



Sale of Goods 2

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Duties of the Seller

Duty 3: In a contract for the sale of specific goods it is the duty of the seller to ensure that the goods are in existence at the time when the contract is made.

- The seller must ensure here that the goods are in fact in existence at the time the contract of sale is actually concluded.

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- **Duty 4:** Duty to pass good title
- The seller must have the legal right or power to transfer the absolute legal interest in the goods to the buyer. To do this the seller must himself have full title to the goods or have authority to transfer such title. The seller will be in breach of this duty if he has no title to the goods thus can be sued for damages.

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- **Duty 5:** The seller has an implied duty to deliver the right quality of goods
 - **The seller is liable for any defects in the goods unless such defects were known or declared to the buyer by the seller before or at the time of the contract of sale.**
 - There are exceptions where the seller is under no duty to ensure that the goods are free from undeclared defects. If the goods turn out to be defective the seller is not liable for any breach:
 1. Where the buyer has examined the goods and the examination would have revealed any defects
 - The buyer is deemed to have examined the goods where the seller gives him access to the goods and a full opportunity to inspect or examine them.

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- Once the buyer has been afforded this opportunity to inspect or examine them even if he performs an incomplete or haphazard exam or if he fails to examine the good, it does not matter anymore.
2. The defects should be such that they should have been revealed by the examination, that is, it should be obvious defects and not latent defects.
- Not only must it be shown that the buyer examined the goods but also that the defects in the goods were such that they will have been revealed to the buyer upon examination.
 - If the defects were latent or hidden such that no amount of examination would have revealed them the exception cannot be invoked and the seller would be liable for the breach.

- E.g. a contract for the sale of Guinness. A buyer given the opportunity to inspect will never detect a wrong chemical mixture
- Where the goods are sold by sample:
 - There is no implied condition that the goods are free from undisclosed defects, if the defects could have been discovered by a reasonable examination of the sample.
 - The sample will represent the bulk and so if the defects are obvious in the sample and the buyer goes ahead to contract for the bulk there will be no liability for the seller in respect of the defects in the goods.
 - Here again the defects must be obvious and not latent. The implied condition does not arise when the seller:

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- Does not sell those kinds of goods in the ordinary course of his business, that is, he is not a dealer in those goods
- Was not aware of the defects in the goods
- Could not reasonably have been aware of the defects in the goods

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Quality of second hand goods

- Act 137 makes no distinction between brand new and second hand goods. This means the same quality and fitness would be applied.
- Courts have however adopted a liberal view with second hand goods:
 - In **Rockson v. Armah**: the judge advised that a second hand car must be taken as it is and not elevated into a new car with all the expectations of factory freshness.
 - In **Yirenkyi v. Tormekpey**: the court held that in buying a second hand car, a buyer should know that defects might appear sooner or later and that even if he bought it from a dealer it would be reasonably fit if it can be driven along the road.
 - These decisions follow the common law position where in **Thain v. Anniesland Trade Centre**, the judge said that “people who buy second hand cars get them at less than their original price in a large part because second hand cars have attached to them an increased risk of expensive repairs”

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- **Duty 6:** to deliver the goods to the buyer.
- Section 81 defines delivery as “*voluntary transfer of possession from one person to another*”.
- Section 15 provides that the seller must be ready and willing to deliver the goods in exchange of the price. This means the seller has no duty to deliver before receiving payment.
- It is not necessary for the seller to physically hand over the goods to the buyer. If there is evidence that the seller is ready but the buyer is not and would have refused to accept the goods, then the seller can be said to be ready and willing to deliver and can sue the buyer for the price or for damages.

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- Delivery can be understood in the following terms:
 - Making the goods available for collection in accordance with the terms of the contract
 - Goods are in the possession of a third party and that person acknowledges to the buyer that he is holding the goods on his behalf
 - Parties may agree that seller should hold the goods as the buyer's agent or bailee
 - Transfers possession by handing over means of control over the goods, such as the keys to where the goods are kept
 - Seller delivers documents relating to goods to the buyer
 - Seller may give goods to the buyer's agent, this amounts to transfer of possession to the buyer himself

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- Place of delivery: Section 19 stipulates that unless a contrary intention is shown, the place of delivery is the seller's place of business, if not, his residence
- Time of delivery: a condition of the contract. If no time is agreed, then it has to be delivered in a reasonable time

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- **Duty 7:** supply goods in the right quantities
- The seller has a duty of delivering the exact quantity of goods contracted for. There are consequences for not doing so and the buyer has different options depending on the quantity delivered. Where the seller delivers a quantity of goods less than the buyer contracted for the buyer has two options:
 - Reject the lesser quantity delivered
 - Accept the quantity delivered and pay for them at the contract price

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- Where the seller delivers goods greater than what was agreed upon:
 - The buyer is not entitled to reject all the goods delivered by reason only of the excess
 - He may accept all the goods delivered and pay for the extra goods at the contract price
 - The buyer may accept only the quantity he contracted for and reject the remainder. The buyer here may recover from the seller the cost, if any, of separating the goods which should have been delivered from the remainder

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- Where the seller delivers in addition to the contracted goods other goods with different description the buyer has the following options:
 - He may accept all the goods delivered and pay for the extra non-contracted goods at a reasonable price
 - He will be entitled to reject all the goods delivered if and only if the quantity of the contract goods which the seller supplied is less than the quantity specified in the contract
 - He may accept only the goods contracted for and reject the remainder. Here the buyer can recover any cost incurred from separating the goods contracted for and those not contracted for.

