

## (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