

SALE OF GOODS ACT

(TOPIC 3)

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1) Introduction

- Model for the SOGA was based on English Sale of Goods Act 1893.
- Law governing sale of Goods – Sale of Goods Act 1957 and was revised. Act enacted in 1957.

2) *Definition*

“Goods” – Defined in S2 SOGA –

“every kind of movable property other than actionable claims and money and includes stocks 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.”

S.2 (definition of goods)

Full meaning

- Every kinds of moveable property other than actionable claims and money
- Includes stocks and shares, growing crops and grass, and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale
- But excludes sales of land, leasehold, right to sue another person for a debt or any other person.

LAW OF SALE OF GOODS

Definition :

Sec.4(1) SOGA 1957 : ‘A contract of sale of goods is where the seller transfers or agree to transfer the property in the goods to the buyer for a price’.

If there is a contract of sale between 2 parties involving above goods, contract governed by SOGA besides general principle of law of contract.

3) *Formation of Contract*

Chap. II, SOGA – outlines formation of contract. No special formalities but must be a contract of sale between 2 parties. If seller owns a part of the thing sold, still contract of sale.

Principle seen in Harper Gilfillian Sdn Bhd v Kean Toh Amang Factory Sdn Bhd v Lee Kwee - court said “contract of sale” include actual sales and agreement to sell. An agreement to sell is contract pure and simple, sale is a contract plus transfer of ownership.

4) How Contract of Sale of Goods Can Be Made

Sec. 4(1) SOGA – “a contract of sale of goods is a contract whereby seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner or another.”

There is contract where seller agrees to transfer goods and agreement to sell for a price. There is owner and buyer.

How Contract of Sale of Goods Can Be Made

Sec. 5(1) SOGA – states :

- Must be an offer to buy or sell goods for a price.
- Must have an acceptance to the offer.
- May provide for types of payment agreed between the parties. Types of payment can be either done on immediate delivery or immediate payment

How Contract of Sale of Goods Be Made

Law provide discretion for parties as to how to settle payment.

Sec. 5(2) – states contract may [also] be made in writing or by word of mouth. Can be done partly in writing and partly by word or by mouth this may be implied based on conduct of the parties.

5) Subject Matter of the Contract

“Goods” - S6(1) – provides “Goods which form the subject matter of the contract of sale, may be either existing or future goods owned by seller.

2 types of goods: EXISTING goods or FUTURE goods. Existing goods = goods currently owned by owner. Future goods = goods to be manufactured or produced or acquired by seller after making the contract of sale.

6) Pricing in the Contract

“Pricing”

Sec. 2 – provides the meaning of the word “price” as the money consideration for a sale of goods.

7) Capacity to sign the Contract

“Capacity” - SOGA is silent on it. However, general law of contract applies.

8) Terms of the Contract

Terms of the contract with reference to sale of goods must be understood by both parties.

Terms also divided into:

- express
- Conditions & Warranty
- Implied terms such as time/title etc.

Conditions & Warranty

Sec. 12 – provides that a stipulation in a contract of sale with reference to goods in question can either be a condition or warranty.

Sec. 12(2) – defines “condition” as a stipulation essential to the main purpose of the contract and any breach of that condition entitles the innocent party a right to repudiate contract.

Conditions & Warranty

Sec. 12(3) – “warranty” is a stipulation collateral to the main purpose of the contract, the breach of it gives the right to claim for damages but not a right to reject the goods and repudiate the contract.

Sec. 12(4) – to determine whether the stipulation is a condition or warranty, it depends on construction of the contract. Sometimes it may be a warranty instead of condition.

Conditions & Warranty

Case: Associated Metal Smelter v Tham Theow Toh

Facts: Appellant agreed to sell metal melting furnace to the respondent. It was agreed that the melting furnace would have a temperature of not lower than 2,600 degree. This specification was not applied. Respondent brought an action on grounds of breach of contract of an express condition and claim damages for RM29,301.80 as damages.

Conditions & Warranty

Issue: Was there a breach of condition?

