SALE OF GOODS (PART II)

Shanila H. Gunawardena

LL.B. (Hons.) (Colombo)

Attorney-at-Law, CTA (CASL)

IMPLIED CONDITIONS AS TO TITLE
-Section 13(a)-

The **seller has the right to sell** the goods [Section 13(a)]. Must have title to the goods.

- English case of ***Rowland vs. Divall (1923) 2 KB 500***

IMPLIED CONDITIONS RELATING TO SALE BY DESCRIPTION
- Section 14-

Where there is a sale of goods by description, the **goods sold must correspond with the description**. Where there is a sale of goods by showing a sample as well as by description, the **goods sold must correspond both with the sample and the description**. Goods are sold by description when they are described in the contract and the buyer contracts in reliance of that description.

- ***Moore & Co. vs. Landaner & Co (1912) 2 KB 519*** .
- ***Arcos Ltd. vs. Ronaasen & Son [1933***].

IMPLIED CONDITIONS AS TO QUALITY OR FITNESS
-Section 15-

- **GENERAL RULE**: Every buyer must satisfy himself as to the quality or fitness of the goods he is buying. If he decides to buy a good he must inspect the goods and be satisfied that he is buying goods of good quality.
- CAVEAT EMPTOR rule: THE BUYER MUST BE AWARE - The buyer must take care and see that he is buying the good he wants.

IMPLIED CONDITIONS AS TO QUALITY OR FITNESS
-Section 15-

EXCEPTIONS:

(1) Section 15(1) – When 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 the buyer relies on the seller's skill and judgment, and the goods are of a description which it is in the course of the seller's business to supply, 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.

- ***Frost vs. Aylesbury Dairy [1905]***.
- ***Grant vs. Australian Mills [1936]***.

IMPLIED CONDITIONS AS TO QUALITY OR FITNESS
-Section 15-

EXCEPTIONS:

(2) Section 15(2) – when goods are bought by description from a seller who deals in goods of that description (whether he be a manufacturer or not), the goods must be of a **merchantable quality**. However, if the buyer has examined the goods, there will be no implied condition as regards defects which such examination ought to have revealed.

When goods are not of merchantable quality

- They have defects unfitting them for their ordinary use; or
- Their condition is such that no one, with knowledge of their true condition, would have bought them.
- ***Wren vs. Holt [1703]***.

SALE OF GOODS BY SAMPLE & RELATED IMPLIED CONDITIONS
-Section 16-

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

Implied Conditions:

- The bulk sold must **correspond in quality** with the sample shown to the buyer;
- The seller must give a **reasonable opportunity for the buyer to compare** the bulk with the sample;
- Must be of **merchantable quality**. Goods must be free from defect which would not be apparent on reasonable examination of the sample.
- ***Drummond vs. Van Ingen [1887]***.

IMPLIED WARRANTIES

Title

- Section 13(b) - The buyer must have and enjoy quiet possession of the goods – seller liable in damages if the buyer is disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell.
- Section 13(c) - The goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

WHEN DOES THE PROPERTY TRANSFER FROM THE SELLER TO THE BUYER

- A contract for the sale of unascertained goods – no property transfers to the buyer until the goods are **ascertained**. (Section 17)
- A contract for the sale of specific or ascertained goods – property transfers to the buyer at such time as the parties to the contract **intend** it to be transferred. [Section 18(1)]

WHEN DO PARTIES "INTEND" THE GOODS TO PASS?

Intention must be ascertained by the **terms** of the contract, the **conduct** of the parties and the **circumstances** of the case. [Section 18(2)]

Rules for ascertaining intention (Section 19):

(1) Where there is an **unconditional contract** for the sale of **specific goods**, in a **deliverable state**, the property in the goods passes to the buyer **when the contract is made**, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

- "deliverable state" is the state in which the buyer would be bound to take delivery of the goods under the contract.
- "specific goods" means goods identified and agreed upon at the time a contract of sale is made
- ***Philip Head and Sons vs. Showfront [1970]***

WHEN DO PARTIES "INTEND" THE GOODS TO PASS?

(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.

(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** of it.

WHEN DO PARTIES "INTEND" THE GOODS TO PASS?

(4) When goods are **delivered** to the buyer **on approval**, 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 without giving notice of rejection**, then, if a time has been fixed for the return of the goods, **on the expiration of such time**, and, if no time has been fixed, **on the expiration of a reasonable time**.

WHEN DO PARTIES "INTEND" THE GOODS TO PASS?

(5) 1. Where there is a contract for the sale of **unascertained or future goods by description**, and goods of that description and in a **deliverable state** are **unconditionally appropriated to the contract**, either by the seller with the **consent** of the buyer or by the buyer with the consent of the seller, the property in the goods thereupon passes to the buyer. Such consent may be express or implied, and may be given either before or after the appropriation is made.

(Unconditional appropriation of goods to a contract means that the goods have been set apart from the bulk of unascertained goods and they would be used for that particular contract without modification.)

2. Where in pursuance of the contract, the seller **delivers the goods** to the buyer or to a carrier for the purpose of transmission to the buyer, and **does not reserve the right of disposal**, he is deemed to have **unconditionally appropriated** the goods to the contract.

Pignator vs. Gilroy [1919]

WHAT IS RESERVATION OF "RIGHT TO DISPOSAL" -Section 20-

- Where 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**. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer **until the conditions imposed by the seller are fulfilled**.

TRANSFER OF TITLE / PASSING OF RISK
-Section 21-

- Unless otherwise agreed, **goods remain at the seller's risk until the property has passed to the buyer**, after which, they are at the buyer's risk, whether delivery has been made or not.
- However, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.