied conditions will apply with full force. Further, the rights of a buyer who deals as a consumer is not affected by section 15A.

[Return to the top](#)

SECTION 4 PASSING OF PROPERTY

Significance

9.4.1 Whether property in goods has passed from the seller to the buyer could be relevant for various purposes, including to determine who is the owner of the goods if either the buyer or seller becomes insolvent whilst the goods are in his possession, to see if risk has passed from the seller to the buyer (since risk generally passes with property), and establish the seller's entitlement to sue for the price.

Intention of the Parties

9.4.2 The general rule under section 17 is that property in specific or ascertained goods passes according to the intention of the parties, having regard to the terms of the contract, the conduct of the parties and all the circumstances of the case. Under section 16, property in unascertained goods cannot pass until they are ascertained,

regardless of the intention of the parties. This is subject to section 20A which will be discussed below. Section 18 provides five default rules which apply, unless a different intention appears, to determine when property in goods passes. These rules are divided according to the type of goods and the sale contract concerned.

Section 18, Rule 1

9.4.3 Rule 1 provides that in an unconditional contract for the sale of specific goods in a deliverable state (i.e. such a state that the buyer would be bound under the contract to take delivery of them), property in the goods passes when the contract is made, even if payment or delivery, or both, might be postponed. This rule might apply, for instance, when a customer selects an item in a shop. However, rule 1 might not accord with the parties' expectations in modern consumer contracts. A shopkeeper might not intend property in goods to pass to the customer before payment has been made. Conversely, a customer might not wish property and therefore risk in the goods to pass to him before the goods are delivered, as he might then have to bear the loss if the goods are accidentally damaged in the interim. In appropriate cases, the courts will probably be prepared to find in Singapore, as they have in England, that rule 1 has been displaced because the parties have displayed a contrary intention.

Section 18, Rule 2

9.4.4 Rule 2 governs the sale of specific goods where the seller is bound to do something to the goods for the purpose of putting them in a deliverable state, and it provides that property passes when the thing is done and the buyer has notice that it has been done. An example might be the sale of a complicated machine that is still in its dismantled state and has to be assembled by the seller before delivery.

Section 18, Rule 3

9.4.5 Under rule 3, where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act to the goods for the purpose of determining their price, property passes under this rule when the thing is done and the buyer has notice that it has been done.

Section 18, Rule 4

9.4.6 Rule 4 applies where goods are delivered on sale or return, or on approval or other similar terms. Here, property in the goods will pass to the buyer when the buyer signifies his approval to the seller or does any other act adopting the transaction, or he retains the goods beyond a certain time without giving notice of rejection.

Section 18, Rule 5

9.4.7 Rule 5 applies to the sale of unascertained goods or future goods by description. Property will pass when goods of that description and in a deliverable state are unconditionally appropriated to the contract. In order for unconditional appropriation to take place, case law requires that the contract goods must be

identified, separated from other goods where applicable, and irrevocably attached to the contract. In practice, it is often difficult to decide if this has taken place and the cases show a range of results depending on the type of goods and the general circumstances of the case. Two cases from England illustrate this. In *Aldridge v Johnson* ((1857) 7 E & B 885), the buyer agreed to buy 100 quarters of barley out of 200 quarters which he had inspected and sent some sacks to contain the goods. The court decided that property passed as soon as the seller filled the sacks, even before the goods left the seller's possession. In contrast, in *Carlos Federspiel & Co SA v Charles Twigg & Co Ltd* ([1957] 1 Lloyd's Rep 240) property in bicycles manufactured to the buyer's order by the seller was held not to have passed even after the bicycles were made and packed into containers with the buyer's name and address, probably because the seller had yet to ship them as it was supposed to do.

Reservation of the Right of Disposal

9.4.8 Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to a contract, section 19 allows the seller to reserve the right of disposal to the goods until certain conditions are fulfilled. In this case, property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled, notwithstanding delivery of the goods to the buyer or to a carrier for transmission to him. This section confers validity on reservation of title clauses, also known as *Romalpa* clauses, whereby a seller retains title to the goods sold until these have been paid for by the buyer (*Armour v Thyssen Edelstahlwerke* [1991] 2 AC 339).

