LAW OF
SALE OF GOODS

SALE OF GOODS ACT 1957

MGM3352

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  - & Teminologies
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FORMATION OF THE CONTRACT

- Section 4(1): A contract of sale of goods is a contract whereby the seller **transfers or agrees to transfer** **the property in goods** to the buyer for price".

ESSENTIALS OF CONTRACT OF SALE

1. **There must be at least two parties**
2. **Transfer or Agreement to transfer the ownership of goods.**
3. **The subject matter of the contract must necessarily be 'goods'.**
4. **The consideration is Price.**
5. **A Contract of sale may be absolute or conditional**
6. **All other essentials of a valid contract must be present.**

`SALE` AND 'AGREEMENT TO SELL' DISTINGUISHED

Sale: Ownership in the goods is transferred by seller to the buyer immediately at the conclusion of the contract.

- transfer of property in goods from the seller to the buyer.
- A sale is an executed contract.

Agreement to sell: Transfer of property in goods is to take place at a future date or subject to some condition thereafter to be fulfilled.

- Executory contract

Payment of price is immaterial to the transfer of property in goods.

Points to Ponder: Transfer of Property in Goods

- **Risk** concurrently transferred with it.
- **When buyer gets ownership,** seller can claim for the unpaid price.
- **Nemo dat quod non habet principle** applies, subject to exceptions:

  - If seller re-sell the goods which property is already transferred to buyer, the.

  - If buyer without property in goods re-sell to new buyer.

'GOODS'

- Every kind of moveable property other than actionable claims and money
- Includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Immovable/fixture is not goods.

What about –

: goodwill, intellectual property, water, food and electricity;
: human organs; blood?

DOCUMENTS OF TITLE TO GOODS

- **Any document used as proof of the possession or control of goods,** authorizing or purporting to **authorize**, either by endorsement or by delivery, **the possessor of the document to transfer or receive goods thereby represented.**

eg: Bill of Lading; Dock Warrant; Warehouse keeper's Certificate; Wharfinger's Certificate; Railway Receipt; Warrant or order for the delivery of goods; and any other document used in the ordinary course of business as a document of title .

Not a Sale of Goods if:

- Bailment
- Hire-purchase
- Barter system / Exchange of goods
- Gift
- Contract for service

CLASSIFICATION OF GOODS

1. Existing Goods - may be either:
   (a) Specific and Ascertained; or
   (b) Generic and Unascertained

2. Future Goods – including Contingent Goods

PRICE

- **Money consideration for a sale of goods.**
- **S. 9 provides that the price may be fixed:**

(i) **by the contract or**

(ii) **may be left to be fixed in manner thereby agreed or**

(iii) **may be determined by the course of dealings between the parties.**

(iv) **If price is not capable of being fixed in any of the above ways, the buyer is bound to pay reasonable price: question of fact.**

CONDITIONS AND WARRANTIES

- Depends on the construction of the contract.
- **Conditions:** Stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
- **Warranties:** Stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods/repudiation of contract.

S.13: Condition treated as warranty

i- condition to be fulfilled by seller waived by buyer

ii- buyer elect to treat breach of condition as breach of warranty

iii- non severable contract of sale: buyer has accepted the goods/part thereof

iv- specific goods: the property in goods has passed to buyer

Note: (iii) & (iv) depends on the existence of terms of contract express/implied to that effect.

IMPLIED CONDITIONS

1- Condition as to Title: S.14 (a)
Rowland v Divall
Butterworths v Kingsway Motor

2- Sale by Description: s.15

It can be sales of **unascertained/future goods** where a description is appliedor **specific goods** bought in reliance, at least in part, of the description given:

Varley v Whipp: 'second-hand self-binder reaping machine'

Nagurdas Purshotumdas & Co v Mitsui Bussan Kaisha Ltd

Grant v Australian Knitting Mills Ltd; Arcos v Ronaasen;

Moore & Co v Landauer & Co

IMPLIED CONDITIONS

(3) Fitness for Purpose (s.16 (1)(a))

- Disclosure of purpose ; need to establish reliance ; Goods of description sold by seller; reasonably fit for purpose & not bought for patent or trade name

Priest v Last; Griffiths v Peter Conway Ltd

Grant v Australian Knitting Mills; Cammell Laird & Co v Manganese Bronze

IMPLIED CONDITIONS

4. Merchantable Quality (s.16(1)(b))

Definition unclear.

