

COMMERCIAL LAW 1

SALE OF GOODS

DEFINITION:

The Sale of Goods Act, 1893 defines a contract of sale of goods as a contract whereby the seller **transfers** or **agrees** to transfer the property in goods to the buyer for a monetary consideration called **price**, see Sec 1 SGA 1893.

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called sale; but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the ownership of the goods is to pass. For e.g. if Ben buys a car, the ownership of the car will in the absence of any contrary agreement pass to him immediately the contract is made. Such an agreement will be a sale but suppose Ben orders a car to be manufactured according to his own specifications and design, the ownership of the car in this case will not pass to him until the car has been manufactured accordingly. Such a transaction is an agreement to sell which would become a sale when the car is manufactured.

ABSOLUTE AND CONDITIONAL SALES

Absolute sale refers to sale where the parties involved are bound by the contract and cannot withdraw or rescind it without committing a breach of contract. Each party is required to perform his/her obligations under the contract or such obligations as may be required under the Act. Absolute contract may in certain circumstances not be binding if the contract is invalid by reason of mistake or if the contract is frustrated as in the case of perishable goods.

Conditional sale on the other hand refers to sale which is intended to be binding on the parties and to pass property in the good which is transferred on the occurrence of the stipulated event or circumstance. At common law, such conditions may be precedent if the performance of the condition must precede the effectiveness of the contract. It is a condition subsequent if the contract will not be valid and binding until the event or circumstance occurs there, see RE DEBESTER (1921) 1 AC 774.

TERMS OF CONTRACT OF SALE

1. **Representation:** These are statements made before or at the time of making the contract. When a statement is made by the seller of goods to the buyer relating to the goods which helps to convince the buyer to enter into the contract, it may be a mere representation or a term of the contract. Under the common law, a mere representation does not give rise to any liability. If a statement is made at the time of the contract and not during negotiations, it is likely to be treated by the court as a term of the contract, however all depends on the intention of the parties, see Oscar Chess ltd vs. Williams (1957) 1 WLR 570.
2. **Conditions and Warranties:** A condition is an obligation under a contract which goes to the root of the contract. A warranty on the other hand is not so vital and a failure to perform it does not go to the substance of the contract. See Sec 11 SGA, see also Sec 62 SGA. Whether a statement is a condition or warranty depends on the construction of the contract, also the intention of the parties. In Harling vs. Eddy (1951) 2 KB 739. Owner of a heifer at an auction sale stated "I guarantee here in every respect and promise to take the animal back if not good" it was held that while those words amounted to a warranty; the judge found out as a fact that the defendant went further to say that he would take the animal back if it turns out to be bad and this amounted to a condition.

Breach of a condition entitles the innocent party to treat the contract as repudiated while breach of warranty entitles the party to claim for damages and not to reject the goods and treat the contract as repudiated, see Sec 11 SGA. In other words, a breach of condition entitles the buyer to reject the goods or to refuse to pay the price or if he has paid the price to recover it.

Note that an innocent party may decide to treat the breach of condition as a breach of warranty and then claim damages, see sec 11 (1) (b).

Note also that if the contract is not severable, the acceptance of any part of it will prevent any right of rejection, also sec 11 (1) (c) precludes rejection where the contract is for the sale of specific goods of the property which has passed to the buyer.

3. **Fundamental Terms and Exemption Clauses:** It is a common commercial practice for a contract to contain certain express terms

whereby the parties may limit or exclude liability for breach of contract or negligence arising from the performance of the contract, see sec 55 SGA.

Most times a seller seeks to protect himself by inserting in the contract exemption clauses excluding his liability for breach of conditions and warranties, they may appear in small print at the back of the contract and the buyer may not have read them or if he did, he may not have understood them. In this regard, courts have tried to mitigate their injustice by resorting to any loophole. In Andrews ltd vs. Singer & Co ltd (1934) 1 KB 17 a buyer ordered new singer cars from the manufacturers. A clause in the contract of sale excluded all warranties, conditions and liabilities implied by statute, common law or otherwise. One of the cars delivered was an old car. The seller was held liable because the term new singer car was an express and not an implied term.

