

## 2. Sale of Goods

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In modern times sale of goods is the basic form of commercial transaction by which goods are supplied, bought and sold in trade and commerce. The sale of goods is by far the most common way in which ownership of goods passes from one person (the seller) to another (the buyer). But a sale need not be the only method of transferring goods. Without selling any goods, the owner of such goods can also *gift, loan, lease or hire-purchase* the goods. Such a transaction will not be covered by the law relating to sale of goods.

### Applicable law

The law relating to sale of goods in Sri Lanka is English law. This is made clear by the Sale of Goods Ordinance No.11 of 1896. This statute is a reproduction of the English statute on the subject namely, the Sale of Goods Act of 1893. The Sri Lanka statute brought in the whole of the English law on the subject and abolished the applicability of the Roman Dutch law to sale of goods in Sri Lanka.

Section 2 of the Sale of Goods Ordinance defines a contract for the sale of Goods as “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer, for a money consideration called the “price”. Thus the two important elements in a sale of goods contract are (1) the goods and (2) the money consideration.

### What constitutes “goods”

In the sale of goods transactions, the term “goods” is defined in section 59 of the statute as including “all chattels personal other than things (choses) in action and money”. The word “chattels personal” and “things in action” are legal terms. The word “chattel” is a legal term for “goods”. Chattels personal, broadly means “movable property”. Things in action (also called choses in action) means rights enforceable by legal action, such as debts, patents, trademarks, copyrights, shares in a company, bills of exchange, cheques and insurance policies etc.

Definitions given in Section 59.

### Formalities required for a contract of sale of goods

As stipulated in section 4 of the Ordinance, a contract for sale of goods can occur in the following ways

- i. By written words
- ii. Verbally
- iii. Partly in writing and partly verbally
- iv. Implied by the conduct of the parties.

### Subject matter of the contract

The goods which form the subject of a contract of sale may be either existing goods to be manufactured or acquired by the seller after the making of a contract of sale. See Section 6.

### The price

The price in a contract for sale of goods may be fixed by the contract or may be determined by the course of dealing between the parties. In the absence of either of these, the buyer must pay a reasonable price, the amount of which will be determined by the circumstances of each particular case. Section 9.

## 2.1. Contract of sale including conditions & warranties.

### Conditions implied in every contract of sale of goods

In the absence of an agreement to the contrary, the following conditions are implied in every contract of sale of goods.

- I. The seller has a right to sell the goods

If therefore, the seller has no title to the goods, he is liable in damages to the buyer. Section 13.

In the English case of *Rowland v Divall* (1923) 2 KB 500, R bought a motor-car from D and used it for four months. D had no title to the car, and consequently R had to surrender it to the true owner. R sued to recover the total purchase money he had paid to D. The Court held that R was entitled to recover in full, notwithstanding that he had used the car for four months.

- II. Sale of goods by description

Where there is a sale of goods by description, the goods sold must correspond with the description. Section 14.

The English case of *Moore & Co v Landaner & Co* (1912) 2 KB 519 illustrated this rule. In this case, M sold L 3,100 cases of Australian canned fruits and the cases were to contain thirty tins each. M delivered the total quantity, but about half the cases contained twenty-four tins and the remainder thirty tins. L rejected the goods. There was no difference in market value between goods packed as twenty-four tins and goods packed as thirty tins to the case. The Court, however, upheld the buyer's right to reject the whole consignment because the goods delivered did not correspond with the description of those ordered.

### III. Sale of goods by description and sample

Where goods are sold by showing a sample as well as by description the goods must correspond both with the sample and the description. Section 16.

In *Nicholas v Godts* (1854) 10 EX 191, N agreed to sell to G some oil described as “foreign refined rape oil, warranted only equal to samples.” N delivered oil equal to the quality of the samples, but which was not “foreign refined rape oil. The court held that G, the buyer could refuse to accept the oil.

#### Rules relating to Quality of goods sold

Many purchasers of goods think that if the quality of the goods they buy are defective after the sale then they have a claim against the seller. However, the general view in law is that every buyer must satisfy himself as to the quality or fitness of the goods he is buying. No one is compelled to buy from another. The buyer has a choice. If he decides to buy he must inspect the goods and be satisfied that he is buying goods of good quality. This is well illustrated by the Latin maxim *caveat emptor* which has become a legal rule and means “the buyer must be aware”

This rule is found in Section 15 of the Sale of Goods Ordinance which states that, except in certain circumstances, there is no implied warranty or condition as to the quality of fitness of goods supplied in a contract of sale. Section 15 however, lays down the following exceptions to this general rule.