Shine v General Guarantee Finance, it was held that a 20 month old second hand car was not of merchantable quality at the time of the sale when the buyer later discovered that 8 months earlier it had been written off by insurers, since it had been totally submerged in water for over 24 hours.

IMPLIED CONDITIONS

5- Sale by Sample (s.17)

-Goods in bulk

Drummond v Ingen

Godley v Perry

IMPLIED WARRANTIES

1. Warranty of enjoying quiet possession: s. 14(b)

-against subsequent future disturbance of possession of the goods.

Microbeads AG v Vinhurst Road Markings Ltd :

the goods sold were, at the time the property in them was to pass to the buyer, not subject to any patent. Subsequently, a third party patent specification was published and the patent was granted. The third party claimed against the buyer for patent infringement. The United Kingdom Court of Appeal held that the seller was in breach of the implied term of quiet possession under s 12(2)(b) of the SGA.

IMPLIED WARRANTIES

2. Warranty of free from charge or encumbrances:
s. 14(c)

- *Steinke v Edwards (1935) 8 ALJ 368*

C bought a car from B & resold it to D. Unknown to all parties, sales tax was owing on the car from the previous owner A, & under the state legislation, a car with tax owing could be seized by government.

Held: this was a charge or encumbrance within the subsection. D could recover from C, who would recover from B, who would recover from A.

Rules on intention regarding Transfer of property in goods

- S.18: For sale of unascertained goods, the transfer occur when the goods are ascertained.
- S.19: For sale of specific / ascertained goods, the transfer is at the time intended by the parties.
- If parties not clear when property in goods transfer to buyer (B), refer to the five "rules":

Rule 1 (s.20)

An unconditional contract for sale of specific goods in a deliverable state, property passes to B when the contract is made. Time of payment of $ / delivery is immaterial.

- **Rule 2 (s.21)**

Specific goods to be put into a deliverable state by S, property does not pass until this is done & Bhas notice thereof.

Chop Why Joo Hak Lee v Official Assignee

- **Rule 3 (s. 22)**

Specific goods in a deliverable state when S has to weigh, measure, test or do something else to the goods to determine the price, property does not pass until this is done & B has notice thereof.

Deliverable state: *Underwood Ltd v Burgh Castle Brick & Cement Syndicate [1922]- Wu Min Aun, p.213*

- **Rule 4 (s.23)**

Sale of unascertained /future goods by descriptions, property passes to B when the goods in a deliverable state are unconditionally appropriated to the contract by either party with the consent of the other. Consent may be express / implied, & may be given either before or after the appropriation is made.

S is deemed to have unconditionally appropriated the goods to the contract when S delivers to B or carrier/ bailee to send to B & does not reserve the right of disposal.

"unconditionally appropriated to the contract" (an overt act manifesting an intent to identify certain goods as those attaching to the contract & without any condition, Wu Min Aun, p.215)

- Rule 5 (s.24)

Goods are delivered to B on approval (unascertained goods), “sale or return”, etc, property passes to B only when B communicates approval / acceptance to S & adopts the transaction.

If B merely keeps the goods without notice of rejection, property passes to B:

- Time fixed for the return of the goods expires; or
- No time fixed but reasonable time (a question of fact) has expired.

Case examples

- *Wardar's (Import & Export) Co Ltd v W Norwood & Sons Ltd [1968]*

Ascertained goods: rotten kidneys. P bought consignment of 600 cartons of frozen kidneys from the 1,500 cartons held in cold store by D meat importer. The 600 cartons were already outside the cold store on the pavement when P's carrier arrived with his delivery order & during the 4 hours it took to load them, they had thawed & some were dripping.

