Business Law
CIL 308

Sale of Goods

Introduction

Governing Law -

- Sale of Goods Act 1893 (English Law Enacted before 1900 -Received English Law)
- Sale of Goods Law of the various States (Lagos State, Ogun State, Ondo State, Bayelsa State, Benue State, Abia State and the Federal Capital Territory)
- Principles of Common Law

Sale of Goods contract must contain all the elements of a valid contract - Offer, acceptance, consideration, intention to contract, capacity, etc.

Definition

- **What is a contract of sale of goods**?

Section 2(1) of the SoG Act defines it 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**.

Characteristics of Sale of Goods Contract:

- Parties
- Transfer or agreement to transfer Property
- Goods
- Price

Property in Goods

- ‘Property in goods’ = ownership of the goods.

- This is different from ‘possession of goods’ which simply means having physical custody or control of the goods.

Sale and Agreement to Sell

The Act makes a distinction between a contract of sale and an agreement to sell.

- Sale: Property in goods is immediately transferred from seller to buyer.

- Agreement to sell: Property in goods is to be transferred at a time in the future or on the fulfilment of certain conditions.

Goods

For a transaction to be classified as a sale of goods contract, the subject matter of the contract must be **‘goods’**

What are Goods?

- Section 62 SOGA defines goods to **include personal chattels other than choses in action**. Goods also **include crops** (emblements - grown naturally, industrially and by agricultural labour) **and things attached to land** which are to be **severed** before the sale or under the contract of sale.

Classification of Goods

Goods can be classified into:

- Specific goods- goods specifically identified at the time a contract of sale is made
- Ascertained goods- goods which are specifically selected from a large set of goods.
- Unascertained goods- goods that are not specifically identified at the time a contract of sale is made

Goods are also classified as:

- Existing goods - goods in existence at the time the contract was made
- Future goods - goods that are yet to be manufactured, grown or acquired by the seller

Price

- For a contract to be referred to as a Sale of Goods contract, the buyer must transfer a **money consideration called the price** to the seller
- Section 8 of the SoG Act provides that price may be fixed by the contract, or in a manner agreed by the in the parties to the contract or determined by the course of dealing between the parties
- If the price is not fixed by any of these ways, the buyer will pay a **reasonable price** for the goods.
- Price may be partly money and partly in kind

Sales distinguished from other transactions

- Contract of sale and Hire purchase
- Contract of Hire
- Trade by Barter
- Contract of Service

Formation of Sales Contract

Sale of Goods contract must contain all the elements of a valid contract:

Offer

Acceptance

Consideration

Intention to contract

Capacity

Terms of Contract

Not all statements made during negotiations form part of the contract
The legally binding statements are referred to as ‘terms’
The statements that do not form part of the contract are referred to as ‘mere representations’

- **Warranties**
- **Conditions**

- **Express Terms**
- **Implied Terms**

Conditions and Warranties

Warranties

least important terms- collateral to the main purpose of the contract

The breach of warranty gives rise to damages.
It does not entitle the party to reject the goods and treat the contract as repudiated

Conditions

Most important term - They are terms that constitutes the main purpose of the contract, and failure to perform such a term goes to the root of the contract.

The breach of warranty entitles the party to reject the goods and treat the contract as repudiated.
The party may also seek damages.

Express and Implied Terms

- **Express Terms**
- Terms agreed on by the parties themselves by words : oral or written

- **Implied Terms** - Sec 12-15 SoG Act
  Terms read into the contract by the court, statute or custom

  -Implied condition as to title
  -Implied warranty as to title
  -Sale by Sample (condition)
  -Sale by Description (condition)
  -Implied Condition as to fitness and quality

Implied Terms as to Title

- Sec 12 (1) SoG Act states that there is an implied **condition** on the seller that in the case of a sale, he has a right to sell the goods and in the case of an agreement to sell, he will have the right to sell at the time the property in goods is to pass to the buyer.

- Sec 12 (2) (3) Implied **warranty** that

1. The buyer shall have quiet possession
2. The goods are free from charge or encumbrances

Sale by Sample

- Where there is a contract of sale by sample there is an implied **condition** that:

1. The bulk shall correspond with the sample in quality;
2. The buyer shall have a reasonable opportunity of comparing the bulk with the sample- until he inspects the goods he cant be deemed to have accepted the goods ;
3. That the goods shall be free from any defect which are not obvious on reasonable examination of the sample.

Sale by Description

- Sec 13 provides that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.
- A sale is by description where the buyer has never seen the goods and his decision to buy is based on the description of the goods. E.g. is buying good over the internet.

Implied Condition as to quality and fitness

- Generally, (under common law) there is no implied condition or warranty that goods must be of good quality and fit for any particular purpose. It is the duty of the buyer to ensure that the goods he is purchasing has no defect and is fit for the purpose he is purchasing it for. *Caveat emptor*

- However, there is an exception, Sec 14 states that where a seller sells in the course of business and a buyer states the purpose for which he is buying the goods for, there shall be an implied condition that the goods must be fit for that purpose for which the goods is being bought.
- However, the buyer does not need to state the particular purpose if the goods is ordinarily used for one purpose.

- For sec 14 to apply, the buyer will have relied on the sellers skill and judgement

Merchantable Quality

- If goods are bought by description from a seller, there is an implied condition under sec 14(2) that the goods must be of merchantable quality.

- Goods are said to be of merchantable quality if they are fit for the purpose to which goods of that kind are commonly used.

