

Sale of Goods

(Sale of Goods Ordinance No.11 of 1896)

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Definition of contract of sale

- A contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in the goods to the buyer for a price.

(Sec.2(1) of the Act)

Goods?

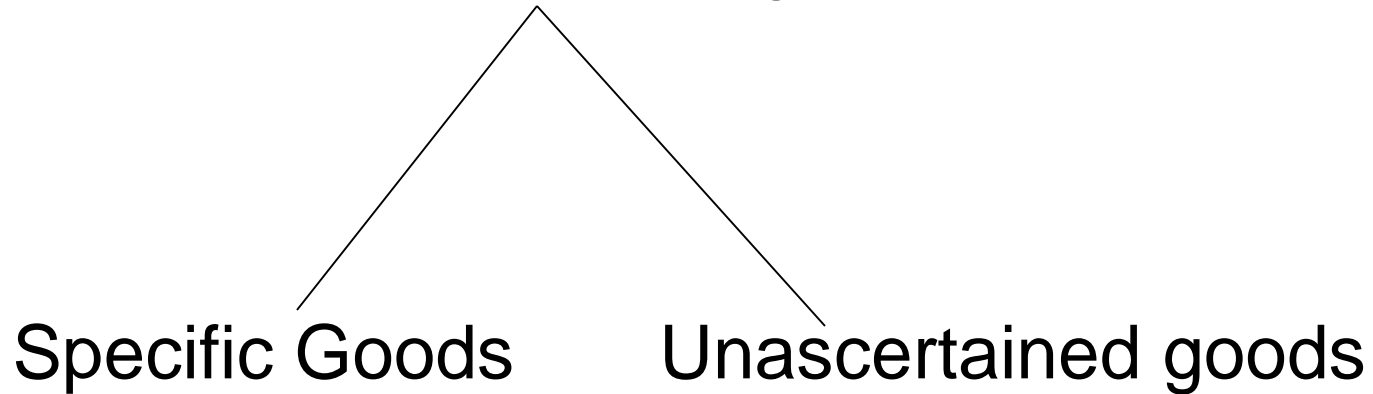


The essentials to constitute contract of sale

- It is a contract between two parties.(seller & buyer)
- The subject matter of a contract is "goods"
- The seller should transfer or agrees to transfer the property (ownership) in the goods to the buyer.
- The consideration known as the "price"

Different kinds of Goods

- Existing goods (goods which are actually in existence, capable of being transferred)



- Future Goods (goods which are not in existence at the time of contract. therefore there cannot be a sale of them)

Distinction between sale and other supply contracts

- there are some other transactions in which property in goods passes but which are not sale of goods.
 - Gift & free promotional offers
 - Barter or Exchange
 - Work & Material
 - Hire
 - Bailment & pledge
- (Auction sale)

Different between goods and services



Passing of property

- Goods-at least specific goods-are tangible things which you can physically handle. But the mere fact that you can handle something do not necessarily mean that you own it.
- Property-The “property” in goods is the “ownership” of them
- Title-it is the right to a persons property in goods." the means whereby an owner has the just possession of his property".
- Risk-The risk in goods is the responsibility of loss, damage or destruction of those goods.

The effect of passing of property.

- The effect of passing the property in goods to the buyer is to transfer to him the title and full legal interest in the goods.
- It is important to,
- decide the owner of the goods.
- decide who should bear the loss, if damaged
- Take legal action.

Risk *prima facie* passes with property.

- Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either party, the goods are at the risk of the party in fault

Specific goods

- Sec.18(1)-property in goods passes According to the intention of the parties
- Sec.18(2)-if the intention is not clear to decide the intention,
- Terms of the contracts,conduct of the parties and the merit of each case should consider.
- If the intention cannot decide according to sec.18(2)then the sec. 19 will apply.

Rule 2

- .-Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done and the buyer has notice thereof.

Rule 3.

- -Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof.

- . Rule 4.-When goods are delivered to the buyer on approval, or " on sale or return ", or other similar terms, the property therein passes to the buyer-
 - (a) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction;
 - (b) if he does not signify his approval or acceptance to the seller, but retains the goods..., if a time has been fixed , on the expiration of such time, or, on the expiration of a reasonable time.