Transfer of an Undivided Share in a Bulk

9.4.9 In 1996, a new section 20A, modelled on similar amendments to the English statute, was enacted to protect buyers who had bought goods which formed part of an identified bulk and who had paid for these goods or part of them. An example might be where a buyer has agreed to buy 100 crates of wine out of 1000 similar crates stored in a particular warehouse. Prior to section 20A, if the seller became insolvent before the buyer's goods were separated from the bulk, the goods would still be unascertained and property would not have been able to pass to the buyer.

9.4.10 The effect of section 20A was to give the buyer in such a situation an undivided share in the bulk so that he could look directly to the proceeds of sale of the bulk and was not relegated to merely having a personal right against the insolvent buyer. The undivided share of the buyer would be such share as the quantity of goods paid for and due to him out of the bulk bears to the quantity of goods in the bulk at that time. If a buyer has agreed to buy and has paid for 100 out of the 1000 items in the bulk, his share at that point in time would be one tenth of the bulk. The buyer's undivided share may fluctuate depending on the quantity of goods he has paid for, the quantity of goods already delivered to him, the quantity of goods in the bulk at the relevant time, the number of other buyers who have a right to share in the bulk, and whether the goods in the bulk are sufficient to meet the shares of all the buyers.

9.4.11 Once the unascertained goods are appropriated to the contract, property in them will pass to the buyer in the normal way and he will no longer be a co-owner of the bulk.

[Return to the top](#)

SECTION 5 RISK AND PERISHMENT OF THE GOODS

Passing of Risk

9.5.1 Where goods are at the risk of one party, he has to bear the loss if the goods are damaged, lost or destroyed. Section 20(1) provides that the goods remain at the seller's risk until the property in them is transferred to the buyer, and that risk passes to the buyer once property passes regardless of whether the goods have been delivered. This section is subject to a contrary agreement between the parties, and in such cases property and risk may be separated. Where delivery is delayed through the fault of either the buyer or the seller, section 20(2) provides that the goods are at the risk of the party at fault "as regards any loss which might not have occurred but for such fault".

Specific Provisions where Goods have Perished

9.5.2 Where, in a contract for sale of specific goods, the goods, without the knowledge of the seller, have perished at the time of the contract, section 6 provides that the contract is void. This is the only type of mistake which is governed by the SGA. Other instances of mistake are covered under the general law of contract.

9.5.3 Section 7 provides that where in an agreement for the sale of goods, the goods perish without fault of the buyer or the seller after agreement to sell but before risk passes to buyer, the agreement is avoided. This is a statutory statement of the doctrine of frustration as applied to the specific situation. In line with the approach taken in section 6, other frustrating events are left to be considered under the general law of contract.

[Return to the top](#)

SECTION 6 TRANSFER OF TITLE BY NON-OWNER

General rule – Nemo Dat

9.6.1 The general rule under section 21 is that where a person who is not their owner sells goods, the buyer acquires no better title to the goods than the seller had. This rule is often expressed in Latin as *nemo dat quod non habet*. According to this rule, a thief cannot pass good title to stolen goods, and the original owner of the goods does not lose his title to them. In a conflict between the ownership interest of the true owner and the legitimate expectations of a buyer who buys in good faith and without notice of his seller's lack of title, the law chooses to protect the former.

Exceptions to the Nemo Dat Principle

9.6.2 Although the general rule prefers property rights over commercial interests, there are exceptions to the rule, and a non-owner might in certain circumstances transfer a better title than he himself had. These exceptions are set out in sections 21 to 25 of the SGA and sections 2, 8 and 9 of the Factors Act (Cap 386, 1994 Rev Ed), which is a re-enactment of the English Factors Act 1889 (52 & 53 Vic c 45).

9.6.3 The nemo dat rule does not apply where (i) a non-owner sells goods under the authority or with the consent of the owner (an agency situation); (ii) the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell (an estoppel situation); (iii) a mercantile agent sells goods in certain circumstances under section 2 of the Factors Act; (iv) there is a contract of sale under any special common law or statutory power of sale, or under a court order; (v) where a person with a voidable title sells goods before the contract is avoided to a buyer who buys in good faith and without notice of the seller's defect in title; (vi) where there is a sale by a seller in possession of the goods; and (vii) where there is a sale by a buyer in possession of the goods.

