Consumer Rights Act 2015 sets out the obligations to traders (sellers) and consumers (individuals purchasing items). There are a range of statutory rights that are included in every contract made between these parties, including section 9 which requires goods to be of satisfactory quality.

9. - Goods to be of satisfactory quality

(1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

(2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—
   a. any description of the goods,
   b. the price or other consideration for the goods (if relevant), and
   c. all the other relevant circumstances.

(3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—
   a. fitness for all the purposes for which goods of that kind are usually supplied;
   b. appearance and finish;
   c. freedom from minor defects;
   d. safety;
   e. durability.

(4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory—
   a. which is specifically drawn to the consumer’s attention before the contract is made,
   b. where the consumer examines the goods before the contract is made, which that examination ought to reveal, or
   c. in the case of a contract to supply goods by sample, which would have been apparent on a reasonable examination of the sample.

This provision applies to all contracts between consumers and sellers across England and Wales. Explain what this provision means for sellers, considering generally the extent of their duty, and specifically the four following issues:

1) What does ‘satisfactory’ mean?
2) Can you provide some examples of “other relevant considerations” in subsection 2(c)?
3) What does “fitness for all the purposes for which goods of that kind are usually supplied” in subsection 3(a) mean? Can you provide some examples of when this section would and would not apply?
4) In what circumstances would the exception in subsection 4(b) apply?

This answer was written by a PhD student with an interest in this area of law.
Introduction

The Consumer Rights Act 2015 (UK) (‘the Act’) came into force on 1 October 2015 and made significant changes to the consumer law landscape in the United Kingdom. This essay will focus on one of the most important provisions in this Act, section 9 – the obligation for goods to be of satisfactory quality. The essay will discuss the scope of section 9, the definition of satisfactory, the meaning of ‘other relevant considerations’ and ‘fitness for purpose’, and finish by discussing the exception that arises when a buyer has an opportunity to examine the goods before purchasing. It will then finish by discussing how the Act balances the rights of consumers with that of businesses to create an effective legal regime for consumer purchases in the UK.

Scope of Section 9

The Act creates a number of protections for consumers when purchasing goods, services or digital content from traders. A ‘trader’ is defined as a person acting for the purposes of their ‘trade, business, craft or profession’. For example, all commercial shops and premises would be considered ‘traders’ and therefore be covered by the obligations under the Act. Government departments, and local and public authorities are also covered by the Act. A ‘consumer’ is defined as an individual acting for purposes ‘wholly or mainly outside that individual’s trade, business, craft for profession’. If the trader wants to argue that the buyer is not covered by the definition of ‘consumer’, they have the burden of proof.

The definitions in the Act distinguish between personal and business reasons for making purchases. For example, if I purchased milk to take home and drink with my family, that would be a personal reason and therefore I would be covered under the Act. If, however, I buy the milk (even the same milk from the same store) as part of my employment obligations and take it to work, I would not be covered by the protections of the Act. If I entered into a ‘dual purpose’ contract (i.e. I purchased two pints of milk – half to be used at work and half to be taken home), the entire transaction would be covered by the Act.

Under section 9, every contract to supply goods is to be treated as including a term requiring that the ‘quality of the goods is satisfactory’. This means that the term will be implied into the contract between the seller and trader, even if it is not actually included. This is very useful, because when buying goods from shops, it is rare for there to be a written contract between the parties. If there is a contract, consumers often do not read the document. Having this section implied into all contracts mean that businesses cannot take advantage of the fact that people do not have the time, energy or ability to read the contracts in which they are entering.

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1 Consumer Rights Act 2015 (UK), s 2(2).
2 Consumer Rights Act 2015 (UK), s 2(7).
3 Consumer Rights Act 2015 (UK), s 2(3). A person will not be a ‘consumer’ if the sale occurs at a public auction, the items are second hand and there was the opportunity to attend the sale in person: Consumer Rights Act 2015 (UK), s 2(5).
4 Consumer Rights Act 2015 (UK), s 2(4).
7 Consumer Rights Act 2015 (UK), s 9(1).
Definition of ‘Satisfactory’

Whilst the Act is a relatively new piece of legislation and has been described as the ‘biggest overhaul of consumer rights in a generation’,9 there has been a duty to ensure goods sold are of a satisfactory quality in the UK since 1979. This obligation was included in the Sale of Goods Act 1979 (section 14) and the Supply of Goods and Services Act 1982 (section 9). ‘Satisfactory quality’ is defined in the Act as meeting ‘the standard that a reasonable person would consider satisfactory’.10 To determine this, the court should consider any description of the goods11 and the price or other consideration for the goods.12 Unfortunately ‘satisfactory’ is not defined in the Act. As there is a lack of definition provided, the courts can consider the dictionary definition of the word to provide guidance.13 In this instance, however, the dictionary definitions in both the Oxford English Dictionary14 and the Collins English Dictionary15 are not particularly helpful.

