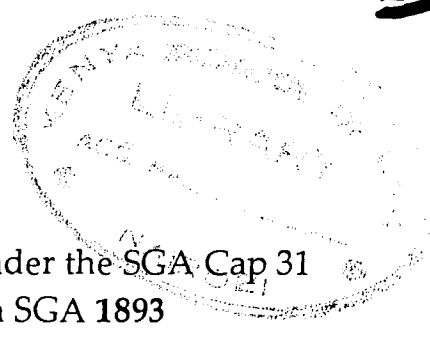


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- SALE OF GOODS LAW
- GENERAL OVERVIEW
- The Law
- Kenyan law on sale of goods provided for under the SGA Cap 31
- SGA a substantial reproduction of the English SGA 1893
- The English Act was made part of the Kenyan law by the colonial administration on 1/10/1931.
- The English Act has been significantly amended (notably in 1979 and 1994).
- SG Contract Defined
- Under s. 3.(1) SGA, 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 a money consideration, called the price.
- The Definition Analyzed
- A sale of Goods is a "contract" governed by contract law. This implies that all requirements for a valid contract must be met e.g. offer to sell/buy + acceptance is necessary etc
- The contract effects transfer of property- defined as "ownership of the goods"

The contract can be either:

- a) a sale: where transfer is immediate; or
- b) an agreement to sell- where transfer is delayed
- The Definition Analyzed cont...
- Consideration must be in form of **money**. A **barter** is therefore not a sale of goods.
- Act of "transfer" connotes existence of more than **2 different parties** to the contract. One cannot sell goods to herself unless doing so in distinct legal capacities.
- Goods
- Defined in the interpretation section to includes "all chattels personal other than things in action and money, and all emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"
- Definition covers most **moveables** but doesn't include land, shares, debts, claims etc, which cannot be moved away.

- **Money** sold as curio or collectors item qualifies but not when transferred as currency.
- **Types of Goods**
- **Ascertained/Specific:** identified and agreed upon at the time a contract of sale is made;

or

- **Unascertained/Future:** to be manufactured or acquired by the seller after the making of the contract of sale
- **Capacity to Contract**
- **Under s. 4.(1)** Capacity is regulated by the general law concerning capacity to contract, and to transfer and acquire property
- **Necessaries** may be sold to minors or incompetent persons provided that they pay a reasonable price therefor.
- **Definition of necessaries** is a **fluid one** and depends on actual requirements at time of sale: "goods suitable to the condition in life of the infant ... and to his actual requirements at the time of the sale and delivery."
- **Form (1)**
- **Under s. 5** a contract may be made:
 - a) in writing (either with or without seal) or
 - b) by word of mouth, or
 - c) partly in writing and partly by word of mouth, or
 - d) may be implied from the conduct of the parties
- **Form (2)**
- **Under s. 6** contracts for Kshs. 200/= or more is not enforceable unless:
 - a) the buyer accepts part of the goods sold, and actually receives them, or
 - b) gives something in earnest to bind the contract or in part payment, or
 - c) unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent
- **Subject matter of the Contract**
- **Under s. 7**, the goods may be either **existing** (specific and ascertained) or **future** (to be manufactured or acquired).
- **Under s. 8**, where goods perish before contract is made (without seller's knowledge) the contract is **void**.
- **Under s. 9** where goods perish after contract but before risk passes to buyer the same is thereby **avoided** pursuant to the doctrine of **frustration**.

- The Price

- Under s. 10.(1) The price for goods may be:

- a) fixed by the contract, or
- b) fixed in a manner agreed and stated in contract (e.g. independent

valuation) or

- c) determined by the course of dealing between the parties.

- Failing above, the buyer must pay a reasonable price;

- a reasonable price is a question of fact dependent on the circumstances of each particular case.

- Time of Payment

- S. 12.(1): Unless expressly stated in the contract, stipulation as to time of payment is not deemed to be of the essence of a contract of sale.