When the cartons arrived at P's, they were declared unfit for human consumption.

D was able to sue for the price, title has passed to P when P's carrier arrived & from then the cartons were the property of P (having been unconditionally appropriated) & at P's risk.

TRANSFER OF RISK

General Rule: ***s.26 SOGA 1957***

Application:

the risk of accidental loss/ damage to the goods passes with property whether delivery has been made or not.

The Buyer would have to pay for the goods even though they had been destroyed.

<u>Exceptions:</u>

1. **s.26 SOGA** – **“*Unless otherwise agreed*….”**

- **RISK** will **NOT PASS** with property where there is an <u>***express / implied*** provision in the agreement to the contrary.</u>

Example: **<u>The parties can state in the contract who is to bear the risk.</u>**

2. **proviso I of S. 26 of SOGA** –

But where **delivery has been delayed** through the fault of either B or S, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

Application: **Risk lies with the party at fault for delays in delivery, irrespective of where property lies.**

3. **proviso II of s. 26 of SOGA** – Nothing in this section shall effect the duties or liabilities of either S or B as a **bailee** of the goods of the other party.

Application: **Risk lies with the bailee at fault.**

E.g: Property in goods may have passed to B, but if the goods were lost thru' the negligence of S (the bailee) while in his custody, S will be liable for the lost.

Passing of Risk

- Until risk passes, the B may refuse to take delivery of goods which are damaged in transit.
- **BUT** once risk has passed to the B, the S is exempted of liability for loss / damage to the goods (unless caused by the S's negligent)

Perishing Goods

- **S.7**: where goods perishing before making a contract, the contract is void
- **S.8**: where goods perishing before sale but after agreement to sell, the agreement is thereby avoided.

Transfer of Title in Goods

- S. 27: buyer will not get good title if buy goods from non-owner who sell without the authority or with consent of owner
  - Bona fide purchaser with value without notice
  - Nemo dat quod non habet
  - Exceptions to nemo dat principle

Application of s. 27:

- *A stole a car and sold it to B.*
- *In this situation, A does not have the title to the car.*
- *Therefore, B also would not get a title to the car even though he had paid for it.*

Lim Chui Lai v Zeno Ltd 1964) 30 MLJ 314

Zeno Ltd had entered into agreement with Ahmad (contractor) who had contract with PJ Authority to construct culvert. Under the contract between Zeno Ltd and Ahmad, Zeno was to provide A with all material for the construction. Then, Z delivered all the materials to the construction site.

Unfortunately, A's contract with PJ was cancelled; Z thereupon informed PJ that the materials on site belonged to them. When Z attempted to sell the material, they discovered the materials had been sold by A to Lim Chui Lai.

***Held*:**

A was merely the bailee & not the owner of the goods at the time he sold them to the Appellant.

Because A had no title to the goods / authority to sell them, he could not pass any title to Appellant.

Thus, Lim Chui Lai does not have the title upon the materials bought from Ahmad

- ***Rowland v Divall***

Plaintiff bought a car from D, & after using it for some 4 months, discovered that it was a stolen car.

He had to return it to the true owner.

Held:

The D had breached the condition as to title & allowed recovery by the P of full price on the basis of a total failure of consideration.

