



A critical examination of implied terms under sale of goods act

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Abstract

This paper critically examines the implied terms under the Sale of Goods Act, 1893, with a focus on understanding their application and impact on contemporary commercial transactions. Using a doctrinal research methodology, the paper explores the statutory provisions of the Act, particularly the implied terms regarding the seller's title, the fitness for purpose of goods, and their correspondence with descriptions. It draws on case law, statutory interpretation, and legal commentary to analyse the practical and theoretical implications of these terms, both in the historical context of the Act and in the modern business environment. The research identifies key gaps in the application of the Sale of Goods Act, particularly its outdated provisions that no longer align with current commercial practices, including digital transactions and e-commerce. The study also highlights inconsistencies in judicial interpretation and the absence of clear guidelines for emerging business models. Based on these findings, the paper recommends reforms to enhance the clarity, adaptability, and relevance of implied terms in the Act. These reforms include updates to account for technological advancements, clarification of judicial interpretation, and the introduction of provisions to better protect consumer rights in a globalized marketplace. By addressing these gaps, the paper advocates for a legal framework that supports fair and transparent commercial practices in line with international best practices.

Keywords: Implied terms, sale of goods act 1893, consumer protection, commercial transactions, legal reform

Introduction

The law governing Sale of Goods in Nigeria is the Sale of Goods Act 1893 (SOGA), a statute of General Application in force in Nigeria, the rules of Common Law, including the Law Merchant which is not inconsistent with the express provisions of the Sale of Goods Act 1893 are also applicable^[1]. Contracts for the sale of goods, as defined by the Sale of goods Act 1979, are subject to its provisions. No other contracts are covered by its provisions. One of the oldest types of commercial transactions is the sale of goods; it dates back to the days when barter was replaced by money. The rights and obligations stemming from the contract are specified in the terms of the agreement. These terms can be classified as either stated terms or implied terms^[2]. The sale of Goods Act, 1893, sections 10-15 imply certain terms into contracts for the sale of goods which are for the protection of the buyer^[3]. For instance, S. 12 makes it an implied condition that the seller shall have title of the goods or a right to sell and an implied warranty that the buyer shall enjoy quiet possession^[4] and S.13 makes it an implied condition that the goods shall correspond with their descriptions^[5]. Then, S. 14 makes it an implied condition that goods shall be fit for its purpose^[6].

Literarily, the implied terms of a contract are words or provisions that a court of law assumes were intended to be included in a written contract, even though the terms are not actually stated within the contract^[7]. In other words, Implied terms are terms that are not explicitly included in a written contract. However, the parties to the contract are still bound by them. Implied terms exist, because often a seller and a buyer in a sale of goods contract will not include a term for every single issue that could possibly occur in the contract. Therefore, implied terms are needed to preserve business efficacy and allow the contract to reflect the intentions of the seller and the buyer^[8]. To this end, the

purpose of the *Sale of Goods Act, 1893* is to provide guidelines that protect parties engaging in transactions for the sale of goods. This Law mainly regulates business to consumer transactions. However, the *Sale of Goods Act* continues to apply in business to business transactions and is relevant to some consumer transactions. It is essential to be aware of the implied conditions by the *Sale of Goods Act, 1893* as they may form part of your rights or obligations when engaging in commercial transactions.

Implied terms are important because they allow contracts to function even when the parties did not include every possible scenario in the contract. For example, implied terms will allow you as the consumer to claim a remedy if the goods you purchase are not of an acceptable quality.

Brief History of Sale of Goods Act, 1893.

The Sale of Goods Act 1893 was an Act of the Parliament of the United Kingdom of Great Britain and Ireland which regulated contracts in which goods are sold and bought^[9]. Its purpose was to define the rights and duties of the parties (where not expressly defined in the agreement), while specifically preserving the relevance of ordinary contractual principles^[10]. The Act was drafted by Sir Mackenzie Chalmers, who later drafted the Marine Insurance Act of 1906. As noted by Lord Denning MR in the case of *Mihalis Angelos*^[11], wherein he adopted a division between conditions and warranties in terms of contracts, propounded by Sir Frederick Pollock in his book *Formation of Contracts*. This was followed by Fletcher Moulton LJ in a celebrated dissent in *Wallis, Son & Wells v Pratt & Haynes*^[12] and adopted by the House of Lords in the same case, which was cited as [1911] AC 394. The Sale of Goods Act 1893 is considered to be classic example of a codifying statute; that is, it draws on established judge made common law principles and converts them into a more accessible

statutory form^[13].