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Duties of the Buyer

- Under Act 137 the duties of the buyer can be found in sections 21 to 24. Under section 21 the buyer has two fundamental obligations:
 - To pay the price
 - To accept delivery of the goods
- **To pay the price:** obligated to pay the price unless a credit payment has been agreed upon. He is not entitled to claim possession unless he is willing and ready to pay the price.
 - A buyer is required to pay cash unless the seller has agreed to accept any other form of payment, i.e. cheque
 - Cheque is considered conditional payment until cleared. Seller is entitled to retain goods until cheque is cleared.

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- Buyer who fails to pay the price is in breach of his fundamental obligation and seller can sue for the price but cannot resell goods
- It is only when the buyer's persistent failure to pay the price manifests a clear intention to repudiate the entire contract that the seller would be entitled to terminate.
- If the seller is still in possession and the goods are perishable, seller can resell and claim any damages due him

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- **Duty to take delivery:** buyer to take delivery of the goods from the seller's place of business or his residence.
 - **Mok Beer Bar v. Gada:** court decided that it was the duty of the buyer to accept delivery of the goods after he has made payment and that the buyer failed the duty when he begged the seller to keep the goods for collection later.
- Time for payment and delivery: failure to pay or take delivery at an agreed date is not a breach of condition but of warranty. Means the seller is not entitled to cancel the contract simply because the buyer failed to pay on time or take delivery on time.

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Remedies of a Seller

- Under the Sale of Goods Act, a seller has two kinds of rights or remedies when the buyer defaults in his principal obligations, which are to accept the goods and pay the price.
 - **REAL RIGHTS / REMEDIES:** these are rights which depend on or are directed against the **goods** themselves.
 - **PERSONAL RIGHTS / REMEDIES:** They are rights against the **person**, such as an action against the buyer for the price or damages. These are claims which may be brought against the other party to the contract and do not depend on the location or possession of the goods at all.

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- **The unpaid seller:** section 34 defines him as a seller who has not received the whole of the price or a cheque issued by the buyer for payment that has been dishonoured by the bank.
- The unpaid seller has two remedies available to him:
 - Real rights or rights in relation to the goods
 - Personal rights

- **Real rights / rights in relation to the goods:**
 1. A Lien on the goods – where unpaid seller is still in possession, he is entitled to retain possession until payment. Not entitled where he has agreed to deliver the goods before payment or goods have been sold on credit and credit has not yet expired.
 2. Right of stoppage in transit - in the case of the buyer becoming bankrupt and unable to pay its debts, the seller has a right of stopping the goods in transit after he has parted with possession of them but before the buyer obtains possession of them.
 3. A right of resale – applicable in the following instances:

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- Where buyer has repudiated the contract and seller has accepted the repudiation
 - Where seller gives notice of intention to sell and buyer does not within reasonable time pay or tender the price
 - Where the goods are perishable
4. Right of recovery of possession -this is the right to recover the goods from the buyer after the buyer has gained possession of them. Available to the seller in two instances:
- Where property in the goods has not passed to the buyer
 - Property has passed but contract confers a right on seller to recover possession if price is unpaid

- **Personal rights of the unpaid seller:**
 - The RIGHT to sue the buyer for THE PRICE
 - The RIGHT to sue for damages for NON-ACCEPTANCE

Note: these may be exercised in addition to the real remedies of the seller.

- **Action for the price:** section 46(1) provides that where under a contract for the sale of goods, the property has passed to the buyer, and the buyer wrongfully refuses or neglects to pay the price in accordance with the terms of the contract, the seller may maintain an action against the buyer for the price of the goods.
- The right to sue the buyer for the price generally arises where property in the goods has passed to the buyer.

- **Action for damages for non-acceptance:** Where the buyer wrongfully neglects or refuses to accept and pay for the goods in accordance with the terms of the contract, the seller may maintain an action against him for damages for non-acceptance.
- Act 137 lays down the basic principle for the assessment of damages for non-acceptance in section 48 above.
 - the loss which could reasonably have been foreseen by the buyer at the time when the contract was made as likely to arise from the breach of contract.
 - Where there is an available market for the goods, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price.

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