[Return to the top](#)

SECTION 7 DUTIES OF THE SELLER AND BUYER

Payment and Delivery

9.7.1 Under section 27, it is the duty of the seller to deliver the goods, and the duty of the buyer to accept and pay for them in accordance with the terms of the contract. Section 28 provides that delivery of the goods and payment of the price are concurrent conditions. The seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for the goods. Neither party can claim that the other is in breach if he himself is not ready and willing to perform his obligations.

Buyer's Right to Reject the Goods

9.7.2 The buyer has the duty to accept goods only in accordance with the terms of the contract. If there is a breach of condition, or if the breach of an innominate term is sufficiently serious, the buyer may be entitled to reject the goods and terminate the contract under the general law.

Delivery of Wrong Quantity

9.7.3 Under section 30, the buyer can choose to reject the goods if the seller delivers the wrong quantity. Other than deviations which fall under the de minimis principle (limited to microscopic deviations where precise accuracy is not commercially reasonable), this section generally operates strictly against the seller, unless the buyer does not deal as a consumer, and the excess or shortfall in quantity is so slight that it would be unreasonable for the buyer to reject the goods (section

30(2A)). Further, the buyer is not bound to accept delivery by instalments unless this is agreed between the parties (section 31).

Loss of Right to Reject the Goods Because Buyer has Accepted Them

9.7.4 In a non-severable contract, section 11(3) provides that a buyer will lose his right to reject the goods and terminate the contract for breach of condition once he has accepted the goods. Section 35 sets out the situations where a buyer is deemed to have accepted goods. These are (i) where the buyer intimates to the seller that he has accepted the goods; (ii) where the buyer does an act inconsistent with the ownership of the seller; and (iii) where the buyer retains the goods beyond a reasonable time without intimating to the seller that he has rejected them. However, a buyer is not to be deemed to have accepted goods merely because he requests or agrees to have the goods repaired by the seller, or resells and re-delivers the goods to a sub-buyer.

Partial Acceptance

9.7.5 Section 11(3) is subject to section 35A which provides that where there is a breach by the seller that affects some or all of the goods, a buyer who accepts part of the goods does not necessarily lose the right to reject the rest. However, in a contract for the sale of goods making up one or more commercial units (i.e. a unit the division of which would impair the value of the goods or the character of the unit such as a pair of shoes or a set of encyclopaedia), if the buyer accepts any goods included in the unit, he is deemed to have accepted all the goods making the unit (section 35(7)).

Severable Contract

9.7.6 Rejection of goods in a severable contract is only dealt with partially by the Act. A defective instalment can be rejected if, for instance, there is a breach of condition or a shortfall or excess, but it does not always follow that the rest of the contract can be discharged for this isolated breach. Section 31(2) provides for the situation where there is a contract for the sale of goods by stated instalments which are to be separately paid for and there is a breach by the buyer or seller in respect of one or more instalments. In such cases, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation but not a right to treat the whole contract as repudiated. English case law suggests that this section should be applied by looking at the ratio quantitatively which the breach bears to the contract as a whole and the degree of probability that such a breach will be repeated (*Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd* [1934] 1 KB 148).

[Return to the top](#)

SECTION 8 UNPAID SELLER'S REAL REMEDIES AGAINST THE GOODS

Introduction

9.8.1 Sections 38 to 48 provide an unpaid seller with real rights against the goods themselves. A common requirement before any of these rights would be available is that the seller has to be an unpaid seller. Under section 38(1), a seller is unpaid when the whole of the price has not been paid or tendered, and this could be the case even if partial payment has been made, or the seller has sold on credit.