Held: High Court – failure on the part of appellant to supply furnace according to specification amounted to breach of condition but entitled the respondent to treat it as a breach of warranty. On appeal to FC, it was upheld as a breach of warranty. (Note: FC held such because respondent claimed for loss of profit not default of machines.)

Implied Terms

Implied terms are terms not stated but understood from parties' conduct, circumstances and prevailing practice.

Because it is difficult to prove the parties' intentions as intentions are not expressly stated in contract. So to protect interest of parties to a sale of contract, SOGA make it as 'implied terms' in the contract.

Implied Terms

Implied terms also important to indicate duties of seller to pass good title to the buyer.

Currently, there are several implied good title:

- implied terms as to time;
- implied terms as to title;
- implied warranty as to quiet possession;
- implied warranty that goods are free from encumbrance;

Implied Terms

- implied conditions that goods correspond with description;
- implied condition as to fitness for particular purpose
- Implied condition as to merchantable quality;
- implied condition that goods must be in accordance to the sample;

1) Implied Terms As To Time

Sec.11 – states “unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of essence of a contract of sale. Whether any other stipulation as to time is the essence of the contract depends on the terms of contract.”

So – essential to determine in the contract to see if time is of essence. Time shall then not be regarded as important to the contract unless there is a contrary intention.

Harrington v. Brown

- Held: There was a sale of livestock . It was held that the time for delivery is the essence of contract. The buyer should have been ready to take delivery because it can create problem for the seller to keep the animals for a longer time.

2) Implied Terms As To Title

Sec.14(a) – seller has the right to sell the goods and to pass the property when it is time to do so. A breach of condition will give right to the buyer to repudiate the contract and recover the full price even though buyer has used the good.

Rowland v. Divall

- The P bought a car and after using it for some four months, he discovered that it was stolen. He had to return it to the true owner and asked for return of purchase money.
- Held: The D had breached the condition as to title and allowed recovery by the P of the full price on the basis of total failure consideration. Buyer got back full price without deducting the period he has enjoyed using the car.

3) Implied Terms As To- Quiet Possession

Sec.14(b) – Buyer have exclusive privacy and enjoyment with the goods. Seller cannot interfere in any manner unless with express consent from buyer.

e.g. Ali sold his car to Babu. However, since Ali still liked the car very much he often used the car by using his own key. Thus, Ali has breached the implied warranty as to quiet possession.

Microbeads A.G V. Vinhurst Road Markings

- The patentee, a 3rd party had brought an action against the buyer alleging the use of certain road marking machines was in breach of their patent 2 years after the sale of the machines by the Plaintiff to the Defendant.
- Held: There was a breach of implied terms because the buyer did not enjoy future quiet enjoyment of the goods.

4) Implied Terms That the goods Free from Encumbrance

Sec.14(3) – state “an implied warranty that the goods shall be free from any charge or encumbrance in favor of any 3rd party not declared or known to the buyer before or at the time the contract is made.”

So if Ali sold his car to Abu and Abu does not know car is charged to Bank MM. Ali has breached the warranty. But, if Abu knew the charge before signing the contract, and still proceed with the sale, there would be no breach.

Steinke V. Edwards

- The Plaintiff who had bought the car paid off the tax owing and sought to recover it from the Defendant (seller).
- Held: the right of the govt. to levy a tax on vehicle coupled with a right to seize the car to enforce collection was a 'charge or encumbrance'. Therefore the claim was allowed for breach of the implied warranty

5) Implied Terms – Goods to be in Accordance with Description

- Sec.14(5).

E.g: If Ali orders a computer from Abu based on Abu's catalog, then Abu must supply exactly the same computer as described in Abu's catalog.

Nagurdas Purshotumdas & Co. V Mitsui Bussan Kaisha Ltd (1911)

- The previous contract between the parties for the sale of flour had been sold in bags bearing a well-known trademark. Further flour was ordered described as ‘the same as our previous contract’. Flour of identical quality was delivered but it did not bear the same well-known trademark.
- Held: The flour supplied did not comply with the description. Contract invalid

5) Implied Terms – Goods to be in Accordance with Description

Case: Varley v Whipp - court said the term “sale of goods” by description must apply in all cases where the purchaser has not seen the goods but is relying on the description alone.

