



Sale of Goods 3

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REMEDIES OF THE BUYER

- The buyer has two kinds of rights or remedies:
 - Real rights: to the goods
 - Personal rights: to the person
- **Real rights of the buyer:** The buyer has the right or is entitled to:
 - **Reject** goods delivered and **refuse** to pay the price, or **recover** the price if already paid in the following cases:
 - Where the seller is guilty of a fundamental obligation (sec 8(1) & (2))
 - Where the seller is guilty of a breach of a condition of the contract and such breach is of a serious nature, i.e. it is not trivial
 - Where the buyer has entered into the contract as a result of fraudulent or innocent misrepresentation on the part of the seller

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2. Breach of a condition of the contract of sale: the breach here must be serious and not trivial. Whether it is serious or not will require a determination by the court. The following will constitute conditions:

- The implied condition that the goods shall correspond exactly with the description or sample by which they were sold (section 11 & 12)
- The implied condition that goods are free from defects which are not declared or known to the buyer before or at the time the contract of sale is made - section 13(1) (a)

1. Breach of fundamental obligation of the seller:

the buyer can reject the goods delivered in the following cases:

- In a contract for the sale of specific goods, the buyer is entitled to reject the goods where the seller delivers goods other than those, which were identified and agreed upon.
- In a contract for the sale of unascertained goods, the seller delivers goods, which do not substantially correspond to the description or the sample by which they were sold.

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- The implied condition that the goods are reasonably fit for the purpose for which they are required (section 13(1) (b))
- The implied condition in section 20(1). Where goods are to be sent through a carrier, there is an implied condition that the seller shall make such contract with the carrier on behalf of the buyer.

3. Contract as a result of fraudulent or innocent misrepresentation.

- Fraudulent misrepresentation is when the seller knew it to be false or untrue or made it without any belief in its truth.
- Innocent misrepresentation is when the maker of the statement honestly believes it to be true, even though it is in fact false.
- The effect of a misrepresentation is to render the contract voidable at the option of the party misled. It gives the party misled the right to rescind the contract or recover the price if it has already been paid.
- In the case of innocent representation time is of the essence. If the buyer retains the goods for an unduly long time before exercising his right to rescind, the courts may be reluctant to grant the remedy of rescission.

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- **Breach as to quantity delivered:**

- The buyer can reject goods where the seller delivers to the buyer a quantity of goods less than what he contracted to sell.
- Where the seller delivers in addition to the goods contracted for, goods which were not included in the contract and the contract goods are less than the quantity contracted for.

- **Mode of rejection:**

- The buyer is not bound to return the goods to the seller unless the contract so provides.
- It is sufficient if he informs or intimates to the seller that he refuses to accept them or that he rejects them.
- The buyer after informing the seller of his rejection must give the seller access to the goods before such rejection will be deemed to be valid.
- Failure to place the goods at the seller's disposal makes the buyer's rejection ineffective.
- Whether or not the goods have been placed at the disposal of the seller is a question of fact.

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- After rejection of the goods property reverts back to the seller and the buyer continuous in possession of the goods as a bailee of the goods and must therefore take reasonable care of the goods.
- Where the buyer has paid the price or part of it he is entitled to retain the goods in his possession until the seller refunds the amount paid to him.

- **Time of rejection:**
- Goods cannot be rejected after they have been accepted, or are deemed to have been accepted. The buyer is said to have accepted the goods where:
 - The buyer informs the seller that he accepts the goods. Sometimes conduct may indicate acceptance, particularly where buyer has exercised rights of ownership over the goods.

- ***Robin Hood v. Farrah***: the buyer had imported several bags of flour which were kept in a warehouse. When the flour became infested he gave access to them to environmental health officers who destroyed the goods for health reasons. Held by the court that allowing the environmental health officers to destroy the goods was an assumption of ownership rights because only the owner could exercise such ownership rights.

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- Where the buyer does not reject goods in reasonable time
 - **Rockson v. Armah:** the buyer kept the second hand car for two months before deciding to return it to the seller. Court held that a long period of retention of the goods must be equated with acceptance and the transfer of the property in the goods and the assumption of all the risks.
- Where the buyer refuses or neglects to place the goods at the seller's disposal after notifying the seller of his rejection.