The Sale of Goods Act, 1893, an English Law adopted in Nigeria long before political independence as one of the statutes of general application in the country^[14]. Is the principal law which governs and regulate the Sale of Goods within the country, as is with a number of other statutes of general application, this statute has become outdated and out of tune with current realities of business and contractual transactions involving both movable and immovable properties. As such, certain of its provisions have become either moribund or inapplicable in given sets of circumstances^[15].

What Are Implied Terms

Implied terms in contracts are provisions that are not explicitly stated but are understood to exist within the agreement by virtue of law, trade usage, or the parties' intentions. These terms can play a crucial role in ensuring fairness and functionality in contractual relationships, especially when explicit terms do not cover every contingency or aspect of the agreement^[16]. An implied term is something that, in a given situation, the law may infer from the silence of the parties, and it would be reasonable to do so; it is something beyond the typical occurrences of the specific type of contract^[17]. However, unless the parties agree to change or omit it, the term "implied term" can be used to refer to a provision that is inherent in the nature of the contract and that the law will imply in every situation. Hypothetically an implied term can be seen in the description given by Per Mary Ukaego Peter-Odili, Jsc that: "It is important to note that the appellant cannot avoid accountability just because the agreement's implied terms regarding the property's physical transfer were not spelt out in stone. There is no getting around the parties' unambiguous covenant, which was made obvious by the exhibits that demonstrated what the parties meant the agreement to say. Stated differently, in the absence of the respondent's physical possession being transferred to them upon payment of the purchase price, there is no other way to explain the transaction. Additionally, the appellant has not provided a different explanation for the respondent's payment and subsequent receipt of the N300,000,000.00"^[18].

The Court of Appeal^[19] reiterated what an implied term in a contract is as follows in implying terms in facts the exercise involved is that of ascertaining the presumed intention of the parties collected from the words of the agreement and the surrounding circumstances. It must have been a term that went without saying, a term necessary to give business efficaciousness to the contract, a term which though tacit is part of the contract the parties made for themselves^[20]. When negotiating contracts, parties choose not just the content of the terms of the contract, but also the degree of completeness of the contract or how many specific terms and conditions will the contract define and cover in detail. All contracts are incomplete. No contract can cover every possible unknown future circumstance that might be relevant to the execution of the contract, but contracts can be complete^[21].

One strategy to save money on these kinds of transaction expenses is to rely on implied contract terms. Because certain provisions are legally assumed implicitly when a contract is entered into, implied contract terms allow the parties to forego discussing or writing down specific terms

in their agreements. By doing this, the contractual parties are relieved of the immediate expense of agreeing to these conditions as well as the worry that, should they remain unclear in the future, a disagreement over them will surface. Both parties gain from this since it frees them up to concentrate on other areas of the contract or lowers the total cost of the transaction. As a result, society as a whole gain from lower transaction costs since more economically advantageous transactions can be completed than would otherwise be possible with higher transaction costs^[22]. These terms are crucial for ensuring that the contract is executable and fair, filling in gaps that the written agreement does not explicitly cover. There are several types of implied terms, which can be categorized broadly into those implied by law, fact, custom, and previous dealings^[23]. Implied by Law certain terms are implied into contracts by statute or common law to uphold fairness and policy. For instance, in employment contracts, the law often implies a duty of mutual trust and confidence between employers and employees^[24]. Implied by Fact, these are terms are implied based on the circumstances surrounding the contract. They are necessary to give business efficacy to the contract (the contract wouldn't make sense without them) or are so obvious that they go without saying, as determined by the "officious bystander test" a hypothetical bystander suggesting a term to which the parties would immediately agree^[25]. Implied by Custom, if a term is widely recognized and expected within a particular industry, and it does not contradict the express terms of the contract, it may be implied. This reliance on industry standards ensures that the contractual obligations of the parties are consistent with industry norms^[26]. Implied by Previous Dealings, when parties have a history of dealing in a certain way, terms from their past dealings can be implied into their current contract. This assumes that the parties intended to follow their established patterns unless stated otherwise^[27].