This condition does not apply

1. If any defect in the goods in specifically brought to the buyers attention before sale.
2. If the buyer examined the goods before making the contract, and the defect was such that should have been discovered during examination.

Exclusion of liability under Implied terms

- Sec 55 allows parties to expressly vary and/or exclude implied conditions and warranties as provided by the SoG Act.

Passing of Property

- ‘**Property’** under the SoG Act means **ownership.**
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- The main aim of a contract of sale is the transfer of property from the seller to the buyer.
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- Ownership/property is not passed when the goods are delivered to a person or when one has possession of the property
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Importance of ascertaining when property passed

1. When ownership passes to the buyer, ‘risk’ of any accidental loss or damage to the goods also passes.

2. The seller can sue for the price after property has passed to the buyer.

3. The buyer/owner can claim possession if the price has been paid but the goods has not been delivered

Passing of Property

- Property in goods are transferred whenever the parties agree or intend that it should pass.
- In the absence of an agreement, Sec 16-18 SoG Act lays down the rule for determining the exact time when property passes
- The time property passes depends mainly on whether the goods are specific or unascertained.

Rules for ascertain when property passes

Specific Goods : Rule 1-4

- **Rule 1:** where there is a contract for the sale of specific goods in a deliverable state, property in the goods passes to the buyer when the contract is made, even if payment and delivery is postponed. This rule does not apply if there are unfulfilled conditions to the contract.

- **Rule 2:** Where the contract is for the sale of specific goods, but the seller is to do something to put the goods in a deliverable state, property does not pass until the thing is done and the buyer is notified.

- **Rule 3:** Where the seller is to weigh, measure, test or do some other thing to the specific goods in order to ascertain the price, property does not pass until the seller has done so and notified the buyer. This rule does not apply where the thing is to be done by the buyer.

- **Rule 4:** Where goods are sold to the buyer ‘on approval’ or ‘sale or return’ basis, property passes when:
    1. the buyer signifies his approval/acceptance of the goods, or does any act adopting it.
    2. the buyer retains the goods without giving notice of rejection until the expiration of a fixed time for the return of the goods, or beyond reasonable time, where no time was fixed.
- This rule does not apply where the buyer was prevented from returning the goods by circumstances/forces beyond his control.

Unascertained Goods : Property does not pass to the buyer until the goods are ascertained

- **Rule 5** : In a contract for **the sale of future or unascertained goods property is transferred** to the buyer **when the goods are unconditionally appropriated and in a deliverable state**

Performance of Contract

- Performance of contract entails acceptance, payment and delivery. Section 27 provides that the seller has the obligation to deliver the goods and the buyer has the obligation to accept the goods and pay for them

Payment

- Sec 28 SoGA provides that **payment and delivery should take place at the same time** unless the parties agree to do otherwise.
- Sec 29(5) provides that the seller bears the expense of putting the goods in a deliverable state.

Acceptance

- It is the duty of the seller to deliver the goods to the buyer. And the duty of the buyer to accept delivery and pay the price for the goods.

Delivery

- Delivery is the voluntary transfer of possession from one party to another.

Forms of delivery

- Physical transfer of the goods
- Constructive delivery
- Symbolic transfer
- Atonement

Rules of delivery

In the absence of express terms on delivery in the contract, the following rules shall apply:

Place of Delivery:

The seller's place of business (or residence if the seller does not have a place of business).

If the contract is for the sale of specific goods, which to the knowledge of both parties, are in some other place, then that other place is the place of delivery

Time of Delivery

- Where the seller is to send the goods to the buyer and time of delivery is not expressly agreed, the goods is to be delivered at **a reasonable time** and **reasonable hour.**

Attonement

- If the goods are in the possession of a 3rd party, the goods will be deemed delivered only **when the 3rd party acknowledges to the buyer** that he holds the goods on his behalf

Rules of Delivery

- Delivery of lesser quantity of goods than agree: buyer may reject the goods. But if he accepts them then he must pay for them at the agreed rate.
- Delivery of a larger quantity of goods than agreed: buyer may reject them; accept the agreed quantity and reject the extras; or accept the whole consignment and pay for the extra at the same contract rate.
- Delivery of goods mixed with other goods: the buy may reject the entire delivery or take possession of only the contract goods.
- Where the seller is to send the goods to the buyer through a carrier, delivery of the goods to the carrier is deemed delivery to the buyer.

Refusal to take delivery

- Where the seller is ready and willing to deliver the goods to the buyer and informs the buyer, failure to take delivery within a reasonable time will cause the buyer is liable to the seller for any loss occasioned by his refusal to take delivery and any reasonable charge for the care and custody of the goods.

Acceptance

- The buyer is deemed to have accepted goods when the buyer:
  1. intimates the seller that he has accepted the goods
  2. does any act to the goods which is inconsistent with the ownership of the seller
  3. retains the goods after the lapse of a reasonable time

- Section 34 (1) - a buyer is not deemed to have accepted the goods until he has had reasonable time to examine the goods to ascertain whether they conform with the contract.
- Once the buyer has accepted the goods, he can no longer rescind the contract.

Remedies of the seller

- Remedies available to the seller where the buyer fails to perform his duty- Acceptance and payment:
- Lien
- Stoppage in trasitu
- Right to resale
- Action for the price
- Action for damages for non-acceptance

To enjoy these remedies, the seller must be an “**unpaid seller”.**

Remedies of the Buyer

- Rejection of the goods
- Damages for non-delivery or defective delivery
- Specific performance