- Rejection after payment and delivery:
 - Despite section 49, which gives buyer the right to reject and recover monies paid, in ***Ghana Rubber v. Criterion Co***: the court held “*there can be no right of rejection after the goods have been delivered and the purchase price paid.*”
 - *The available remedy then would be damages*

- **Personal rights of the buyer:**
- The buyer may maintain an action against the seller for damages for non-delivery, that is, where:
 - The seller refuses or neglects to deliver at all
 - The seller delivers the goods but the buyer rejects them having the right so to do
- Damages for non delivery are determined in the same way as damages for non-acceptance. The measure of damages in an action for non-delivery is the loss which could reasonably have been foreseen by the seller at the time when the contract was made as likely to result from his breach of contract. Where there's an available market for the goods in question the measure of damages is ascertained by the difference between the market price and the contract price where the market price is higher.

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- Market price is determined in the following ways:
 - Where a time has been fixed in the contract for delivery it is the market price of the goods on the date fixed for delivery that is used
 - Where no date has been fixed it is the market price that the seller actually refuses to deliver the goods
 - Where the date is fixed for delivery and the seller repudiates the contract before the date but the buyer does not accept the repudiation it is the market price on the date fixed for delivery
 - Where the buyer accepts repudiation it is the market price on the date on which the buyer repudiated the contract that is used
 - Where the goods are to be delivered within a reasonable time it is treated as though there's no date and therefore it is the market price on the date the seller actually refuses to deliver the goods that is used.

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- The buyer can sue under section 55 for damages:
 - Where there is a breach of fundamental obligation or serious breach of condition. He is entitled to reject the goods under section 49(1)a & b and also sue for damages for non delivery
 - Where he accepts the goods in spite of the breach which has occurred and which entitles him to reject the goods
 - Where he does not reject the goods but his actions amount to this
 - Where the buyer accepts the goods or is deemed to have accepted he does not lose his right to sue for damages for the breach, which has occurred.
- Where the breach of a condition is trivial he cannot reject the goods; he has to accept them but can still sue for damages for the breach of condition.

- Where the buyer accepts the goods, property passes to the buyer, and the seller even though he is in breach can sue for the price of the goods which the buyer has accepted. (Section 46)
- Thus section 55 provides that in a situation where a seller has instituted an action against the buyer for the price the buyer may also set up his claim to damages for the breach either:
 - In diminution of the price (reduce the price being sued for) or
 - In extinction (to completely set – off) the entire price

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- **Specific Performance**

- Where in a contract for the sale of specific or ascertained goods the seller fails to deliver the goods (and thus is in breach of contract) the court may in exercise of its discretion order specific performance of the contract without giving the seller the option of retaining the goods and paying for damages for non-delivery.
- This applies to contracts for the sale of specific goods or ascertained goods because in that case the goods are definitely in existence and there are no problems with agreement and identification as in the case of unascertained goods which may not yet be in existence.

- ***Hasneem v. Swiss African Trading Co:*** the court held that the remedy of specific performance is only available in respect of specific goods. The court in its discretion may order the seller to deliver specific goods to the buyer

- Specific performance is an equitable remedy thus subject to the discretion of the court and all the considerations for its award will have to be taken into account.
- It is awarded only in unusual circumstances e.g. where the goods are unique or rare or were to be made to the buyer's special requirements or specification,

Sale by a non owner

- Two principles are of practical importance to commercial transactions.
 - A non owner cannot pass good title to a third party - “nemo dat quod non habet”, simply called the nemo dat rule. This means you cannot give a better title than you have, or you cannot transfer what you do not have.
 - An innocent person who acquires goods from a non owner for valuable consideration should be protected by law

- The nemo dat rule is contained in section 28 (1) of the Act. Where goods are sold by a person who is not the owner and who does not sell them under the authority or with the consent of the owner, the buyer does not acquire a better title than the seller had.
- This rule puts undue influence on an innocent purchaser who purchases the goods for value in good faith and without notice of any defect in the seller's title.
- The Act has made several important modifications to this rule by providing a number of instances where a person who purchases goods from a non owner is nevertheless deemed to have acquired a full and valid title where:
 - he obtained them for value,
 - in good faith and
 - without notice of the seller's lack of title.