An implied term of a contract is the opposite of an express term of a contract; therefore, an express term of a contract is one voluntarily entered into by parties upon negotiated and agreed terms and conditions and often reduced into written documents by the parties^[28]. An implied term of a contract on the other hand, is one which is assumed to exist or inferred from the actions, conduct and circumstances of the parties. An implied term is treated only for purpose of giving a remedy to a party whose action or conduct has benefited another in circumstances where without the remedy the benefiting party will be unfairly enriched by the action or service rendered by the other party^[29]. The burden is on the party asserting an implied term to prove an unjust enrichment by the other party and the necessity to imply a contract^[30]. The interpretation and enforcement of implied terms require careful consideration of the contract's nature, the relationship between the parties, and the context of their agreement. These terms are enforced to ensure that contracts are not only legally binding but also equitable and reflective of the parties' actual intentions^[31].

1. Implied Terms as Contained Under Sale of Goods Act

1.1 Stipulation as to Time

Section 10(1) of the SOGA Provide that unless a different intention appears from the terms of the contract stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is

of the essence of the contract or not depends on the terms of the contract. It went further and state that a month is a Contract of Sale means a calendar month^[32].

Typically, a contract for the sale of goods does not place a deadline on payment. Parties must express their desire for time to play a significant role in the agreement. According to Section 10 of the Sale of Goods Act, terms on the timing of payments are not considered to be essential to the terms of the sale of goods, unless they are made clear by the terms of the agreement. While the contract does not require timely payment, there are other aspects of performance where time is crucial, such delivery, shipment, or opening a letter of credit^[33]. Thus, in *Amadi v. Thomas Aplin and Co*^[34], the court held that failure of the ship to arrive as agreed was a breach of condition as to time.

1.2 Implied Undertaking as To Title

Generally, implied undertakings as to title deals with the condition of title which can be divided into three distinct parts. First part, deals with condition as to title (Right to Sell), the second part deals with warranty relating to quiet possession and the third parts touches the freedom from encumbrances. Section 12 of the Sale of Goods Act provide, thus: In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is

1. An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass. This in turn postulate that on the part of the seller that in the case of sale that he has the right to sell and in the case of agreement to sell, that he will have the right to sell at the time the property is to pass. A person to whom property has not pass would not have a right to sell. See the case of *Rowland v. Dival*.^[35]
2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods. See the case of *Neblet v. Confectioners Materials Co.*^[36] This means that if after the sale of the goods, the buyer's possession is disturbed by the lawful act of a third party/the wrongful act of the seller, there is a breach of this condition. In *Mason V Burningham*,^[37] the plaintiff bought a typewriter from the defendant which had been obtained by theft. He later had to return it to the initial owner. The court held that there was a breach of this section. As it was lawful for the previous owner to seek to recover it.
3. An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made. *Lloyds v. Scottish Ltd Modern Cars & Caravans*,^[38] it was held that Only those charges which the seller knows of shall implicate him. Where he is ignorant of the charges, he shall be excused.

1.3 Sale by Description

Under Section 13 SOGA, it provides that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be 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.

The Implied Condition as to sale by description may be represented as follows:

Where in a contract for sale, the buyer has specified the description of the goods to be bought, there is an implied condition that the goods shall correspond with the description so given^[39].

Description means those words in the contract which the parties intended to serve as an identifier of the kind of goods which were to be supplied. If the goods are of a different kind and do not correspond to the description of the goods in the contract, the buyer can fairly and reasonably refuse to accept the goods. This implied condition also operates when the sale is by sample as well as by description of the groups^[40].

In the case of *Andrews Brothers Ltd v Singer & Co Ltd*^[41] The seller sold the "New Singer Car" to the buyer. When the car was delivered, the buyer discovered that the car was not new. In such a situation, the buyer may reject the car.

1.4 Implied Conditions as To Quality or Fitness

This is provided for under section 14 of SOGA, that subject to the provisions of the Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose:
2. Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed:
3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade:
4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

The general rule is that there is no implied condition that the goods shall be fit for a particular purpose or as to the quality of the goods. However, there are certain exceptions to this rule^[42].

First exception

The implied condition is that the goods supplied by the seller are reasonably fit for the purpose which the buyer indicated to the seller.

Where the buyer, either through words or by his conduct, makes known to the seller the particular purpose for which he is buying the goods, in order to indicate that he is relying upon the skill or Judgment of the seller, and the goods are such that, the seller supplies them in the course of his business then the implied condition comes into effect. Importantly, the seller in this scenario need not be the manufacturer or producer of the said goods.