Under the doctrine of fundamental term, no person is allowed to hide under the provisions of an exemption clause if the breach of the contract is sustained and affects the very purpose of the contract, see Karsales (Harrow) ltd vs. Wallis (1956) 1 WLR 936, (1956) 2 ALLER 866.

PERFORMANCE OF THE CONTRACT OF SALE

Performance refers to the delivery of goods by the seller to the buyer and payment of the purchase price by the buyer to the seller. The main objective of Contract of Sale is to transfer property from seller to buyer and the strongest proof is delivery of the goods to the buyer.

By sec 27 SGA, it is the duty of the seller to deliver the goods to the buyer and of the buyer to accept and pay for them in accordance with the terms of the contract. Unless there is an agreement to the contrary, the delivery of goods and payments of price are conditions. The buyer must be ready and willingly to pay the price in exchange for possession of goods. Both parties are under a duty to fulfill all other respective obligations in accordance with the terms of the contract. Three things are involved; delivery of goods by the seller, acceptance and payment by the buyer.

Delivery is defined by the Act as voluntary transfer of possession from one party to another, see sec 62 (1) SGA. In Bijou (Nig) ltd v Osidarohwo W.O (1992) 6 NWLR (pt 249) 463, it was held "if there is a contract whereby one party undertakes to supply the other with goods at a stipulated price, the seller is bound

to deliver the goods and the buyer upon accepting delivery of the goods is bound to pay the purchase price of the goods.

Delivery is essentially a matter of agreement between the parties and in the absence of any agreement, the rules as outlined in Sec 29 SGA will apply.

METHODS OF DELIVERY

1. Actual or physical transfer of goods
2. Delivery of means of control over the goods e.g. keys
3. By allotment e.g. where goods are in possession of a third party who acknowledges that he holds on the buyers behalf.
4. Delivery of document of title.
5. Constructive delivery
6. Where seller holds the goods as buyer's agent or bailee.

PLACE OF DELIVERY

Unless there is an agreement to the contrary, the place of delivery is at the seller's place of business or at his residence but in the case of specific goods, delivery must be at the place where the goods are unless there is agreement to the contrary, see sec 29 (1).

TIME OF DELIVERY

Delivery must take place within a reasonable time and this depends on the circumstances of each case. Time of delivery is usually of essence in commercial agreement and therefore adequate terms should be included in the contract of sale to protect the seller in the event of his inability to perform the terms of the contract sec 29 (2) see Mazin Eng. Ltd vs. Tower Aluminum (1993) 5 NWLR (pt 295) 526, 526.

DELIVERY OF WRONG QUANTITY

Where the seller delivers a lesser quantity to the buyer, the buyer can reject the goods but where he accepts the quantity supplied, he must pay for them at the contract rate.

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Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If he accepts the whole of the goods delivered, he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or he may reject the whole. See sec 30 SGA see Behrend & Co Ltd v Produce Brokers Co Ltd (1920) 3 KB 530. Although the wording of sec 30 is to the effect that the buyer reserves the right to reject delivery of goods of a quantity or description different from what was agreed upon, the courts have interpreted this differently in Shipton Anderson and Co Ltd vs. Weil Bros (1912) 1 KB 574. Here the buyers rejected the whole cargo exclusively on the ground that the quantity delivered was in excess of the contract quantity. It was held that as the quantity in excess was so trivial and the sellers had not claimed the price thereof, the sellers had substantially performed the contract and the buyers were not entitled to reject the goods.