- 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 he relies on the seller’s skill and judgement, 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 of not), then the goods sold must be reasonably fit for that purpose. The purpose for which the goods are required need not however, be expressly made known to the seller if it can be readily gathered from a description of the goods. See Section 15(1).

In the case of *Frost v Aylesbury Dairy Co Ltd* [1905] 1 KB 608, A a milk dealer, supplied F with milk which was consumed by F and his family. The milk contained germs of typhoid fever and F’s wife was infected thereby and died. The court held that the purpose for which the milk was supplied was sufficiently made known to A by its description, and as the milk was not reasonably fit for human consumption, A had committed a breach of the condition of selling the milk and was therefore liable in damages to F for the loss he had suffered.

- When we speak of “quality of the goods”, in a transaction concerning a ‘sale of goods contract’, the term used in the legislation is “fitness for purpose”.

In *Grant v Australian Knitting Mills Ltd* (1936) AC 85, Dr Grant purchased some woolen underwear from a retailer selling such garments. The garments contained an excess of sulphite as a result of which Dr Grant contracted a skin ailment (dermatitis) when he wore them. The court held that he was entitled to damages against the retailer that sold him the garments and the manufacturer that had made them, because there was a breach of an implied condition that the garments were reasonably fit for use.

#### IV. Merchantable quality of goods sold

The goods sold must be of a “merchantable quality”. See Section 15(2).

Goods are not of merchantable quality if in the state in which they are sold,

- i. They have defects unfitting them for their ordinary use or
- ii. Their condition is such that no one, with knowledge of their true condition, would have taken them but rather rejected them.

In such cases they are not merchantable.

In the English case of *Wren v Holt* (1703) 1 KB 610, a customer went to a restaurant and ordered some beer to drink. The beer given to him had been contaminated with arsenic and because of this the customer fell ill. He sued the owner of the restaurant for having supplied goods (beer) that was not ‘fit for the purpose’ and was also ‘not merchantable’. The court agreed and awarded him damages.

It must be noted that if the buyer had examined the goods or had been given the opportunity to inspect the goods, then no condition is implied as regard defects which such inspection would have revealed. Section 15(2).

In *Thornett v Beers & Son* (1919) 1 KB 486, B went to T’s warehouse to buy some glue. The glue was stored in barrels and every facility was given to B for its inspection. B did not have any of the barrels opened, but only looked at the outside. He then purchase the glue but later found that the glue was defective. The court held that B could not complain of the defect or breach of merchantable quality because he had all the time and opportunity to inspect and test the glue but had chosen not to do so. In such a case, the buyer cannot later complain that the goods were bad and not what he wanted.

## V. Sale of goods by Sample

Section 16 of the statute deals with sale of goods by sample. The following rules will apply where the sale is by sample.

1. The bulk sold must correspond in quality with the sample shown to the buyer.
2. The seller must give the buyer a reasonable opportunity to compare the bulk with the sample.
3. The bulk of the goods supplied must be of merchantable quality because an inspection of the sample may not reveal any defects.

In the case of *Drummond v Van Ingen* (1887) 12 App Cas 284, the seller submitted a sample of cloth which the buyer approved. The seller knew that the buyer was intending to re-sell the cloth to several tailors as material for tailoring work. When the bulk of the material was delivered, they were found to be unmerchantable for tailoring purposes – although the bulk was similar to an equal to the sample approved by the buyer. The court held that the defects in the material could not be discovered by the inspection of the sample and the buyer was not liable to pay for the bulk.

### Warranties implied in sale of goods

Under Section 13, the following warranties are implied in every contract of sale of goods, in the absence of any agreement to the contrary.

- i. That the buyer shall have and enjoy quiet possession of the goods. This means that the seller will be liable in damages if the buyer is disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell.
- ii. That the goods are free from any charge or encumbrances in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

### 2.2. Performance of the Contract

The rules as to performance of a contract for sale of goods is found in Section 22-37 of the statute.

#### Section 27 – Duty to take delivery

Under Section 27, it is the duty of the buyer to accept and pay for the goods, in exchange for the delivery of the goods by the seller. This section creates the presumption that in a sale of specific goods the place of delivery is the place where the goods are known to be at the time of the contract. Also it lays down that in all cases, in the absence of any special agreement, the place of delivery is the seller's place of business.