The term ‘satisfactory’ has specifically been kept vague as it needs to apply to a wide variety of different goods. By not providing more specific information on the obligation, the legislation allows the courts to consider what is ‘satisfactory’ for a reasonable person on a case-by-case basis. Providing a more detailed definition would have been difficult and may, in fact, have proved harmful to the court’s discretion. What is ‘satisfactory’ for a toaster is not going to the same as what is ‘satisfactory’ for a haircut or an i-Tunes download. This approach is reflected in the cases. For example, in Tullis Russell Papermakers Limited v Inveresk Limited,16 it was held that in determining ‘satisfactory’, the courts should consider what is ‘normal’ in that specific industry.

As well as providing a vague definition, the legislation has also actively invites the courts to consider the matter on an individual basis, by stating that it can consider ‘all other relevant circumstances’. Whilst this is an exceptionally wide provision, it specifically includes any public statement about the specific characteristics of the goods.17 Similar to the vagueness of ‘satisfactory’ discussed above, the ‘all relevant circumstances’ allows courts to look at the item in question on a case-by case basis. In Kelly v Andersons House Furnishers (Inverurie) Ltd Sheriff Court18 when considering other relevant factors, in the context of an expensive three-piece leather suite, the Sheriff also looked at the long term use of the suite and its general function. In line with this case and section 9(5), other relevant factors may include the type of store in which the item was purchased, any prior advertising of the item and the characteristics of the group who is reasonably likely to purchase the item.

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10 Consumer Rights Act 2015 (UK), s 9(2).
11 Consumer Rights Act 2015 (UK), s 9(2)(a).
12 Consumer Rights Act 2015 (UK), s 9(2)(b). There is also a third factor ‘all other relevant considerations’, but this is discussed in the below section.
14 Online version used and the relevant definition obtained was ‘sufficient for the needs of the case, adequate’.
15 Online version used and the relevant definition obtained was ‘adequate or suitable; acceptable’ [2010] CSOH 148 at [58].
16 Consumer Rights Act 2015 (UK), s 9(5).
'Fitness for Purposes'

A factor for the courts to consider when determining the quality of the item is whether it is fit for all the purposes for which goods of that kind are usually supplied. This provision highlights that goods can often be sold for multiple purposes, and that they need to be appropriate for all the purposes for which they are usually supplied. I will use two examples to highlight how this may and may not apply.

The first is regarding food. Food is usually supplied to be eaten by the purchaser, however it may be eaten in numerous different manners and combinations. In the case of Wood v TUI Travel Plc T/A First Choice Lord Justice Burnett held that buffet food at a holiday venue was not fit for purpose when it resulted in the husband and wife claimants suffering acute gastroenteritis from food poisoning. However, if food is used in an unusual manner, it will not be for a purchase usually supplied. For example, if someone irrationally believes that placing raw meat on open wounds will heal them quicker, they are unlikely to be successful in an action against the trader for any infection that may result. This is because meat is not usually supplied to be put onto open wounds.

The second example is focused on cars. In R&B Customs Brokers Co Ltd v United Dominions Trust Ltd, the court held that a second-hand car with a leaking roof was not fit for the purpose in which cars are usually used, namely to be driven on English roads. If a car was however to be purchased and used as a getaway car for a bank robbery, the purchaser could not make a claim against the trader on the grounds that it did not go fast enough to get away from the police. This is because cars are not usually supplied to be used as part of the commission of a crime, therefore it does not matter whether the vehicle was not fit for this purpose.

Examination of Goods

Section 9(4) provides some exceptions to the obligation that goods are of satisfactory quality. This includes where the consumer has the opportunity to examine the goods before the contract is made, and that examination ought to reveal the unsatisfactory nature. As people have the opportunity to examine most items before they make a purchase (excluding, obviously, purchases made over the internet), the focus is on the second part of the requirement.

In determining whether the examination ought to have revealed the unsatisfactory nature, there will generally be a requirement for the trader to take some steps to bring the issue to the attention of the consumer. Whilst the specific issue does not need to be flagged, the trader will need to bring to the attention of the consumer that the item may be of a lower quality. For example, if the item is included a part of a ‘factory merchandise’, ‘seconds’, ‘reduced’ or ‘refurbished’ line of products and the consumer has an opportunity to examine the goods, then the exception is likely to apply.

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19 Consumer Rights Act, s 9(3)(a).
20 [2017] EWCA Civ 11.
23 Meadowbank Vac Alloys Limited v Eurokey Recycling Limited, Unreported, High Court of Justice Queen's Bench Division Manchester District Registry (16 May 2016), [63].
Concluding Thoughts

Section 9 places a duty on all traders to ensure that what they are selling is of the quality that the public are reasonably entitled to expect. The basic obligation for sellers to ensure goods are of ‘satisfactory’ quality has clearly been an effective model, as this obligation has been part of the English landscape since 1979 and the test remains largely unchanged during this time.\(^{24}\) In the United Kingdom, we want a legal system that provides adequate protection for people when they make purchases. On the other hand, we do not want to place undue burdens on businesses and limit marketplace efficiency, as that is frustrating for sellers and increases the costs of goods for everyone. The Consumer Rights Act 2015 is a great example of a balancing act between creating and enforcing rights for individuals on one hand and not avoiding unreasonably obligations on the market place on the other. To conclude, the Act is a valuable and helpful piece of legislation that protects individuals against unfair or exploitative selling practices. This essay has highlighted that the legislation, whilst creating significant protections for consumers, also balances the obligations so that they do not become too onerous on sellers.

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