Rule 5

- (1) Where there is a contract for the sale of unascertained or future goods property does not pass until the goods are ascertained.

Reservation of right of disposal.

- there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

1.

- Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

2.

- Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Condition & Warranties

- A condition is the term or stipulation going to the root of the contract. it is the essence of a contract. condition makes the very basis of a contract. A breach of which gives rise to right to treat the contract as repudiated.
- Warranty is not that much important but it is collateral to the main purpose of the contract. the breach of which gives rise to claim for damages.

Breach of condition/warranty(sec12.3)

- A buyer may elect to treat a breach of condition as a breach of warranty. but according to sec.12(3)the buyer is compelled to treat the breach of condition by the seller as if it is a breach of warranty and claim damages only.

- 1.where the contract of sale is not severable and the buyer has accepted the goods or parts of it
- 2.where the contract is for specific goods and the property of the goods has passed to the buyer.

Implied conditions



Sec.13(a),tittle

- 1.the seller should have a right to sell in the case of a sell.in case of an agreement to sell he will have such a right....
- Rowland v Divall

Description-sec14

- Where there is a sale of goods by description the goods sold must correspond with the description.
- Moore &co v Landaner

Description and sample

- If the sale is by sample as well as by description, the goods should correspond to sample and description.



FIT FOR THE PURPOSE

- Goods must be fit for the purpose
- If the buyer makes known to the seller any particular purposethen the goods must reasonably fit for that purpose.
- Frost v Aylesbury Dairy Co. Ltd
- Godley v Perry
- Priest V Last
- Grant V Australian Knitting Mills Co.

Requirements..

- Purpose should be informed
- Relied on sellers' skill and judgments
- It has to be the general business

Merchantable quality...?



Merchantable quality

- The goods should have a merchantable quality. if the defect specifically drawn to the buyers attentionthe condition is not implied.



exceptions

- If the defect specifically drawn to the buyers attention
- If the opportunity is given for examination

Implied warranties

- 1.buyer shall have and enjoy quiet possession of the goods
- 2.goods must be free from any charge or encumbrances.

Performance of a contract

- Sec27.it is the duty of the seller to deliver the goods and the buyer to accept and pay for them in accordance with the terms of the contract.

Goods in dangerous nature

- Where the person sells goods knowing that they are likely to be dangerous to the buyer and that the buyer is likely to be ignorant of the danger ,he is under a duty to warn the buyer of the probable danger.

Unfair contract terms Act.

- Any exemption clause purporting to exclude sec.13,14,15,16 of the sale of goods ordinance is void and of no effect as against a person dealing as a consumer...



Nemo dat quod non habet

- Buyer never get the better title than the seller had

Sale by person not the owner

- Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

exceptions

- Estoppel
- Sale by mercantile agents
- Sale by seller in possession of goods or documents to title
- Sale by buyer in possession of goods or documents to title
- Sale in market overt
- Statutory sale
- Fiscal sale

Caveat emptor

- Buyer beware

But there are exceptions

- Notification of purpose
- Reliance of the sellers skill or judgment
- Reasonable fitness etc.....

Rules as to delivery.

- (1) , the place of delivery is the seller's place of business, if he have one, and if not, his residence:
- (2) the seller is bound to send goods within a reasonable time.
- (3), there is no delivery by seller to buyer
- (4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour..
- (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Acceptance.

- 35. The buyer is deemed to have accepted the goods when *he intimates to the seller that he has accepted them*, or when the goods have been delivered to him and *he does any act in relation to them which is inconsistent with the ownership of the seller*, or when, after the lapse of a reasonable time, *he retains the goods without intimating to the seller that he has rejected them*.

Remedies of an unpaid seller

- Rights against the goods(real remedies)
- Rights against the buyer(personal remedies)

" unpaid seller "

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- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise

Real remedies, sec. 39

- Lien
- Stoppage in transit
- Re sale

Lien is available. when..

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

Termination of lien.

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof

Personal remedies

- Action for the price
- Action for damages for no acceptance

Remedies for the buyer

- Action for non-delivery
- Sue to recover money.
- Action for breach of contract.