The buyer's failure to take delivery of the goods at the time agreed does not by itself justify the seller in forthwith disposing of them to someone else. But, in accordance with ordinary principles of contract law, if the buyer accompanies his failure to take delivery with words or conduct which justify the seller in thinking that the buyer is repudiating the whole contract, the seller may accept the repudiation, and he is then free to re-sell the goods and to sue the buyer for damages for non-acceptance. Moreover, if the contract is for the sale of goods of a perishable nature, the buyer's duty to take delivery at the right time is of the essence, and default by the buyer justifies the seller in reselling immediately.

It is important that the rules as to the times of payment and taking of delivery should be the same, because otherwise difficulties may arise if the seller refused to allow the buyer to take delivery on the ground of non-payment. It must be borne in mind that even where the time of delivery is not of the essence, Section 20 casts on the buyer, where there is delay in taking delivery, the risk of accidental destruction of, or damages to, the goods which might not have occurred but for the delay.

#### Section 28 – Payment and delivery concurrent conditions

It is not necessary for the seller actually to tender delivery before being entitled to sue for the price or for damages if it is clear that the buyer would have refused to accept the goods but it is enough that he (the seller) was ready and willing to do so. And similarly, a buyer need not formally tender the price before becoming entitled to sue for non-delivery provided that he was ready and willing to do so.

#### Section 29 – Rules as to delivery

In the absence of specific terms and conditions on the delivery of goods, the following Rules will apply:

1. The place of delivery is the Seller's place of business, if he has one, if not, its his residence.
2. Where the Seller is bound to send the goods to the Buyer, but no time for sending them is fixed, must be sent within reasonable time and in a reasonable hour.
3. If the goods are in possession of a 3<sup>rd</sup> party, there is no delivery until such 3<sup>rd</sup> Party acknowledges to the Buyer that he holds the goods on his behalf.
4. Where the Seller is authorised or required to send the goods by delivery to a carrier, whether named by the Buyer or not, the delivery to the carrier is *prima facie* proof of delivery to the Buyer.  
[Where the carrier is by Sea, Seller must give the Buyer reasonable notice to Insure the goods. Otherwise it will be at the Seller's Risk]
5. The expenses of putting the goods into a deliverable state must be borne by the Seller.

## Section 30 – Delivery of the Right Quantity

Sub section (1) – delivery a lesser quantity

Sub section (2) – deliver a higher quantity

Sub section (3) – if the buyer accepts all the goods delivered he must pay for them at the contract rate.

Sub section (4) – Gives the buyer the explicit right to accept part and reject part of the goods delivered.

If the Buyer sent the seller the wrong quantity of goods that he ordered, the Buyer may:

- a) Reject the whole;
- b) Accept the whole;
- c) Accept the quantities he has ordered and reject the rest

## Section 31 – Installment deliveries

If the contract provides for the delivery of the goods in installments and the buyer wrongfully refuses to accept one or more of them, Section 31(2) provides that whether the seller may treat the whole contract as repudiated will depend on the terms of the contract and all the circumstances of the case.

## Section 33 – Risks where goods are delivered at distant places

## Section 34 – buyers right to examine goods

## Section 35 – Effect of accepting the goods

Acceptance is deemed to take place when the Buyer:

1. The Buyer intimates to the Seller that he has accepted the goods;
2. The Buyer does any act to the goods which is inconsistent with the ownership of the Seller;

### **Perkins Vs. Bell** [1893] 1 QB 193

In this case the seller sold barley to the defendant for delivery at T railway station. The defendant could have examined the barley there but he sent it on to sub-buyers, who later rejected it. The buyer was held to have lost his right to reject and the principal reason for this seems to have been the court's view that it would be unjust to compel the seller to collect the barley from the sub-buyer's premises.

3. The Buyer retains the goods after the lapse of reasonable time, without intimating to the seller that he has rejected them.

**Bernstein Vs. Pamsons Motors (Golden Green) Ltd** [1987] 2 All ER 22

Here the buyer sought to reject a new car for serious defects, causing a major breakdown on a motorway, after he had had the car for three weeks but done some 140miles. While holding that the buyer was undoubtedly entitled to damages, it was also held that he had lost the right to reject, as a reasonable time for rejection had elapsed. A reasonable time, meant a sufficient time to give the car a general trial, not sufficient time for hidden defects to be discovered.

4. If the Buyer has not examined the goods, he is deemed not to accept them unless he has reasonable opportunity to examine them. However, the Buyer, upon delivery, would have reasonable time to examine the goods.

Section 36 – Buyer not bound to return rejected goods

Section 37 – Liability of buyer for neglecting or refusing delivery of goods.