- Seller can however give notice (post-contract) making time of essence and fixing a reasonable time for payment (see Sagoo v. Dourado (1983) KLR 365

- In absence of express agreement or NPC seller cannot repudiate contract on ground of unreasonable delay in payment (see Wambugu v. Njuguna (1983) KLR 172

- Contract Terms (1)

- These can either be:

- a) **Conditions:** the breach of which destroys the root/purpose of undertaking by a party (failure of consideration) and entitles the other to repudiate contract and sue for damages.

- b) **Warranties:** breach doesn't destroy main purpose of the contract and therefore cannot lead to repudiation but only a suit for damages.

- Under s. 13 parties may treat conditions as warranties and vice versa by

- Contract Terms (2)

- Whether a term is a condition or warranty depends on:

- a) interpretation; and

- b) The consequences of breach thereof

- Neither SGA nor common law stipulate contract terms and parties are free to incorporate terms they deem fit (**freedom of contract & party autonomy/prerogative**).

- Implied Terms

7. That the buyer will have a **reasonable opportunity of comparing the bulk with the sample** (s. 17(b))

8. That the goods shall be **free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of sample** (s.

17(c)).(Cf. Godley v. Perry where a catapult had a defect causing it to break and rapture a boy's eye).

■ **Implied Warranties**

1. **That the buyer shall enjoy quiet possession of the goods** (s. 14(b))

■ Intended to protect buyer against defects of title arising after contract has been entered into. (cf. Microbeads v. Vinhurst).

2. **That the goods shall be 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** (S. 14(b))

■ Intended to protect buyer against defects in the seller's title which exist at the time the contract is made.

■ **"Nemo dat quod non habet"**

■ A common law maxim which meaning that **"a person cannot give what he doesn't have"**

■ S. 23 provides for maxim: where the seller is not the owner and is selling without owner's consent or authority, buyer acquires no better title than the seller had.

■ If seller's title is valid, void or voidable, buyer acquires the same title.

■ The maxim is however subject to exceptions stated in the Act.

■ **Exceptions to "nemo dat" Principle**

1. **Estoppel-** (s. 23(1))

2. **Sale by a factor- a mercantile agent whose business is to sell or otherwise deal in goods** (s. 23(2))

3. **Sale under a voidable title not avoided at time of sale** (s. 24)

4. **Resale by a seller in possession** (s. 26(1))

5. **Sale by a buyer in possession** (s. 26(2))

6. **Sale under statutory power of sale** (e.g. Disposal of Uncollected Goods Act)

7. **Sale under common law power of sale-** e.g. By agent of necessity

8. **Sale under the order of a competent court**

■ **Transfer of Ownership**

- SGA and common law however **impute/imply** certain terms considered so fundamental and efficacious as to require incorporation into transactions. If not expressly stated, these can be read into a contract.

- S. 14 SGA forbids contracting out, restriction/modification etc of these terms.

- Terms can also be implied by: parties' conduct or custom and usage.

- Implied terms can either be conditions or warranties.

- Implied Conditions (1)

1. That the seller has the right to sell the goods (s.14(a))- aimed at protecting buyers who unknowingly buy or agree to buy stolen or counterfeit goods.
2. That the goods correspond with their description (s. 15)- esp. for unascertained or future goods or specific goods sold as corresponding to a certain description.

- This condition apply where the buyer has not seen the goods but is relying on the description alone or where seen on display but still relying on description (cf. Grant v. Australian Knitting Mills)

- Implied Condition (2)

3. That where goods are **sold by sample as well as by description**, goods must correspond with the description as well as the sample (s. 15(2))
4. That the goods are of **merchantable quality** (s. 16(b))- term not defined in SGA but means "reasonable fitness for purpose(s) for which goods of that kind are generally bought."

