

GENERAL OVERVIEW OF THE SALES OF GOODS

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Definition of Sales of Goods

By the provision of **S.1(1) of the Sales of Goods Act**, a contract of sale is one whereby a seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. A contract of sale could be absolute or conditional; **S.1 (2) SOGA**.

A contract of sale can be an outright sale or an agreement to sell. It is an outright sale if by the time the contract is made; the goods are transferred from the seller to the buyer. It is an agreement to sell if by the time the contract is made, the goods are to be transferred at a future date or upon the fulfillment of some conditions; **S.1 (3) SOGA**.

An agreement to sell would become a sale when the time for delivery elapses or the conditions are fulfilled; **S.1 (4)**.

Formation of a Contract of Sale

By virtue of the provisions of **S.3 of the Sales of Goods Act**, no formality is required for the formation of a contract of sale. It could be written or oral or a mixture of both. It could also be concluded by the conduct of the parties to the contract. It is however provided that this provision shall not affect the law relating to a corporation.

Therefore, although a company has the powers of a natural person, if its memorandum stipulates that its contracts of sale should be in a particular format, they must be in that format; **S.38 (1) Companies and Allied Matters Act**.

Essentials of a Contract of Sale

The following are essential requirements for the formation of contract of sale of goods:

1. **Two Parties:** In a contract for sale of goods, there must be two parties present; the buyer and the seller. The parties do not necessarily have to be two single individuals; it could be two corporations with one as the buyer and the other as the seller.
2. **Offer and Acceptance:** Another important ingredient for a contract of sale is offer and acceptance. The offer most likely comes from the buyer and the acceptance comes from the seller. However, in some situations, this role may be reversed.
3. **Consent:** Another important ingredient is the consent of the parties. A contract of sale in which one of the parties is under duress would not be valid. The parties have to be aware of what they are doing and they should consent to it.
4. **Capacity:** By the provisions of **S.2 SOGA**, capacity to contract in sales of goods is governed by the general law relating to capacity to contract. However, where necessities are sold to an infant, a drunkard or a person with mental incapacity, such persons must pay a reasonable price.

Necessaries are further defined as goods that are important and suitable for the life of such persons that lack capacity can also be his actual requirements at the time of the contract of sale.

5. **Price:** The price in a contract of sale of goods serves as the consideration. The price is usually in monetary terms. It could also be in monetary terms and in goods. There are different ways of fixing the price. The price could be fixed by the provision of the contract, at the time of dealing or in the manner agreed to by the parties; **S.8 (1) SOGA**.

In a situation in which a price was not fixed for the purchase of the goods, a reasonable price should be paid. The reasonableness of a price depends on the individual circumstances of each case; **S.8 (2) SOGA**.

6. **Time:** By the provisions of **S.10 SOGA** it is stated that time for payment isn't considered of the essence except it is stipulated by the terms of the contract. It is further provided that whether or not any other stipulations as to time would be of the essence is determined by the agreement between the parties. If there is no stipulation as to the time for delivery, by the provisions of **S.29(2)** it is stated that the goods should be delivered within a reasonable time. This goes to show that although time of payment is not *prima facie* of the essence, the time of delivery is important.

Thus in the case of ***Amadi Thomas vs Thomas Aplin & Co Ltd (1972) 1 All NLR @409*** the goods were to be delivered at a particular time but the seller didn't comply with the time stipulated. The court ruled that the time of delivery is of the essence. Thus the failure to stick to the time provided by the contract was a breach of the contract of sale.

7. Goods: By the provisions of **S.62 (1) of the Sales of Goods Act**, goods have been defined as chattel personal other than money. However it should be noted that land is not included under the ambit of sales of goods. Under the Act, goods have been broadly classified into: specific goods, existing goods, future goods, unascertained goods and ascertained goods.

Specific goods are goods that have been clearly identified and agreed upon at the time of the contract of sale; **S.62 (1)**

SOGA.

Existing goods are those that the seller already possesses at the time of the contract of sale; **S.5 (1) SOGA**. In the case of existing goods, property in the goods passes once the buyer takes delivery of such goods.

Future goods are goods that would be manufactured or acquired by the seller after the conclusion of the contract of sale. They are not in the possession of the seller at the time of the contract. They are delivered to the buyer at a future date; **S.5 (1) SOGA**.

Unascertained goods are those that are not yet specified. They are usually sold by general descriptive terms for that class of goods. For example, a contract for 50 crates of eggs that haven't been seen by the buyer is one that involves unascertained goods. The 50 crates of eggs in this scenario are unascertained.

Ascertained goods, like specific goods, are those that have been identified at the time of the contract. For example, if there is a contract for 20 crates of eggs seen by the buyer, they become ascertained.

Conditions and Warranties (S.11 SOGA)

Conditions are those terms of a contract of sale which if breached, would lead to the repudiation of the contract. Warranties, on the other hand, are those terms the breach of which would only give rise to the payment of damages and not the repudiation of the contract; **S.11 (1) (b)**. To determine if a statement is a condition or warranty attention should be paid to the construction of the contract.

There are some instances in which the breach of a condition could be interpreted as a breach of warranty. One of such instances is when the buyer decides to waive the condition. The buyer could also regard the breach of condition as a breach of warranty; **S.11 (1) (a) SOGA**.

Also, if the goods have been accepted by the buyer in whole or in part, or property has passed to the buyer, the breach of a condition would have to be treated as a warranty; **S.11 (1) (c) SOGA**.

Generally, conditions are fundamental terms while warranties are minor terms in the contract of sale.

Warranties and Mere Representation

A representation is a statement made by the seller in a contract of sale usually as a means to entice the buyer. A representation is not usually regarded as a term of a contract. However in some situations, if the representation was made by the seller to the buyer and the buyer depended on the representation due to the fact that he thinks the seller has more knowledge in that regard, it could be treated as a warranty by the court.

Whether a statement is a mere representation or a warranty depends on the intention of the parties, their conduct and other surrounding circumstances. See: ***Hopkins vs Tanquery (1864) 15 QB 611; Couchman vs Hill (1947) KB 554***.

SOURCES

1. Lecture on Commercial Law delivered by Dr. Mrs H.I Saadu, Faculty of Law, University of Ilorin.
2. MC Okany: Nigerian Commercial Law
3. Sales of Goods Act