So if the purchaser buys goods based on the description made available to him, it is considered that the sale was effected by description.

5) Implied Terms – Goods to be in Accordance with Description

Moore & Co and Landauer & Co

- The plaintiffs entered into a contract to sell to the defendants a certain quantity of Australian canned fruit, the goods to be packed in cases containing 30 tins each. When the goods arrived, it was found that about half of the goods were packed in cases containing 24 tins only, instead of 30. The correct total amounts of tins were delivered, and the market value of the goods supplied was unaffected. The buyer refused to accept them.
- The held was although the method of packing made no difference to the market value of the goods, the sale was by description and the description had not been complied with. Thus the buyers were entitled to reject the whole lot of the goods.

6) Implied Terms As to Fitness to particular purpose.

Common law – no implied warranty or condition as to fitness or merchantable quality for any particular purpose of goods under a contract of sale unless :

- **Goods must be reasonably fit for the purpose which the buyer acquires them. If buyer asks seller to supply goods which is specified, conditions must be as requested by the buyer (Sec.16(1)(a))**
- **Goods be of merchantable quality (Sec.16(1)(b))**

6) Implied Terms – as to Fitness for particular purpose.

Fitness: Sec.16(1)(a) – implied condition that goods are reasonably fit for the purpose required by the buyer. 4 requirements:

- Buyer informs the seller the particular purpose in the goods the buyer wants to buy;
- Buyer relies on the seller's skill and judgment to supply that goods
- The seller is in the actual business to supply the goods as required by the buyer.

Implied Terms – as to Fitness to particular purpose.

Buyer should indicate the particular purpose of the goods to ensure that is the quality of the goods he expects. Sometimes buyer may rely on skill of seller to supply him such goods. Stated in the case earlier.

Griffiths V Peter Conway

- Facts: A woman with an unusually sensitive skin bought a Harris Tweed coat without disclosing that fact to the seller. It turned out that the goods afflicted her health.
- Held: The woman could not succeed under this section, as the coat would not harm a normal person.

7) Implied Terms as to Merchantable Quality

Merchantable Quality: S16(1)(b) provides “where goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality: provided that if the buyer has examined the goods there shall be no implied condition as regards defect which such examination ought to have revealed.

Implied Terms – as to Fitness & Merchantable Quality

Priest v Last

Fact: Buyer had purchased a thermos from the defendant. Some day after that, the thermos while being used by the buyer's wife burst and she was scalded

Held: if the goods has one purpose or the purpose is obvious, then the goods must be fit for that purpose. In this case, the thermos is used for keeping hot water and if cannot maintain the heat then it is not fit for its purpose.

Implied Terms – as to Merchantable Quality

Meaning of Merchantable Quality: Many interpretations.

Act does not define it. Anyway, supplier must reasonably provide merchantable quality goods.

Cristol v Tramways Co. Ltd v Fiat Motors Ltd: Farwell LJ was in the opinion that “merchantable quality” refers to such quality in such condition that a reasonable man acting reasonably would after full examination accept it under the circumstance of the case.

Implied Terms – as to Merchantable Quality

Case: Seng Hin v Arathoon & Sons Ltd:

Facts: Tapioca flour claimed to be unfit for human consumption as there was a discolouration of a small portion of the flour. It was discovered that it did not contain any injurious ingredient.

Held: Plaintiff failed to prove that tapioca flour was un-merchantable quality.

Wilson v Rocket, Cockerall & Co

- Fact: A lady ordered a fuel under its trade name of “Coalite”. The consignment of the fuel was mixed up with a piece of coal and it caused an explosion of the fireplace.
- Held: The consignment of the fuel as a whole was unmerchantable because there was a defect. The fuel was unfit for burning and thus the buyer could bring action against the seller for breach of Section 16 (1) (b).

8) Implied Terms – Sale By Sample

Sec.17(1) – “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”.

So reference is to the contract; and court will determine if there is a sale by sample or not upon reading of the contract.