As it was clearly illustrated in the case of *Priest v Last* [43] the Buyer went to the chemist who sold hot water bottles and asked for a hot water bottle. The hot water bottle burst on being filled with boiling hot water and injured his wife. It was held that it is justified to assume that the goods were bought and sold for the purpose of being used as hot water bottles. The chemist as the seller of the hot water bottle will be liable to the buyer.

This implied condition does not operate however where the buyer does not rely upon the seller's skill and judgment., and enters into a contract for the sale of an article under its patent or trade name, relying upon his own skill and judgment There is no implied condition that the goods shall be fit for the purpose for which he needs them.

Second exception

Where the buyer describes the goods to be bought to the seller and the seller deals in goods that are of that description there is an implied condition that the goods shall be fit for sale and purchase be of merchantable quality.

Here too, the seller need not be the manufacturer or producer of the said goods.

This position is also illustrated in the case of *Watson v Buckley, Osborne, Garrett & Co. Ltd* [44]. Where the buyer went to the hairdressing establishment of the seller and had his hair dyed by the seller. The hair dye used was recommended as good hair dye by the seller. However, because of the use of the hair dye, the buyer contracted dermatitis. The buyer was held liable for damages.

However, if the goods have a defect(s) that are capable of being revealed by examination of the goods, and the buyer has examined the goods, there is no such implied condition.

Third exception

The third exception is that an implied condition about the fitness or quality of the goods may operate because of trade usage.

Fourth exception

The fourth exception is that just because certain express conditions are given in a contract, that does not mean that the implied conditions provided in the Act will not operate. However, if the express condition is inconsistent with the implied condition, then the express condition will prevail.

1.5 Sale by Sample

Sale by sample as contained under section 15(1) of SOGA is that a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect and that in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality or that there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample. It went further to state that there is an implied condition that the goods shall be free from any defect, rendering them un-merchantable,

which would not be apparent on reasonable examination of the sample.

Where the contract contains a term that the sale of goods is a sale by sample, it is considered to be a contract for sale by sample. In such a contract there are three implied conditions [45].

Firstly, there is an implied condition that the quality of the bulk of the goods shall correspond with the quality of the sample.

Secondly, there is an implied condition that a reasonable opportunity shall be given to the buyer to compare the bulk with the sample.

Thirdly, there is an implied condition that the goods should not have any defect which makes them unsuitable for sale or purchase. The defect should be of such a nature that it is not discernible on a reasonable examination of the sample.

For example, 5liters of coconut oil which was warranted as pure equal to sample. But was adulterated with 20 % of palm carnal oil. This would be a breach of the implied condition.

Recommendations

1. Review and Clarification, there is a need for a thorough review of the Sale of Goods Act to address ambiguities and inconsistencies in the language of implied terms. This would enhance clarity and facilitate more consistent interpretation and application by the courts.
2. Awareness and Education, stakeholders, including buyers, sellers, and legal practitioners, should be provided with comprehensive education and awareness programs regarding their rights and obligations under the Act. This would promote better understanding and compliance with the implied terms, reducing disputes and enhancing confidence in commercial transactions.
3. Access to Justice, efforts should be made to improve access to justice for parties seeking redress for breaches of implied terms under the Act. This could involve streamlining legal procedures, providing legal aid where necessary, and promoting alternative dispute resolution mechanisms to resolve disputes more efficiently.
4. Adaptation to Modern Commerce, given the significant changes in commercial practices and consumer expectations since the enactment of the Sale of Goods Act, consideration should be given to amending the legislation to address emerging issues, such as e-commerce transactions and digital goods. This would ensure that the implied terms remain relevant and effective in regulating modern commercial activities.
5. Monitoring and Enforcement, regulatory authorities should enhance monitoring and enforcement mechanisms to ensure compliance with the implied terms under the Act. This may involve conducting regular inspections, imposing sanctions for non-compliance, and fostering collaboration with relevant stakeholders to promote a culture of adherence to consumer protection standards.

By implementing these recommendations, Nigeria can strengthen the legal framework governing the sale of goods,

enhance consumer confidence, and promote fair and transparent commercial practices in line with international best practices.