Right of Lien, Stoppage in Transit and Resale

9.8.2 Where property has passed to the buyer, an unpaid seller might in certain circumstances have a right of lien over the goods, a right to stop the goods in transit, or a right to resell the goods (section 39(1)). A right of lien is a right of an unpaid seller who is in possession of the goods to retain them until payment or tender of the price. This right is available provided that the goods are sold without any stipulation as to credit, or the credit has expired, or the buyer has become insolvent. Even where the seller has lost possession of the goods, he would have a right of stoppage in transit if the buyer becomes insolvent, and this entitles him to resume possession of the goods as long as they are in the course of transit and to retain them until payment or tender of the price. An unpaid seller who has exercised his right of lien or stoppage in transit may pass a good title to his buyer if he resells the goods (section 48(2)).

9.8.3 Where property has not passed to the buyer, the seller has rights to withhold delivery similar to and co-extensive with his rights of lien and stoppage in transit where property has passed to the buyer (section 39(2)). The seller also has power under the general law to pass good title to the next buyer upon resale, as property in the goods remains with him in this case.

9.8.4 Even where an unpaid seller has the power to pass good title to a buyer upon resale of the goods, he may not necessarily have the right to sell the goods in the sense that he may still be liable under his sale contract with the original buyer since this contract is not rescinded by the mere exercise of the unpaid seller's lien or stoppage in transit (section 48(1)). An unpaid seller will have the right to resell as against the original buyer where he has expressly reserved the right to resell the goods in case the buyer should make a default (section 48(4)), where the goods are perishable, or where he has given notice to the buyer of his intention to sell, and the buyer does not pay or tender the price within a reasonable time (section 48(3) and *R V Ward Ltd v Bignall* [1967] 1 QB 534).

[Return to the top](#)

SECTION 9 SELLER'S ACTIONS FOR BREACH OF CONTRACT

Action for the Price

9.9.1 Where property in goods has passed to the buyer and he wrongfully neglects or refuses to pay for them according to the terms of the contract, the seller may sue the buyer for the price of the goods (section 49(1)). This action might be

available even for goods that have not yet been delivered, as long as property has passed. Where the price of goods is payable on a certain day irrespective of delivery, the seller may bring an action for the price even if property has not passed and the goods have not been appropriated to the contract (section 49(2)). An action for the price might be more advantageous for the seller than one for damages, as there is no obligation to mitigate his losses under the former.

Damages for Non-acceptance

9.9.2 In a case where the buyer has refused to accept and pay for the goods, section 50 allows the seller to sue for damages for non-acceptance. Where property has not passed to the buyer, this may be the seller's only option, whereas where property has passed, the seller may alternatively be able to bring an action for the price as described earlier.

9.9.3 The measure of damages for non-acceptance is the loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract (section 50(2)). Where there is an available market for the type of goods in question, the measure of damages is prima facie based on the difference between the contract price and the market or current price of the goods at the time when they ought to have been accepted, or if no time was fixed for acceptance, at the time of refusal to accept (section 51(3)). Case law suggests that an available market means that the situation in the particular trade in the particular area was such that the particular goods could freely be sold, and that there was a demand sufficient to absorb readily all the goods that were thrust on it so that if a purchaser defaulted, the goods in question could be easily disposed of (*W L Thompson Ltd v Robinson (Gunmakers) Ltd* [1955] Ch 177). The rule in section 50(3) is just a prima facie rule, and it can be displaced where its application is inappropriate.

9.9.4 Where a seller resells the goods at a price that is different from the prevailing market price, it is unclear whether the seller's damages should still be the measure provided for in section 50(3) which is based on a hypothetical sale based on the market price, or whether the actual resale price can be taken into account to increase or reduce the damages that can be claimed. It is unlikely that a seller who resells for less than the market price would be awarded his full loss, but where the seller resells for a price that is higher than the market price, a court might be unwilling to overcompensate him and might limit the amount of damages to his actual loss, unless the court decides that the seller by his actions (for instance in delaying the resale) has assumed the risk of market movements and should therefore be able to reap any resulting benefits just as he would have to suffer any loss.

Special Damages and other Rights

9.9.5 Where the seller suffers losses as a result of the buyer's refusal to take delivery of the goods within a reasonable time of a request by the seller, the seller can sue for any loss caused by the buyer's refusal to take delivery, as well as a reasonable charge for the care and custody of the goods (section 37(1)).