- The buyer must have acted honestly, i.e., not fraudulently or dishonestly.
 - Where the circumstances surrounding the transaction are such as would lead to the inference that the purchaser had a suspicion that something was wrong but refrained from asking questions it may be inferred that there was lack of good faith e.g. where goods are sold at a ridiculously low price.
- The buyer has notice, actual knowledge of the fact that the seller did not have title to the goods. He may have the knowledge by direct communication or being aware of circumstances which would lead a reasonable man to a conclusion that the fact is so.

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Exceptions to the Nemo Dat rule

- **The doctrine of estoppel**
- This applies where a person by his words or conduct willfully causes another to believe in a certain state of fact, which induces that person to act on that belief so as to alter his position. In this case the person whose words or conduct induced that belief will be precluded or estopped from denying the existence of that state of facts.
- Where a true owner by his words or conduct represents that the goods belong to another person or that the person has authority to sell them and the innocent purchaser relies on this then the true owner will be estopped and the purchaser acquires a valid title.
- Estoppel may be by conduct, by representation or negligence. Representation must be clear and unequivocal.

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- Example: Nellie, owner of a brand new Samsung phone, is aware that Anima, a seller is pretending to be the owner and proposing to sell the phone to Mercy, a buyer. Nellie does not step in either to stop the sale or to inform Mercy that she is the true owner and that Anima is only a pretender and thus has no right or title to sell the goods.

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- **Sale under an enactment**
 - Certain enactments confer on individuals an authority to sell goods belonging to others
- **Sale by a seller in possession**
 - Where the seller of goods remains in possession of the goods after the property in the goods has passed to the buyer. If while in possession of the goods the seller makes a sale of the goods to another buyer, the 2nd buyer obtains a valid title to the goods. The first buyer is entitled to sue the seller for damages for the wrongful sale.
- **Sale by a buyer in possession**
 - This exception applies where the buyer of goods obtains possession of the goods or the document of title to the goods with the consent of the seller before the property is transferred to the buyer. A sale to any person by the buyer will obtain a valid title to the goods. The true owner (the seller) can sue the person who sold the goods for damages for wrongful sale.

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- **Sale under a voidable title**

- Where a person who has a voidable title to goods sells or pledges them at a time when his title has not been avoided, the purchaser obtains a valid title to the goods provided that he acquired them for value without notice of the seller's defective title – section 29.
- This section applies only when the seller has a voidable title to the goods but not when he has no title. A person may have a voidable title on grounds of fraud, misrepresentation, duress, undue influence etc

- **Sale by a mercantile agent**

- Where a mercantile agent has obtained goods or documents of title to goods with the consent of the owner for a purpose other than sale, and he sells, pledges or otherwise disposes of them to another person, such person obtains a valid title provided he acquired the goods for value, in good faith, without notice of the mercantile agent's lack of authority to sell.
- The true owner is said to have taken a risk on the agent's integrity and therefore he must bear the consequences of his own misjudgment if the agent should exceed his authority and sell the goods to a 3rd party. E.g. A gives his car to B to obtain offers but not to sell and B immediately sells to C then C has a valid title.

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Group 1 Assignment

- On 6th February, Tornye, a general merchant, contracts to sell to his brother Agbemor 1,000 bags of rice at GHC 60 a bag, delivery to be made on the 16th of February. On 16th March, Tornye delivers 1,200 bags of rice and 300 bags of beans. Agbemor decides to reject the 300 bags of beans and informs Tornye accordingly. Agbemor packs all the goods into his garage, locks the door and leaves the key in his study and travels out of town on a vacation. Thieves break into Agbemor's garage and steal all the goods stored there.
- Advice Tornye and Agbemor on their respective legal rights and liabilities.

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