

## (5) CAPACITY TO BUY AND SELL

### - Section 3

“Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property:

Provided that where necessities are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

‘Necessaries’ in this section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.”

## (6) WHAT IS NOT A CONTRACT FOR SALE OF GOODS?

### - Contract for work and material:

- The main difference here is that the main subject matter as to whether it involves “goods” or “skills”.
- A contract for the sale of goods contemplates the delivery of a movable item. However, if the substance of the contract is for the exercise of some skill and the delivery of the movable is only a subsidiary part of the contract, there is no sale of goods.
- English case - *Robinson vs. Graves (1935)* – painting a portrait plus supplying the canvass and other material was held to be a contract for work and materials and not a contract for sale of goods.

### - Contract of hire purchase/ lease:

- The hirer does not “agree to buy”. The owner agrees to sell only if the hirer performs all necessary conditions. E.g. payment of installments due.

## (7) FORMALITIES REQUIRED FOR A CONTRACT OF SALE OF GOODS

### - Section 4 –

A contract for the sale of goods can be made:

- in writing; or
- by word of mouth (verbally); or
- partly in writing and partly by word of mouth (verbally); or
- implied by the conduct of the parties.

## (8) SUBJECT MATTER OF THE CONTRACT

### - “Existing Goods” vs. “Future Goods”

Section 6(1) – The goods which form the subject of a contract of sale may be either **existing goods**, owned or possessed by the seller, or **goods to be manufactured or acquired** by the seller after the making of the contract of sale (**future goods** as defined in Section 59).

- Section 7 – Where there is a contract for the sale of **specific goods** (specific goods defined in Section 59 as goods identified and agreed upon at the time a contract of sale is made), and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.
- Section 8 – Where there is an agreement to sell **specific goods**, and subsequently the goods without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is thereby avoided.

## (9) IMPLIED CONDITIONS

### - Implied conditions as to title - section 13(a):

- The **seller has the right to sell** the goods [Section 13(a)].

The seller must have title to the goods. In the English case of *Rowland vs. Divall (1923)* 2 KB 500, Rowland bought a motor-car from Divall and used it for four months. Divall had no title to the car, and consequently Rowland had to surrender it to the true owner. Rowland sued to recover

the total purchase money he had paid to Divall. The Court held that Rowland was entitled to recover in full, notwithstanding that he had used the car for four months.

- Implied conditions relating to sale by description - section 14:

- Where there is a sale of goods by description, the **goods sold must correspond with the description**. Where there is a sale of goods by showing a sample as well as by description, the **goods sold must correspond both with the sample and the description**. Goods are sold by description when they are described in the contract and the buyer contracts in reliance of that description.

*Moore & Co. vs. Landaner & Co (1912) 2 KB 519* – Moore sold Landaner 3,100 cases of Australian canned fruits and the cases were to contain 30 tins each. Moore delivered the total quantity, but about half the cases contained 24 tins and the remainder 30 tins. Landaner rejected the goods. There was no difference in market value between goods packed as 24 tins and goods packed as 30 tins to the case. The Court upheld the buyer's right to reject the whole consignment because the goods delivered did not correspond with the description of those ordered.

*Arco Ltd. vs. Ronaasen & Son [1933]* – This involved a contract to buy wooden sticks of a specified thickness of ½ inch. About 80% of those supplied were more than ½ inch. It was held that the buyer could reject the goods as the goods supplied did not correspond with the goods specified or described in the contract.

- Implied conditions as to quality or fitness – section 15:

- General rule relating to quality or fitness of a good is that every buyer must satisfy himself as to the quality or fitness of the goods he is buying. If he decides to buy a good he must inspect the goods and be satisfied that he is buying goods of good quality. This is known as the “caveat emptor rule” which states that “the buyer must be aware.” Accordingly, the buyer must take care and see that he is buying the good he wants.
- Exceptions to the above general rule are found as implied conditions as follows:
  - (a) Section 15(1) – When the buyer, expressly or by implication, makes known to the seller the particular **purpose** for which the goods are required, so as to show that the buyer relies on the seller's skill and judgment, and the goods are of a description which it is in the course of the seller's business to supply, then the goods sold **must be reasonably fit for that purpose**. The purpose for which the goods are required need not, however, be expressly made known to the seller if it can be readily gathered from a description of the goods.

*Frost vs. Aylesbury Dairy [1905]* – a milk dealer supplied milk containing germs of typhoid fever which was consumed by the buyer's family. Wife was infected with typhoid and died. It was held that the purpose for which the milk was bought was sufficiently made known to the milk dealer by its description. Milk was not reasonably fit for human consumption.

*Grant vs. Australian Mills [1936]* – woolen underwear purchased from a retailer contained an excess of Sulphite. The user of the underwear contracted a skin ailment after he wore them. It was held that he was entitled to damages because there was a breach of an implied condition that the garments were reasonably fit for use.

- (b) Section 15(2) – when goods are bought by description from a seller who deals in goods of that description (whether he be a manufacturer or not), the goods must be of a **merchantable quality**. However, if the buyer has examined the goods, there will be no implied condition as regards defects which such examination ought to have revealed.

The goods are not of merchantable quality where: