**Answer Guidance for Chapter 15 Practice Questions**

**1. ‘Given the breadth of the term implied by s 14(2) of the SGA 1979, it can be argued that the term implied by s 14(3) is no longer needed.’**

**Do you agree with this assertion? Give reasons for your answer.**

You should first set out and explain the terms contained in s 14(2) and 14(3) from which you should point out that ‘fitness for all the purposes for which goods of the kind in question are commonly supplied’ is one aspect of quality contained in s 14(2B)(a).

Section 14(3) provides that where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller (or where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker) any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.

You should explain that there is a degree of overlap between the two subsections and that goods deemed not fit for purpose could also be regarded as of unsatisfactory quality and, indeed, it is common to plead a breach of both implied terms. However, there are two crucial differences between them. First, the term implied by s 14(3) relates to ‘any particular purpose for which the goods are being bought’, whereas s 14(2) is more concerned with ‘fitness for all the purposes for which goods of the kind in question are commonly supplied’.

The practical difference between particular and common purposes was discussed by the Court of Appeal in *Jewson Ltd v Boyhan* [2003] EWCA Civ 1030. Boyhan, a property developer, acquired a building that he intended to convert into flats, which were then to be sold. Individual heating boilers needed to be installed in the flats, but it would have been prohibitively expensive to install gas boilers. Boyhan contacted Jewson Ltd, a builders’ merchant, who recommended a particular type of electric boiler. Relying on this, Boyhan purchased a number of boilers from Jewson, and they appeared to work well. However, it transpired that the boilers reduced the SAP rating of the flats to an unacceptable level, which made the flats less attractive to potential buyers. Boyhan therefore refused to pay for the boilers, alleging that they breached the terms implied by s 14(2) and (3). Jewson sued to recover the cost of the boilers. The claim succeeded. As the boilers functioned perfectly well as boilers, there was no breach of the term implied by s 14(2). Boyhan had not communicated to Jewson the need to have a low SAP rating, so there was also no breach of the term implied by s 14(3). As to the relationship between the two subsections, Clarke LJ explained that the function of s 14(2), by contrast with s 14(3), is to establish a general standard of quality which goods are required to reach. It is not designed to ensure that goods are fit for a particular purpose made known to the seller. That is the function of section 14(3).

You should also explain that each term is subject to limitations that the other is not subject to. First, the term implied by s 14(3) will not be implied where the buyer does not rely on the seller’s skill and judgment, or where it would be unreasonable to rely on such judgment. The term implied by s 14(2) is not subject to these limitations. Secondly, the express limitations on the term implied by s 14(2) found in s 14(2C) do not apply to the term implied by s 14(3).

You should also point out that if the buyer wishes goods of a higher than satisfactory quality, irrespective of the price agreed, then he should set this out in the contract (Phoenix Interior Design Ltd v Henley Homes PLC and Union Street Holdings Ltd [2021] EWHC 1573 (QB)).

**2. ComCorp Ltd purchases twenty pine office cabinets from Homeware Ltd, after viewing a sample cabinet in Homeware’s factory. Upon delivery of the goods, Lee, a director of ComCorp, notices some minor scratches on the rear of one of the cabinets. It is also discovered that the cabinets are made from oak, not pine, although this makes no practical difference to ComCorp or to the users of the cabinets.**

**Lee also purchases a new washing machine from his local branch of ElectroMart Ltd, who agree to deliver it to Lee’s home. On the way home, Lee stops at his local branch of BuyPhone Ltd and purchases a new mobile phone. Upon returning home, Lee removes his phone from the box in order to charge it up. He notices that the glass screen of the phone contains a number of small scratches, but the phone functions perfectly. ElectroMart deliver and install the washing machine as promised. Lee uses the machine to wash a batch of assorted clothing, including an antique sixteenth-century tablecloth. The washing machine contains a defective drum, which causes the machine to shake violently and leak, flooding Lee’s kitchen and severely scratching the cabinets surrounding it. It also transpires that the antique tablecloth has been damaged during the wash. No other clothing was damaged.**

**Discuss to what extent the sellers have breached any of the statutory terms and what possible remedies might be available.**

This is a typical problem question examining the terms implied by ss 12 – 15 of the Sale of Goods Act 1979 and the terms to be treated as included in the contract ss 9 – 11 of the Consumer Rights Act 2015.

The 1979 regime will be relevant to the goods purchased by ComCorp whereas the 2015 Act will apply to the goods Lee purchased privately.

The goods purchased by Comcorp

You should explain at the outset that these terms will only be implied into a contract of sale, that is, a contract which satisfies the requirements in s 2(1) SGA, which provides that a contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Provided it is a contract of sale then the implied terms are statutorily implied by the SGA.

The next point to explain is that some of these terms will only be implied in cases where the seller sells the goods in the course of a business. You should then explain that the phrase ‘in the course of a business’ is a wide one and will cover sales that are integral to the business, incidental sales that are regularly carried out, and one-off sales. Further, as the phrase ‘a business’ is used, the sale need not relate to the actual business that is engaged in. The courts’ liberal and purposive interpretation of the phrase can be seen in *Stevenson v Rogers* [1999] QB 1028. For over twenty years, Rogers had engaged in business as a fisherman. In 1983, he purchased a second fishing boat, the Jelle and, in 1986, he sold his first fishing boat, the Dolly Mopp. In 1988, after deciding to have a new custom-made boat built, he sold the Jelle to Stevenson. Stevenson contended that the boat was not of satisfactory quality. Rogers countered that the boat was not sold in the course of a business and therefore did not need to be. At first instance, the judge held that the sale was not in the course of a business as it was not an integral part of his business as a fisherman. Stevenson’s appeal was allowed. The Court of Appeal held that the sale was in the course of a business. Potter LJ stated that the words in s 14(2) should be construed ‘at their wide face value’ and that there was no reason to ‘reintroduce some implied qualification... in order to narrow what appears to be the wide scope and apparent purpose of the words, which is to distinguish between a sale made in the course of a seller's business and a purely private sale of goods’. Thus, a sale will almost always be in the course of a business unless it is a purely private sale outside the confines of a business carried on by the seller.

The pine cabinets

Discuss the effect of ComCorp viewing a sample cabinet in Homeware’s factory. Does this make it a sale by sample to which s 15 would apply? A sale by sample is defined in the following terms: ‘[a] contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract’ (s 15(1)). Accordingly, the mere fact that the seller has exhibited a sample of the goods to the buyer, for example, by displaying them in a shop window will not usually, in itself, make the sale one by sample. A seller may produce samples merely to indicate the nature of the goods and may not intend the sample to be compared to the bulk. In order for a sale to be one by sample, it will need to be shown that, objectively, the parties intended the sale to be one by sample, or that the sample was intended to form a basis of comparison for the bulk. This could occur in several ways, for example, the contract may contain an express term stating that the sale is one by sample, or stating that the bulk must correspond to the sample. In such a case, the contract will almost certainly be a sale by sample. Alternatively, even in the absence of an express term, it may be the case that a particular trade or custom indicates that sales by sample are normal practice. It seems that in this case, the sale of the cabinets was not a sale by sample. However, if it was a sale by description they must match the description and as the seller sold them in the course of a business they must also be of satisfactory quality and fit for purpose. You then need to apply the relevant provisions and cases.

You should also explain the effect of s 15A. A buyer who does not deal as a consumer and who would otherwise have the right to reject the goods following a breach of the terms implied by ss 13 to 15 will not be permitted to do so if the breach is so slight that it would be unreasonable for him to reject them (s 15A(1)) and that this is the position unless a contrary intention appears in, or is to be implied from, the contract (s 15A(2)). As Lee appears to be a consumer buyer then this restriction will not affect him.

Lee’s purchases

If the question doesn’t state the contract date then the transaction could either fall under the SGA or, if it is after 1 October 2015, the CRA. Both regimes should be discussed.

We will start with the SGA.

(a) The washing machine

This was sold in the course of a business and therefore needs to be of satisfactory quality and fit for purpose. As it had been fitted with a defective drum which caused it to shake violently and leak, it appears not to be satisfactory or fit for purpose. The machine flooded Lee’s kitchen and severely scratched the cabinets surrounding it. Provided that Lee has not accepted the machine within the meaning of s 35, Lee would be entitled to reject the machine for breach of s 14(2) and 14(3) and to sue for damages. His losses would include the damage to the flooring and cabinets. The machine also damaged Lee’s antique tablecloth although no other clothing was damaged. We don't know whether or not the tablecloth was suitable for machine washing. If it wasn’t, then no claim can lie against ElectroMart. There is no evidence that Lee communicated a particular purpose for his intended use of the machine (i.e. to wash an antique tablecloth) and therefore the term in s 14(3) will not be implied into their contract (Griffiths v Peter Conway Ltd [1939] 1 All ER 685).

The telephone

The telephone has a number of “small scratches” on the screen but otherwise it functions perfectly. As the phone functions perfectly then there is no question of a breach of s 14(3) as it is clearly fit for purpose. But, are the small scratches sufficient to render the phone unsatisfactory and in breach of s 14(2)? The goods need only be “satisfactory” and not necessarily “perfect” although s 14(2B)(c) provides that the goods should be free from minor defects.

You should point out that originally, the Law Commission recommended that ‘appearance, finish and freedom from minor defects’ should be regarded as one aspect of quality (Law Commission, *Sale and Supply of Goods* (Working Paper No 58, 1983), para 4.15). However, the Law Commission became concerned that this could be interpreted to mean that the minor defect was one that must relate to appearance or finish, and so it instead recommended that the two matters be separated (Law Commission, *Sale and Supply of Goods* (Law Com No 160, 1987), paras 3.38–3.39). Historically, the courts adopted a usability test, under which goods that remained usable would not be regarded as unmerchantable, even if they contained minor (or, in some cases, not so minor) defects. However, s 14(2B)(c) makes it clear that this is no longer the case and goods may be unsatisfactory if minor defects are present. It does not matter that these minor defects can be quickly or easily remedied and this will not be enough to render the goods satisfactory *(Jackson v Rotax Motor and Cycle Co Ltd* [1910] 2 KB 937; *Rogers v Parish (Scarborough) Ltd* [1987] QB 933).

*If the goods were purchased on or after 1 October 2015*

A sale made between a trader and consumer on or after 1 October 2015 falls under the CRA 2105. The following sections need to be considered.

* Section 9 - goods to be of satisfactory quality. This is similar in effect to the corresponding implied term in s 14(2) SGA.
* Section 10 - goods to be fit for particular purpose. This is similar in effect to the corresponding implied term in s 14(3) SGA.
* Section 11 - goods to be as described. This is similar in effect to the corresponding implied term in s 13 SGA.

The key difference between the two regimes is the remedies available to the buyer.

As Lee is a consumer, the following remedies need to be discussed. Insofar as the requirement for the goods to be of satisfactory quality (s 9), fit for particular purpose (s 10) and as described (s 11), the buyer will have a short-term right to reject (ss 20-22), a right to repair or replacement of the goods (s 23) and a right to a price reduction or the final right to reject (s 24).

If the breach of the statutory right arises in the first 6 months from delivery, it is presumed to have been present at the time of delivery unless the trader proves otherwise or this presumption is incompatible with the nature of the goods or the particular breach or fault. This applies where the consumer exercises their right to a repair or replacement or their right to a price reduction or the final right to reject but not where the consumer exercises their short-term right to reject (ss 19(14) and (15)).