DELIVERY BY INSTALLMENTS

Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installment. Where the goods are delivered by installment which are to be paid for separately and the seller made defective delivery in some of the installments, the question whether the breach amounts to repudiation or only to damage is a matter of circumstance of each case, see Sec 31 SGA, 32 SGL – Section 31 provides that the buyer is not bound to accept delivery by installment unless agreed upon by the parties, any breach on a particular installment may result in repudiation of the contract or payment of compensation by the erring party depending on the circumstances of the case, see Robert A. Munro & Co Ltd v Meyer (1930) 2 KB 312, Hartley vs. Hymans (1920) 3 KB 475.

Where the parties have not agreed on delivery by installment, the buyer can either reject delivery or accept such delivery and be bound by it, see Jackson vs. Rotax Motor & Cycle Co (1910) 2 KB 937.

DELIVERY BY CARRIER

Whether the carrier is named by the buyer or not, delivery to the carrier is delivery to the buyer, SEE NADS IMPERIAL PHARMACY VS SIENS QLUSE & SONS

& ANR (1959) LLR 21, it was held by the court that delivery to the carrier is delivery to the buyer. This presumption of delivery may be rebutted if the seller selling the goods makes out the Bill of Lading to himself or his own agent, see Sec 32 (1) SGA, S 33 (2) SGL. Section 33 SGA provides that where the seller of goods agrees to deliver them at his own risk at a place other than that where they are sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incidental to the course of transit.

CONTRACT OF CARRIAGE

Sec 32 (2) SGA, S 33 (2) SGL.

The seller must make contract of carriage on behalf of the buyer as may be reasonable, see Thomas Young and Sons ltd vs. Hobson & Partners (1949) 65 TLR 363. In order for the delivery to the carrier to be deemed delivery to the buyer, the seller must make the contract of carriage on behalf of the buyer, therefore signifying that possession has been transferred to the buyer. When the seller fails to do this, by virtue of sec 32 (2), delivery to the carrier will not be deemed delivery to the buyer. Here the seller of electric engine agreed to sell it to the buyer by rent. They were sent at owner's risk but the goods would have been sent at the buyer's risk if there were proper negotiations and the goods were damaged. The court held that: 1) The seller failed to make a reasonable contract of carriage and 2) The buyer could reject.

Note that a buyer may have claim against the seller if the goods that were sent to him arrived in a defective condition in the following cases:

1. If the seller's agreement to send the goods at his own risk and deterioration were not necessarily incidental to the journey, see Sec 33 SGA, sec 34 SGL.
2. If the seller is in breach of Sec 14 SGA or Sec 15 SGL that is implied condition as to quality and fitness.
3. If the seller has failed to make a reasonable contract of carriage, see Sec 32 (2) SGA, sec 33 SGL.
4. If the journey is by sea and the seller has failed to give the buyer particulars to enable the buyer insure see sec 32(3) SGA, sec 33(3) SGL.

EXAMINATION AND ACCEPTANCE

A buyer is not deemed to have accepted unless and until he has had a reasonable opportunity to examine them to ascertain whether the goods conform with the contract see Sec 34 SGA, sec 35 SGL.

Acceptance can be in any of these three ways: 1) By intimating the seller of accepting the goods,

2) By doing acts inconsistent with the right of ownership of the seller,

3) By retaining the goods after a reasonable time of examination see Sec 35 SGA, sec 36 SGL. In Ignobis Hotels ltd v. Bentec Elect ltd (2015) 1 NWLR pt 1441, 570 C.A.

It was stated that by virtue of sec 35 SGA 1893, the buyer is deemed to have accepted the goods when he intimates the seller that he has accepted them or when the goods have been delivered to him, and he does anything in relation to them which is inconsistent with the ownership of the seller or when after a lapse of a reasonable time he returns the goods without intimating the seller that he had rejected them.