S.27: Nemo Dat Quod Non Habet

- **Means "that no one can give what he himself has not"**
- **Bona fide purchaser with value without notice**
- **Exceptions to the Rule:**
  1. **Estoppel**
  2. **Sale by mercantile agent**
  3. **Sale by joint owner**
  4. **Sale under a voidable contract**
  5. **Sale by seller in possession after sale**
  6. **Sale by buyer in possession**

PERFORMANCE OF CONTRACT OF SALE: CH. IV OF SOGA

~ BY SELLER

~ BY BUYER

DUTY OF SELLER: DELIVERY OF GOODS (S.31)

- **Delivery** (s.2) : 'voluntary transfer of possession from 1 person to another'.
- **Forms of delivery** : actual delivery (*handing over of goods sold*) or constructive manner (*handing over keys to car / document of title representing the goods*)
- S.33: up to the parties to **decide how**.
- S.35: seller **not bound to deliver until** buyer applies for delivery.
- S.36(3): goods **in possession of 3rd party**: not a delivery until the 3rd party acknowledges to buyer he holds the goods on buyer's behalf.
- If **doc. of title to goods being issued /transferred**, it is treated as delivery of goods. Carrier need not acknowledge it.

Performance of Contract

- **Place of delivery**: look in the contract & s. 36(1).

s.36(1): **sale**: place at time of sale; **a'm to sell**: place at which they are at the time of a'm to sell / if not in existence, place of manufacture or produce.

If not secured an agreement where seller should deliver, **seller's obligation is merely** being ready & willing that buyer should take possession of the goods sold.

s.35: unless otherwise agreed, seller shall bear the **expenses & incidental** to put goods into a deliverable state.

PERFORMANCE OF CONTRACT

- **Time of delivery**

~ **not fixed**: seller must send within **reasonable time & reasonable hour** (ques of fact)

~ if buyer not respond to take delivery within the reasonable time, buyer liable to seller for loss occasioned by his **neglect or refusal** & to pay **reasonable charge** for the care & custody of goods. Seller can additionally ask for **damages** when repudiation occurs (s.44)

~delivery delayed & loss occurred: look at **whose fault** (s.26)

PERFORMANCE OF CONTRACT

- **Wrong quantity**

Eg: Buyer ordered 10 cans, seller send 12 cans. Price per can RM2.

Buyer can: 1) Reject all, or

2) Take 10 cans & pay RM20

3) Take 12 cans & pay RM24

Eg: Buyer ordered 10 cans, seller send 8 cans. Price per can RM2. eg: Harland & Wolff Ltd v J Burstall & Co.

Buyer can: 1) Reject all, or

2) Take 8 cans & pay RM16

- **Wrong mix of goods**

Buyer can: 1) accept goods in accordance with contract, or

2)reject all.

PERFORMANCE OF CONTRACT

- Unless otherwise agreed, must deliver at one & the same time.

  Behrend & Co Ltd v Produce Brokers Co Ltd

- A severable contract if each delivery is treated separately. Pay separately.
- But if there's defective delivery & refusal to take delivery : look into the terms of contract & circumstances of case. ~ can repudiate or just damages.

Maple Flock Co. Ltd v Universal Furniture Products (Wembley) Ltd

Cf : Robert A Munroe & Co Ltd v Meyer

Performance of Contract

- **Acceptance of goods: duty of buyer**
- **3 methods of acceptance:**

a- buyer intimates to seller his acceptance

b- buyer does an act inconsistent with the seller's ownership; or

c- buyer retains goods after lapse of time without intimating to the seller his rejection.

E Hardy & Co v Hillerns & Fowler

MG Sheth & Ors v Lam Thye Co Ltd

Fisher, Reeves & Co Ltd v Armour & Co Ltd

UNPAID SELLER AND HIS RIGHTS

- **Unpaid seller when:**

(a) **the whole of the price, has not been paid or tendered;**

(b) **dishonoured or otherwise bill of exchange or other negotiable instrument received as conditional payment.**

- **Classification of rights : 1. Rights against goods ; 2. Rights against buyer personally.**

1. Rights against goods

(a) **Lien on the goods**

(b) **A right of stoppage in transit**

(c) **A right of re-sale**

2. Rights Against the Buyer Personally

(i) Right to sue for the price; and
(ii) Right to sue the buyer for damages for non-acceptance.

Rights of the Buyer

1. **Damages for non-delivery**
2. **Specific Performance**
3. **Action in Tort**
4. **Breach of Warranty**