Implied Terms – By Sample

Sec.17(2): following conditions are implied in a sale by sample: condition for a contract of sale that:

- bulk shall correspond with sample in quality
- buyer shall have reasonable opportunity of comparing the bulk with the sample
- goods are free from any defect rendering them un-merchantable which would not be apparent on reasonable examination

Breach of any one of the conditions: buyer can reject goods and treat contract as ending.

Drummond V. Van Ingen

- The cloth supplied by the seller was equal to samples previously examined. However, there was a latent defect not discoverable by a reasonable examination.
- Held: The seller was liable for breach of subsection. Even though the bulk correspond with the sample, there was a latent defect rendering the goods unmerchantable.

Transfer of Property

Property in goods i.e title or ownership of goods must be distinguished from possession of the goods.

Property in goods sold may have passed to the buyer but seller may continue to be in possession of the goods or buyer is in possession of goods but seller still has title like in a hire-purchase.

Transfer of property

SOGA lays down certain rules in relation to this:
Sec.18 – for contract of unascertained goods – no property in the goods is transferred to the buyer until the goods are ascertained. Buyer and seller must determine the goods.

Transfer of property

Sec.19 – for specific or ascertained goods. Property passes when parties intend to pass it, and intention can be known from terms of contract; conduct of parties and circumstances of the case.

Sec.20 – for unconditional contract for sale of specific goods in deliverable state, property passes when the contract is made.

Turling v Baxter

- The buyer brought a haystack (in a deliverable state) but before he took it away, it was destroyed by fire. It was held that the property passed at the time of the contract and thus the loss fell on the buyer.

Transfer of Title

Fundamental rule:

No one can give what he does not have. It means simply that person having no title to the goods cannot pass a good title to another. Thus if the seller's title is defective, so is the buyer's. Aim – to protect a right of ownership even if it is stolen, the owner still has a right to the goods.

Sec.27 set out general rule: “goods sold by a person who is NOT the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods.”

Transfer of Title

**Rule in Sec. 27 derived from the maxim –
Nemo Dat Quod Non Habet (No one can
transfer a better title than he himself).** So
goods if purchased from a person who is not
owner and without owner's authority, buyer
will not get a title even if he has paid in good
faith for the price of the goods.

Transfer of Title

Lim Chui Lai v Zeno Ltd.

Facts: Zeno made agreement with a contractor, Ahmad. Ahmad had a contract with Petaling Jaya Authority for construction of culvert. Agreed that Zeno to provide all construction materials. Zeno bought materials and delivered to construction site. Contract between Ahmad and Petaling Jaya Authority terminated. Zeno then informed PJA that materials belong to them, and wanted to sell them. Found materials already sold by Ahmad.

Transfer of Title

Held: Ahmad was just a bailee and not owner of the goods. Because he has no title to the goods and has no authority to sell the goods, title to the goods did not pass to him.

Transfer of Title

Exceptions to the rule of Nemo Dat Quod Non Habet . Buyer will acquire good title although the seller has no title to the goods but buyer must prove that he buys them for value, in good faith and without notice that seller has not title.

Transfer of Title

The exceptions to the rules are:

- **Estoppel**
- **Sale by a merchantile agent**
- **Sale by a joint owner**
- **Sale under a voidable contract**
- **Sale by a seller in possession after sale**
- **Sale by a buyer in possession**

Transfer of Title

1) Estoppel

Sec.27 – provides “estoppel occurs when owner of goods by its conduct is precluded from denying seller’s authority to sell.”

Here owner of goods by his conduct makes it appear to a buyer that the person who sells the goods has his authority to do so and the buyer acted in reliance on it.

Owner is estopped (prevented) from denying the seller’s authority. Buyer takes the goods in good faith and acquire good title

Transfer of Title

2) Sale by a Mercantile Agent:

Gen. rule: A person who does not own goods cannot sell goods without owner's actual or apparent authority, and has no right to pass a better title to the buyer.

What is “actual authority?” = express authority given by owner to agent. Can be oral or in writing.