CONSEQUENCES OF ACCEPTANCE

The buyer loses the right to reject the goods for breach of condition see Sec 11 (1) SGA, sec 12 (1) SGL. Note that buyer can reject the part which does not conform to contract description, see Sec 30 SGA, sec 30 SGL. The question whether a buyer is deemed to have accepted the goods by either intimating acceptance or doing some acts after delivery inconsistent with the seller's ownership before he has a reasonable opportunity to inspect was answered in the case of HARDY DE & CO V HILLERNS & FOWLER (1923) 2 KB 490. The sellers of wheat sent it to the buyer under the contract and the goods arrived in 3 days, later the buyer sold part of it to a third party. 2 days thereafter it was discovered that the goods did not conform to the terms of the contract. The court held that the sale was an act inconsistent with the seller's ownership and accordingly, the buyer had accepted and lost the right to reject, see also DANJUMA VS STANDARD CO LTD (1922) 4 NLR 52. The plaintiff supplied to the defendants for export but were left with the defendants for several weeks unexamined, see general WEST

AFRICAN IMPORT & EXPORT CO VS JASSER (1939) 15 LLR 21,
HARDY & CO VS HILLERNS & FOWLER.

Therefore if the buyer has an opportunity to examine the goods but does not

do so, he/she is deemed to have waived the right to examine them and the seller will not be liable for any defects discovered afterwards. Although it is not clear what constitutes a reasonable opportunity, it can be suggested from the above cases that reasonable opportunity will expire once the buyer purports to transit property in the goods to a third party which is an act inconsistent with the ownership of the seller under sec 35.

PLACE OF EXAMINATION

Place of examination is the same as place of delivery see E&S RUBEN LTD VS FAIR BROS & CO (1949) 1 ALLER 215. Here the buyer bought rubber materials for making tyres. The buyer sold them to sub buyer and he instructed the seller to deliver them to the sub buyer who subsequently rejected the goods for breach of condition as they were not as described. The buyer sought to do same, it was held that:

1. The place of examination and delivery was the seller's place of business.
2. When the buyer instructed the seller to deliver to the sub buyer, they had constructively taken delivery.
3. The delivery to the sub buyer done by the seller as agent of the buyer was an act inconsistent with the seller's ownership.
4. Although the buyer has the right to reject, they had accepted the goods and so they could not reject for breach of condition. The result is the same where the buyer instructs the seller to deliver to the carrier.

COST INSURANCE FREIGHT

CIF contract is a type of contract for the sale of goods in which the contract price includes cost, insurance and freight. It is an international shipping agreement used when freight is shipped through sea or waterway. In summary, it is the transfer of title and associated risks in international sale of goods and shipping contracts. Acceptance of shipping doctrine does not

prevent the buyer from rejecting the goods if found not conforming to the terms of the contract.

Where goods are rejected because they are not in terms with the contract or defective, the buyer is not bound to send them back to the seller, it is sufficient to inform him of the rejection.

Payment: The buyer must pay the purchase price in return for delivery but there is one exception to this, if the goods still in possession of the seller are destroyed before risk has passed to the buyer.

DUTIES OF THE SELLER

While the buyer has a duty to accept the goods and pay the price, as discussed earlier, the seller has the duty to deliver goods at the right time, pass good title and as well supply goods of the right quality.

DUTY TO DELIVER GOODS AT THE RIGHT TIME

Although time may not be of essence in a contract, the other party can make time of essence by giving reasonable notice to the defaulting party, see sec 10 SGA, see also Associated Press of Nig Ltd vs. Philips W.A Records Ltd (1973) 3 UILR pt 4 at 523. Here a Linotype machine was bought and allowed to remain in the seller's premises until the buyer gets competent operator. It was held that the property has passed.

In Charle Richards Ltd vs. Oppenham (1950) KB 616, the defendant wanted to have a body built on a Roll Royce Chasis and instructed the plaintiff to complete within a certain period. The work was not done on that day. The deft however continue to press for completion and later on informed the plaintiff that he would refuse to take the car unless it was delivered at the time and the deft rejected the car. The C.A held that he was entitled to do so because not having waived his right to reject, the notice that the car is delivered within a fortnight again makes time of the essence.

