

UNITED KINGDOM SALE OF GOODS ACT 1979 AND ITS APPLICABILITY IN SINGAPORE

This statute, which received the Royal Assent on 6th December 1979 and came into force on 1st January 1980 (apart from a few provisions which will become effective on a day to be appointed) consolidates the law relating to the sale of goods. It thus repeals and replaces (with the exception of the procedural s. 26) the Sale of Goods Act 1893, as amended. The old Act had been subjected to a number of major amendments, insertions and extractions in recent years, and a brief survey of these changes will make it clear why a consolidating measure was necessary.

The first steps were taken in the Misrepresentation Act 1967 (c. 7). Section 4 of this Act amended, firstly section 11(1)(c) of the 1893 Act, so as to make the buyer's right to reject specific goods for breach of a condition depend on whether he has accepted the goods and not on whether the property in them has passed to him, and, secondly, section 35, to ensure that a buyer shall not, by doing an act inconsistent with the seller's ownership, be deemed to have accepted the goods until he has had an opportunity of examining them in accordance with section 34.

Far more comprehensive reforms were made by the Supply of Goods (Implied Terms) Act 1973 (c. 13) which was passed as a result of the Law Commission's proposals in its First Report on Exemption Clauses. These amendments dealt largely, as the Act's title suggests, with certain terms such as the condition of good title, warranties of freedom from incumbrances and of quiet possession, conditions as to quality and fitness to be implied into contracts of sale, and the prohibition of contracting out of these implied terms. This was achieved by major changes in Part II of the 1893 Act and the replacement of section 55 (exclusion of implied terms). A new section 55A, dealing with conflict problems, was inserted. In Part II, sections 12 (implied undertakings as to title) and 14 (implied undertakings as to quality or fitness) were replaced by new sections. A new subsections (2) was added to section 13 which deals with sales by description (this becomes subsection (3) in the new consolidating measure). The new section 14(3) was itself amended by the Consumer Credit Act 1974 (c. 39) (which also amends section 25) as from a day to be appointed, in relation to credit transactions. These changes are all incorporated into the consolidating Act, with the one cosmetic and very sensible change being the insertion into section 14 of the definition of "merchantable quality" included in the interpretation section (s. 62) of the 1893 Act in 1973.

As mentioned above, the 1973 Act also replaced section 55 of the 1893 Act with a new section, which included incidentally the

former section 14(4) of the old Act, dealing with the negating of implied terms by express ones inconsistent with the Act: this provision is retained in the 1979 Act. The main purpose of the new section was to invalidate any attempt by the seller in a consumer sale to exempt himself from the operation of sections 13, 14 or 15. In non-consumer sales, a clause which sought to avoid the provisions should "not be enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term" (s. 55(9)). Other sub-sections contained definitions of exemption clauses and guidelines for determining what is "reasonable". Following the Law Commission's Second Report on Exemption Clauses (No. 59 of 1975) the Unfair Contract Terms Act 1977 (c. 50) was passed. This repealed section 55(3)-(11) replacing them with substantially similar provisions to be found in sections 6 and 11, and Schedule II, of the 1977 Act. The 1979 Act, incorporates these changes, so that section 55 is basically as it was prior to 1973, together with an express provision that its operation is subject to the terms of the 1977 Act. Section 55A was also, repealed by the 1977 Act, which makes similar provision in section 27.

Sections 61 and 62 of the 1979 Act correspond respectively with sections 62 and 61 of the 1893 Act. They incorporate changes made by the 1977 Act. Incidental amendments were made to the 1893 Act by the Theft Act 1968 (c. 60) which repealed section 24 of the 1893 Act, and the Criminal Law Act 1967 (c. 58) which repealed section 22(2).

One obvious result of all the chopping and changing that has occurred in the last few years is that different rules will apply depending on when a contract was made. A welcome feature of the 1979 Act is that by reference to the new section 1 (which deals with contracts to which the Act applies) and Schedule I, it is possible to discover the law applicable at any given date since 1894. The Act thus looks backwards as well as forwards.

Does the new Act apply in Singapore? Aficionados of "the section 5 problem"¹ read on! This of course should be the subject of a monograph rather than of a brief note on a consolidating Act.² Suffice it to say that the matter is riddled with doubts.

It is probably safe to assume that the 1893 Act, in its pristine state, did apply in the Republic: there is a certain amount of case law based on this assumption:³ and the same probably applies to the amendments made by the Misrepresentation Act 1967. The applicability of the subsequent amending statutes is more questionable. The only reported case since 1973 on breach of an implied term in a sale of goods in Singapore, *Eastern Supply Limited v. Kerr*,⁴ seems

¹ Civil Law Act, Cap. 30, Singapore Statutes, Rev. Ed. 1970, s. 5, as amended by Civil Law (Amendment No. 2) Act 1979, Cap. 24 of 1979. See Hickling, "Section 5 of the Civil Law Act: Snark or Boojum", (1979) 21 Mal. L.R. 351.

² As, of course, it has been. See Bartholomew, *The Commercial Law of Malaysia*, (1965).

³ See Myint Soe, *The General Principles of Singapore Law*, (1978), pp. 396-426.