What is “apparent authority?” = which law regards agent as having authority even if owner did not consent

Transfer of Title

BUT Proviso to Sec 27 of the SGA states:

'...where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him when acting in the ordinary course of business of a mercantile agent shall be as valid as if he were expressly authorised by the owner of the goods to make the same'.

Transfer of Title

So goods sold by a merchantile agent may pass good title in selling if he has the fulfilled the requirements under Sec.27 as well as having the authority to sell:

- 1. the agent must possess the goods or document of title;**
- 2. the possession must be with the consent or authority of the owner;**
- 3. the sale must be in the ordinary course of business of a mercantile agent.**

Transfer of Title

Sec.2, defines “mercantile agent” as an “agent having in the customary course of business has such authority either to sell goods, ... for the purpose of sale, or to buy goods...”

Thus agent: who has authority may pass good title in selling goods belonging to his principal provided he is acting within the scope of the actual authority.

Transfer of Title

Person who sells own good is NOT an agent.

Sec.27 – provides that in cases where mercantile agent gets consent from the owner, any sale made by him the ordinary course of a business of him shall be valid as if he was expressly authorised by the owner. If agent is also in possession of document of title of the goods and has authority from owner to sell goods, title can be passed to the buyer.

Folkes v King

- Fact: Folkes owned a car and he hand it to A (a merchantile agent) for sale and the price must be not less then 575 pound sterling. A later sold this car to King for the price of 340 pound sterling, which buy in good faith and without notice of any restriction . A later absconded with the money. Folkes claimed King
- Held: Since all the requirements are satisfied, king get good title.

Transfer of Title

3) Sale by one joint-owners

Goods can be owned by several persons.

S28 – provides if one of the joint owners of goods has sole possession of them by permission of the other co-owners, property in goods will be transferred to any buyer who buys them in good faith, and is not aware that the seller has no authority to sell.

Transfer of Title

If goods owned by several owners, and sole possession is with one, seller can pass good title to buyer provided buyer buys in good faith, and does not know seller lacks authority to sell.

Example: Rice cooker belongs to Rama, Muthu and Chandra. Rama takes possession of the cooker with permission from the other. He sells the cooker to Mary. Title of cooker transfer to Mary in good faith, if she has no knowledge that Rama has no authority to sell.

Transfer of Title

4) Sale under a voidable contract:

Sec.29 – provides that if seller obtains possession of goods under voidable title under S19 and S20 CA before contract is rescinded, buyer gets good title provided buyer buys it in good faith without any notice of seller's defect of title. Otherwise, NO title if contract rescinded.

Transfer of Title

Voidable contract is contract formed by coercion, undue influence, misrepresentation, fraud or mistake.

Example: Tan buys a car from Lim. Contract was effect by undue influence. Later, Tan sells car to Ang. Ang gets good title if Ang buys in good faith, and without notice of seller's defect of title and contract was not rescinded when Ang bought the car.

Transfer of Title

5) Sale by seller in possession after sale:

Sec. 30(1) – a seller who has departed with the title to the goods but remains in possession of the goods or document of title can pass good title to a bona fide buyer. 2nd buyer gets a good title. Original buyer loses his title.

Example: Ali sells his car to Amin. Ali still has car with him but title already pass to Amin. Ali sells car to Jim. Jim gets good title. Amin loses title.

Transfer of Title

6) Sale by buyer in possession:

Sec.30(2) – a buyer having bought the goods or agreed to buy goods, obtain possession of the documents of title with the consent of the seller can pass good title to any innocent purchaser (3rd party) under any sale. Buyer must obtain the goods or documents of title after the sale or agreement to buy.

Newtons Wembley Ltd v Williams

- Plaintiff (the true owner) sold the car to the first buyer. Payment was made by cheque. It was agreed between the parties that the title would only pass when the cheque was honoured but the plaintiff had given possession of the car to the first buyer. The first buyer subsequently sold the car to the second buyer who in turn sold it to the defendant. The cheque was dishonoured and plaintiff attempted to recover the car from the defendant.
- Held: the first buyer who was in possession of the car with consent of the true owner could pass a good title to the second buyer who in turn transferred it to the defendant. Plaintiff's action failed. He could only claim the price from the first buyer.