DUTY TO PASS GOOD TITLE

Under the Common Law, the general principle was that of Caveat Emptor Sec 12 SGA protects the title of a buyer by imposing a duty on the seller with regard to good title of the goods sold, see Sec 12 SGA in Akoshile vs. Ogidan (1950) 19 NLR 87, the plaintiff a car dealer bought a car from the defendant who said he bought from an European manufacturer was later convicted for stealing. It was held that he could recover the purchase price.

REMEDIES FOR BREACH

If there is a breach of Sec 12 SGA by the seller and subsequently no property passes to the buyer; there is a total failure of consideration, he can recover the price which he paid. This is so notwithstanding that he has used the goods for something and he has done some act amounting to acceptance. In Rowland vs. Divall (1923) 2 KB 500, the defendant sold a car to the plaintiff who used the car for several months. The defendant was not the true owner and the plaintiff had to return to the true owner. The plaintiff sued for the purchase price and he succeeded. It follows from the above that the seller cannot evade his breach of Sec 12 (1) by subsequent acquisition of title, see Akoshile vs. Ogidan (Supra), Butterworth v Kingsway Motors ltd (1954) 2 ALLER 694.

DUTY TO SUPPLY GOODS OF RIGHT QUALITY

Under Sections 13-15 SGA, there is an implied condition that the goods should correspond with their description as well as an implied condition that the goods are fit for a particular purpose.

Sec 13 provides: 'where there is a contract for 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'.

Goods are regarded as sold with description where the buyer contracts to buy the goods in reliance on the description given by or on behalf of the seller.

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It applies particularly where the purchaser has not seen the goods but merely relying on its description as given by the seller. In *Valley vs. Whipp* (1900) 1QB 513, the seller had agreed to sell a good hand reaping machine which he described as new but was later found out to be old. The buyer purported to reject it and sued for the price paid. It was held that the words relating to the age of the machine formed part of the description and as the seller had broken the condition under S. 13SGA, the buyer could reject it.

In the case of unascertained goods, they can be identified in one of these three ways:

1. By classification,
2. By sample and description,
3. By sample only e.g. a seller produces a sample of a new product and a buyer says 'send me 1000 of it'

Specific goods may be sold by description if the buyer has seen them provided that they are not sold as specific goods but as goods answering a description. If Sec 13 is breached in that the buyer receives goods different from what he contracted to receive, he can claim damages or reject the goods. This is so even if the contract purports to exclude the right to reject. See *Arcos vs. Rontasen* (1923) Ac 470.

EXCLUSION OF LIABILITY UNDER SEC 13 SGA

A breach of Sec 13 being a condition can be excluded under S. 55SGA. It is not however as simple as that because a seller who agrees to supply goods answering to a description and delivers something else is guilty of non performance and no exemption will protect him. See *NICHOLSON VS HARPER* (1895) 2CH415. A merchant sold wine stored in a seller's warehouse and later pledged houseman. It was held that no title was conferred as he never had been in possession.

QUALITY AND FITNESS

The maxim *caveat emptor* though sent away by many exceptions is not entirely extint. See the opening words of S. 14SGA for e.g. 'A' buys a lawn mower from 'B' which turned out to be useless. Neither A or B is a dealer in lawn mower. The result then is A has no claim against B. That is *caveat emptor*.