Conclusion

This paper has undertaken a comprehensive critical examination of the implied terms under the Sale of Goods Act, 1893, revealing both its historical importance and its growing inadequacy in addressing the evolving demands of modern commercial transactions. As one of the most significant statutes in the regulation of contracts for the sale of goods, the Sale of Goods Act has provided foundational protection for buyers through its implied terms. These terms, including the seller's right to sell, the goods' correspondence with their descriptions, and the fitness for purpose of the goods, have long been central to the functioning of trade relationships. However, the analysis has demonstrated that while these provisions were relevant and effective at the time of the Act's enactment, they are increasingly out of step with contemporary commercial realities. The doctrinal methodology employed in this research has illuminated several critical gaps within the Sale of Goods Act, 1893, particularly in light of today's globalized economy, the rise of e-commerce, and technological advancements that were not foreseen when the Act was first drafted. While the Act's principles remain largely clear and concise, they fail to accommodate modern complexities such as online transactions, digital goods, and the nuanced nature of international trade. Additionally, the Act's provisions, which were once comprehensive, now appear outdated, as they do not account for the fast-paced developments in commercial practice that are prevalent in the current business environment.

One of the most significant challenges identified in this paper is the inconsistency in judicial interpretation of the implied terms under the Sale of Goods Act. Despite the statutory language, courts have occasionally taken divergent approaches to implied terms, leading to confusion and uncertainty in both business-to-business and business-to-consumer contexts. This inconsistent application has made it difficult for parties to predict the legal outcome of their transactions and has, in some cases, undermined the reliability of the legal framework. Moreover, the absence of a clear framework to address emerging issues such as the sale of digital products and services further compounds these difficulties, leaving gaps in consumer protection. The need for reform is evident. This paper has identified several areas where updates to the Sale of Goods Act are critical for its continued relevance. Among the most pressing reforms is the incorporation of provisions specifically tailored to the digital economy and e-commerce. The rise of online shopping, digital contracts, and the sale of intangible goods such as software and digital media necessitates the introduction of new statutory provisions that can address the unique challenges posed by these types of transactions. Furthermore, the globalization of trade calls for provisions that better protect international buyers and sellers, particularly in cross-border transactions where jurisdictional issues often complicate the enforcement of implied terms. To ensure that the Sale of Goods Act remains a robust legal framework, the paper recommends several key reforms. First, the Act should be amended to explicitly cover digital transactions, offering clearer guidelines for the sale of digital goods and services. These amendments should

provide specific protections for consumers in e-commerce settings, where the traditional concepts of "fitness for purpose" and "merchantable quality" may not always align with the nature of digital products. Second, the Sale of Goods Act should be updated to reflect the realities of international trade, providing clearer rules for cross-border sales and recognizing the increasing role of international trade agreements in shaping contractual obligations. This would ensure that the Act's implied terms remain applicable and effective in a globalized business environment. In addition to these legislative updates, the paper calls for greater clarity in judicial interpretation. To address the inconsistencies in how implied terms are applied, the Act should provide more detailed guidance on the interpretation of terms like "merchantable quality" and "fitness for purpose." A more uniform approach by the courts would reduce uncertainty and make it easier for both businesses and consumers to navigate their contractual obligations. The establishment of clearer guidelines would also ensure that implied terms can be more effectively enforced, thereby promoting fairness and predictability in commercial transactions.

Moreover, the research suggests that ongoing education and awareness initiatives are necessary to ensure that stakeholders whether they are buyers, sellers, or legal professionals fully understand their rights and obligations under the Sale of Goods Act. By fostering a greater understanding of implied terms, these educational efforts can help reduce disputes and enhance the overall effectiveness of the legal framework. It is also recommended that regulatory authorities take a more proactive role in monitoring compliance with the Act, ensuring that its provisions are applied consistently and fairly across various sectors. Ultimately, while the Sale of Goods Act, 1893, remains a cornerstone of commercial law, its continued effectiveness depends on its ability to adapt to changing commercial practices. The suggested reforms aim not only to address the current gaps and limitations within the Act but also to future-proof it, ensuring that it continues to serve as a comprehensive and relevant piece of legislation in an increasingly complex and digital global economy. By updating the Act to incorporate modern commercial realities, clarifying judicial interpretations, and enhancing consumer protections, the Sale of Goods Act can maintain its foundational role in regulating the sale of goods, while aligning with international best practices and contributing to a fairer and more transparent commercial environment.

Through these reforms, the Sale of Goods Act, 1893, can continue to protect the interests of both buyers and sellers, ensuring that it remains an indispensable tool in facilitating commerce and safeguarding consumer rights in the 21st century.

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