⁴ [1974] 1 M.L.J. 10.

to indicate that the amendments made to section 14 of the 1893 Act by the Supply of Goods (Implied Terms) Act 1973 were not applicable in Singapore: at any rate, there is no reference to the Act, even though it was in force in England. As has been stated elsewhere,⁵ the amendments made by the Consumer Credit Act 1974 are almost certainly not applicable, as the main purpose of the Act is to deal with a topic already covered by Singapore legislation, and it did nothing to change the principles of sale of goods law as such. The 1973 Act is, of course in a rather different position, in so far as it actually replaces some of the most important sections of the principal Act. The main argument against reception of these amendments is that the Act also contains sections which deal with matters such as hire purchase, covered by Singapore legislation⁶ and therefore not applicable, and that one should heed the words of Lord Atkin⁷ and take an Act or leave it, rather than choose the morsels that one wants and discard the rest. On the other hand "severance" would pose no problem in this instance, for the sections dealing with the sale of goods are quite distinct from the rest. Logically, if the 1893 Act has been the law applicable in Singapore, it must surely be that Act as amended in 1973 and, one would submit, 1977 too.⁸

Does it make any difference that the 1979 Act is a *consolidating* Act? Should we treat such an Act as a new entity, and apply it in appropriate cases irrespective of the previous applicability or otherwise of its component parts, or should one apply only such parts as would have been applicable previously? Cross points out that "[t]he authorities on previous statutory provisions consolidated in a later enactment retain their force as precedents."⁹ Presumably, then, had there been definite authority, prior to the 1979 Act, for the proposition that the 1973 Act did not apply, its provisions would still not apply, notwithstanding their consolidation into the 1979 enactment. Such a conclusion would, of course, lead to problems of severance with regard to the 1979 Act itself. Could we take the 1979 Act with sections 12, 13, 14 and 55 in their unamended state (the form of the Act's First Schedule, as noted above, actually makes this a reasonable option), or should one say, adopting the Atkin formula, that the law applicable in Singapore is still the English Act of 1893 as amended in 1967? Increasingly common sense leads one to the conclusion that the applicable law must be the 1979 Act, minus the amendments made in 1974.

⁵ Myint Soe, *op. cit.*, p. 397. Its inapplicability could be based in accordance with the 1979 amendments to section 5 of the Civil Law Act, on the ground that the 1974 Act is "regulating the exercise of any business or activity by providing for registration, licensing or any other method of control...." (s. 5(2)(b)(ii)).

⁶ Notably the Hire Purchase Act, Cap. 182, Singapore Statutes, Rev. Ed. 1970. S. 1(5) of this Act provides that, notwithstanding the provision of s. 5(1) of the Civil Law Act, English hire-purchase legislation shall not apply in Singapore.

⁷ In *Shaik Sahied bin Abdullah Bajerai v. Sockalingam Chettiar* [1933] M.L.J. 81, at p. 82 (P.C.). For an alternative view see *Seng Djit Hin v. Nagordas Purshutumdass & Co.* [1921] 14 S.S.L.R. 181 (P.C.).

⁸ The 1977 Act is in a similar position to the 1973 Act in that it deals with hire-purchase also. Nonetheless the general feeling seems to be that it is applicable in Singapore: see Hickling, *op. cit.*, p. 357. The sale of goods provisions are again equally severable. Indeed the changes made to s. 55 of the 1893 Act in 1973, having been removed in 1977 and incorporated by reference instead, would appear to be applicable even if one holds that the 1973 Act itself did not apply.

⁹ Cross, *Statutory Interpretation* (1976), p. 5.

Discussion so far has been on the assumption that the question is one of the wholesale importation of English mercantile law into Singapore. Of course this is not necessarily the case. It has been forcibly argued the "application of an English statute in any one case does not lead to its importation at all. Whether it is applicable again in a later case... depends on whether the issue raised is one with respect to mercantile law."¹⁰ This view, which permits a more flexible approach than a straightforward doctrine of importation, has the backing of at least one judicial opinion. As was said in *Mun Kai Piano Co. v. Rozario*:¹¹ "All that section 5 asks a Court in Singapore to do is to decide any question that arises" with respect to mercantile law generally "in the absence of any local provision as a Court in England would have decided the issue at the corresponding period." Put that way, there is surely little room for doubt. Consider a case concerning breach of the warranty of merchantable quality arising in, say, 1977. No one would claim that this did not raise a question relating to "mercantile law generally". The applicable law in England would be the section 14 of the Sale of Goods Act 1893 as substituted by the 1973 Act. Is it really to be supposed that the amendments would not apply to Singapore simply because the 1973 Act also happened to contain other quite separate sections dealing with hire purchase, and that consequently the law prevailing in England "*at the corresponding time*" would in fact be different from that applicable in Singapore? Similarly the law on sale of goods applicable in the Republic today must surely be that contained in the 1979 Act, subject to the reservations mentioned earlier relating to the 1974 Act. But, regrettably in view of the recent amendments to section 5 of the Civil Law Act, the matter is sufficiently confusing to merit the further attention of the legislature.

To conclude on a more general note, the English Law Commission has recently published a paper on Implied Terms in Contracts for the Supply of Goods (Law Com. No. 25 of 1979) dealing with contracts analogous to (and excluding) those of sale and hire-purchase, such as contracts of barter and labour and materials, and legislation may well be forthcoming. The 1893 Act went unamended for seventy years; since then changes have been made every six years or so. It will be interesting to see how long the new Act remains unscathed.

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¹⁰ Chan Sek Keong, "The Civil Law Ordinance, Section 5(1); A Re-Appraisal" (1961) 27 M.L.J. 1vii.

¹¹ Unreported. Referred to in (1962) 28 M.L.J. lxxxvii.