NOTIFICATIONS FOR A PARTICULAR PURPOSE

1. The buyer must notify the seller the particular purpose for which he wants the goods. See Nigeria Bottling Co vs. Ngonadi Obi (1985), NWLR 12, Priest vs. Last (1903) 2 KB 148, Frost vs. Aylesbury Dairy Co (1905) 1 KB 608. In Priest vs. Last (1903) 2kB 148, a customer went to buy hot water bottle. He was told that it could take hot water but not boiled water. The hot water bottle got burst and the court found that the water bottle was not fit for the purpose. If the case is obvious as in the case of hot water bottle or food, the mere facts of asking for the goods amounts to notification of the purpose for which the goods are wanted. See Grant vs. Australian Knitting Mills (1936) AC 85. If it has many purposes, then the buyer must indicate the particular purpose for which the goods are wanted.
2. Relying on the seller's skill and judgment: The buyer must rely on the seller's skill and judgment. See Grant vs. Australian Knitting Mills (Supra). For this purpose, partial reliance is sufficient. See Carmel Lairds & Co Vs. Manganese Bronze & Brass & Co (1934) AC 402.
3. The need for the seller to deal with the goods in the ordinary course of business: The seller must be dealing with the goods in the ordinary course of business.
4. Liability is strict if the above three conditions are not satisfied. See Frost vs. Aylesbury Dairy Co. (Supra). The defendant supplied and sold meat to the plaintiff containing some germs. The plaintiff half boiled the meat before consuming it and died. The plaintiff sued under S. 14(1) SGA. It is a question of fact whether the goods are fit for the buyer's purpose and in reaching such decision, the court will have to look at all the circumstances. See Crowther vs. Shannor Motors Co (1978) 1 WLR 30.
5. Sale under trade name: There is no implied condition as to fitness for any purpose for goods sold under a trade name.
 - a. A manufacturer would not escape liability under S. 14(1) SGA simply by relying on his skill or judgment.
 - b. The proviso operates only when the buyers relied on the seller's skill or judgment.

MERCHANTABLE QUALITY S. 14(2)

See Henry Stevens Eng. Co ltd vs. Complete/Home Enterprise ltd (1987) 1 ALL NLR. This subsection only operates where the sale is by description including a sale under a trade name. The Act does not define merchantable quality but the phrase has been judicially considered by Farwell L.J in Bristol/Trainway & Co ltd vs. Faith Motors ltd (1910) 2KB 831. The phrase in Sec 14(2) SGA is used as meaning that the article is of such quality and in such condition that a reasonable man acting reasonably would after a full examination accept it under the circumstance if the trader in performance of his offer brings the article whether he buys for his own use or to sell again.

TIME

The goods must be merchantable when they are sold and delivered. The goods must be of merchantable quality when they are appropriated and must remain so for a reasonable time. If the goods are sold under a contract before use, the goods must be merchantable throughout the normal journey and a reasonable time thereafter. See Beer vs. Walke (1877) 66 LJ 377. The proviso to S. 14 (2) SGA as to examination only applies where the buyer had actually examined the goods. See British & Overseas Credit ltd vs. Animashaun (1961) 1 ALL NLR 343.

FEATURES OF CONTRACT OF SALE OF GOODS

1. Sale of goods Act 1893 applies only to the contracts of sale but not necessarily other types of contract. In Ignobis Hotels ltd vs. Bentec Elect ltd (2015) 1 NWLR Pt 1441, 570 C.A, it was stated that what governs contract for Sale of goods is the terms of the contract and the Sale of Goods Act.
2. The consideration required under the Act in respect of sale of goods is money. In other words, money is a prerequisite for a contract of sale. It is not in other types of contract for e.g. exchange or barter which involves the transfer of goods to a person in exchange for the other person's goods.

Note that in a contract of sale, consideration may be partly in money and partly in goods or some other articles of value for e.g. where a dealer, in selling a new car takes an old car in part exchange. See Aldridge vs. Johnson (1857) 7 E&B 885. In G.F Dawson (Clapham) ltd VH.G Dutfield (1936) 2 ALL E.R 232 it was held that the purchaser of a motor vehicle

who exchanges an old one for the one being purchased in addition to a further payment embarks upon a contract of sale.