- Implied Condition (3)

5. That goods bought for a particular purpose are reasonably fit for that purpose (s. 16(a)).

- This condition applies only where:

- a) particular purpose is made known to seller expressly or by implication
- b) goods are of a description of which it is in the course of the seller's

business to supply

- c) buyer relied on the seller's skill and judgement.

- **Exception:** where goods are sold under a patent/trade name and buyer did not rely on seller's skill & Jt.

- Implied Condition (4)

6. That the **bulk of the goods shall correspond with the sample in quality**(s.17(a))

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- Determination of the exact point at which property in the goods is transferred is important for reasons:
 - a) in the event of **loss or damage** so as to determine which party bears the risk
 - b) In the event of **bankruptcy**, so as to determine whether the goods belong to the trustee in bankruptcy
- **General rule:** the property passes in accordance with the intention of the parties, express or implied (s. 19)
- Where this is not discernible, **statutory rules** apply
- Rules for Determining Transfer of Property Under s. 20 (1)
 - 1. unconditional contract for the sale of specific goods, in a deliverable state - **when the contract is made** (it is immaterial whether the time of payment or the time of delivery or both be postponed;
 - 2. sale of specific goods but seller is bound to do something to the goods for the purpose of putting them into a deliverable state - **when that thing be done, and the buyer has notice thereof;**
- Rules for Determining Transfer of Property Under s. 20 (2).
 - 3. sale of specific goods in a deliverable state, but 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- **when that act or thing be done, and the buyer has notice thereof;**
- Rules for Determining Transfer of Property Under s. 20 (3)
 - 4. when goods are delivered to the buyer on approval or "on sale or return" –
 - (i) when buyer signifies approval or acceptance; or
 - (ii) does any other act adopting the transaction (e.g. consuming, pledging etc); or
 - (iii) if he does not signify his approval/acceptance he retains the goods without giving notice of rejection:
 - beyond the time fixed for return; or
 - the expiration of a reasonable time if no time has been fixed.
- Rules for Determining Transfer of Property Under s. 20 (4)
 - 5. 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 assent

of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

- Delivering goods to a carrier for transmission to buyer is an e.g. of appropriation

- Rules for Determining Transfer of Property (5)

6. Where seller reserves the **right of disposal of the goods until certain conditions are fulfilled**, - when the conditions are fulfilled.

7. In an **auction sale**- at the fall of the hammer unless otherwise agreed,

- Transfer of Risk
- Under s. 22 unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer whether delivery has been made or not.
- where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for that fault.
- Duties of the parties
- **Seller:** to deliver the goods (s. 28)
- **Buyer:** accept and pay for the goods (s. 28)
- Unless otherwise stated, these are **concurrent conditions (s. 29)**
- **S. 31:** delivery must be of **agreed quantity**- too much or too little entitles buyer to reject the whole
- If quantities are stated as "**more or less**" a reasonable margin is allowed
- **S. 32:** unless otherwise stated, buyer is not bound to accept ~~delivery by~~ **installments**.
- Breach of Contract by buyer
- Buyer is in breach if he wrongfully fails to accept or pay for the goods in accordance with the terms of the contract.
- **S. 39:** a seller is deemed to be unpaid if:

a) when the whole of the price has not been paid or tendered;

(b) when payment is through a conditional bill of exchange/negotiable

instrument and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument

- Remedies of unpaid seller

1. Action for the price-where property has already passed to buyer or a payment date has been agreed
2. Action for damages – where buyer wrongfully refuses to accept goods

3. Right of lien-right to retain goods until price is paid
 4. Stoppage in transit~~w~~- right to resume possession of the goods as long as they are still in transit until payment is made
 5. Right of resale- e.g. where goods are perishable.
- Breach by Seller
 - Where he wrongfully neglects or refuses to **deliver** the goods to the buyer.
 - Remedies of buyer:
 1. Damages for non-delivery
 2. Specific performance- in case of breach to deliver specific or ascertained goods.