9.9.6 Section 54 preserves the parties' rights to sue for interest or special damages where these are otherwise available to them under the general law.

[Return to the top](#)

SECTION 10 BUYER'S ACTIONS FOR BREACH OF CONTRACT

Damages for Non-delivery

9.10.1 Where the seller wrongfully neglects or refuses to deliver the goods, the buyer may sue the seller for non-delivery (section 51(1)). The provisions for damages for non-delivery are based on the same principles as those for damages for non-acceptance. Section 51(2) expresses the measure of damages to be the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. Where there is an available market, section 51(3) provides that the measure of damages is prima facie the difference between the contract price and market or current price of the goods at the time they ought to have been delivered, or if no time was fixed, at the time of refusal to deliver. In practical terms, a buyer should be able to succeed in getting substantial damages for non-delivery only where the market price is higher than the contract price. Otherwise, the buyer can go into the market and buy replacement goods more cheaply than he would have got them under the contract, and would have suffered no loss.

9.10.2 Usually, the market price rule would apply even if the buyer has contracted to resell the goods to a third party, as he should still be able to fulfill the resale contract by buying in the available market (*Williams v Agius* [1914] AC 510). Sometimes, however, the sub-sale cannot be fulfilled by substitute goods from the market, for instance, because the sub-sale was for specific goods. In such a case, if the seller knew or ought to have known of the resale, the buyer may be able to recover the difference between the contract price and the resale price instead of being confined to the market price rule, as well as any damages that he may have to pay the sub-buyer (*Re Hall & Pim's Arbitration* [1928] All ER 763).

Specific Performance

9.10.3 Where the contract is one for the delivery of specific or ascertained goods, a court has the discretion under section 52 to direct that the seller must perform the contract specifically. Whether specific performance will actually be awarded in such contracts will depend on the general principles under which the remedy is available at common law.

Damages for Breach of Warranty

9.10.4 Under section 53, where the seller has breached a warranty of the sale contract, or where the buyer elects or is compelled to treat a breach of condition as a breach of warranty, the buyer can bring an action against the seller for damages for breach of warranty. Alternatively, the buyer can set up the breach of warranty in diminution or extinction of the price that he has to pay to the seller. The measure of

damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty. In the case of a breach of warranty of quality, the loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they fulfilled the warranty.

Special Damages and other Rights

9.10.5 Section 54 provides that the buyer's right at common law to recover interest or special damages is not affected by the Act. Applying this section, where a buyer suffers consequential losses as a result of the seller's breach of contract, he may be able to claim for these losses over and above the losses directly and naturally resulting from the seller's failure to deliver or breach of warranty. Thus a buyer who sues for breach of warranty of quality may be able to recover for personal injuries caused by using the defective goods, and a buyer who sues for non-delivery under section 51(3) may be able to claim additional damages for wasted freight or losses on a sub-sale contract. Such claims would be subject to the limitations imposed by the general law, like remoteness of damage.

9.10.6 The buyer's right to recover money for total failure of consideration under the general law is also not affected by the Act.

[Return to the top](#)

SECTION 11 CONSUMER PROTECTION IN SALE CONTRACTS

9.11.1 Some of the provisions of the SGA give consumers consideration over and above that enjoyed by business buyers, and these have been discussed earlier in this chapter.

9.11.2 Further, under the Consumer Protection (Fair Trading) Act (Cap 52A), a consumer who has entered into a consumer transaction involving an unfair practice may bring an action against the supplier. A sale of goods transaction falls within the ambit of this statute, and a consumer who buys goods may therefore rely on the statute for protection.

9.11.3 Generally, it would constitute unfair practice for a supplier, in relation to a consumer transaction (i) to do or say anything if as a result a consumer might reasonably be deceived or misled; (ii) to make a false claim; or (iii) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction (section 4). The statute also sets out a list of specific unfair practices (schedule 2). These include representing that goods have performance characteristics, qualities or benefits that they do not have; representing that goods are of a particular standard, origin or method of manufacture if they are not; or representing that goods have a particular history when the supplier knows that this is not the case.

[Return to the top](#)

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