3. A contract of sale involves the transfer of property in the goods to the other party in the transaction. In contracts of bailment and hire purchase, the property in the goods is not intended to and does not pass on delivery. It remains with the bailer, though it may sometimes be the intention of the parties that the property should pass in due course as in Lee V Griffin (1861) 1 B&S 272. It was held that if a contract would result in the transfer of the property in goods from one party to another, then it must be a contract of sale.
4. Contract of sale contemplates the delivery of a chattered goods but if the substance of the contract is for the exercise of skill and the delivery of the chattered goods only subsidiary, the contract is not one for sale of goods. Thus, if a picture dealer engages an artist to paint a picture which the dealer then sells in the ordinary course of business, there is a contract of sale of goods but if a person who is not a dealer commissions an artist to paint a portrait, the contract is not one of sale. See Robinson vs. Graves (1935) 1 KB 579 (1935) ALL ER 935 where it was held that a contract to paint a portrait was a contract of skill and labour and not a contract of sale of goods despite the fact that in the contract to paint, the intention of the parties was to transfer the property in the portrait to the defendant.

FEATURES OF CONTRACT OF SALE OF GOODS

1. Sale of goods Act 1893
2. Sale of goods Law of the various states
3. General Law of contract if not inconsistent with statutory provisions.
4. Rules by parties. Note that parties may exclude by express terms of the contract, the operating effect of the Act. See Sec 55 SGA 1893.

CREATION OF THE CONTRACT OF SALE OF GOODS

The creation of a contract of sale of goods is governed by the general principles of contract.

- A. **CAPACITY:** Parties involved in a contract of sale of goods must have capacity to make the contract just as in ordinary contracts.
In cases of persons who are incapable of entering into a contract such as infants, insane persons, drunks etc. the proviso to S. 2 of the Act states that

where necessaries are sold and delivered to an infant or a drunken person or a lunatic, such a person must pay a reasonable price for the goods.

B. **FORM:** No special form is prescribed for contract of sale of goods. A contract of sale of goods may be made orally or in writing or partly in writing and partly orally or it may be implied from the conduct of the parties.

C. **CONSIDERATION:** The principles governing the doctrine of consideration also apply to contracts of sale of goods. However, the consideration in respect of sale of goods must consist wholly or in part of money called the price.

THE SUBJECT MATTER OF THE CONTRACT OF SALE

The subject matter of the contract of sale of goods must be shown to be goods within the meaning of the Act before the Act can govern the transaction. See Sec 62(1) SGA.

The issue of goods being the subject matter of contract of sale of goods is important because it answers such questions as; 1) When property in goods passes from the seller to the buyer, 2) Whether specific performance of the contract may be decreed, 3) Whether there is a valid contract of sale or whether the contract is a sale or an agreement to sale, 4) Whether the doctrine of frustration apply to the contract in question.

CATEGORIES OF GOODS

Goods may be: (a) Existing goods (b) future goods (c) Specific (or ascertained) goods (d) Unascertained goods

A. **EXISTING GOODS:** These are goods that are actually in existence at the time the contract is made. They are goods owned and at the same time possessed by the seller at the time of the contract. They may be either specific or unascertained.

B. **FUTURE GOODS:** These are goods not yet in existence at the time the contract is made and goods in existence but not yet acquired by the seller. See Sec 5 Act for purposes of transfer of property as between seller and buyer. Section 17(1) of the Act provides that 'where there is a contract for the sale of specific or ascertained goods, the property in the goods is

transferred to the buyer at such time as the parties to the contract intend it to be transferred'. Thus, in Howell vs. Coupland (1876) 1 Q.B 258, a sale of 200 tons of potatoes to be grown on a particular piece of land was held to be sale of specific goods despite the fact that they were not existing goods.

C. **SPECIFIC OR ASCERTAINED GOODS:** They are goods identified and agreed upon at the time the contract is made for e.g. a Mercedes car with chassis and engine numbers.

Section 6 of the Act provides that where there is a contract for the sale of specific goods and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Section 7 also provides that where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyers perish before the risk passes to the buyer, the agreement is thereby avoided.

D. **UNASCERTAINED GOODS:** These are goods sold by description but which are not identified or agreed upon at the time of the contract. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. See S. 16 SGA.

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