

05. (a) Define "a Contract of Sale of Goods" under the Sale of Goods Ordinance and list the three (03) essential elements in the contract of sale of goods.

The Sale of Goods Ordinance is dealing mainly with the Contract of Sale of Goods. It is the most common way in which the transfer of ownership of goods from one person to another takes place. Section 2 of the Sale of Goods Ordinance defines a contract for the sale of Goods as "a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer, for a money consideration called the "price". Thus the two important elements in a sale of goods contract are (1) the goods and (2) the money consideration.

The Sale of Goods Ordinance deals with what constitutes goods. The term "goods" is defined in section 59 of the statute as including "all chattels personal other than things (choses) in action and money". The word "chattel" is a legal term for "goods". Chattels personal, broadly means "movable property". Things in action (also called choses in action) means rights enforceable by legal action, such as debts, patents, trademarks, copyrights, shares in a company, bills of exchange, cheques and insurance policies etc.

The goods which form the subject of a contract of sale may be either existing goods to be manufactured or acquired by the seller after the making of a contract of sale. Existing goods may be either specific or unascertained, and important consequences follow from this transaction, for example, in relation with the passing of the property. Specific goods are goods identified and agreed on at the time a contract of sale is made.

Unascertained goods are not defined by the Act, but they seem to fall into three main categories; 1. Goods to be manufactured or grown by the seller, which are necessarily future goods, 2. Purely generic goods, for example, 1,000 tons of wheat which must also be future goods, at least where the seller does not already own sufficient goods of the description in question which can be appropriated to the contract. 3. An unidentified part of a specified whole, for example, 1,000 tons out of a particular load of 2,000 tons of wheat; these may be either future or existing goods. The distinction between the second and third kinds of unascertained goods is only a matter of degree. The more detailed is the description of the genus, the more it comes to resemble a sale from a specified bulk or stock. In the case of Howell c Coupland, a sale of 200 tons of potatoes to be grown on a particular piece of land was held to be sale of specific goods, despite the fact that they were not existing goods, for the purpose of the common law rule of frustration.

Future Goods include goods not yet in existence, and goods in existence but not yet acquired by the seller. It is probably safe to say that future goods can never be specific goods within the meaning of the Act.

The price in a contract for sale of goods may be fixed by the contract or may be determined by the course of dealing between the parties. In the absence of either of these, the buyer must pay a reasonable price, the amount of which will be determined by the circumstances of each particular case.

The Act specifies that the a contract for sale of goods can occur in the following ways

- i. By written words
- ii. Verbally
- iii. Partly in writing and partly verbally
- iv. Implied by the conduct of the parties.

(b) State five (05) implied conditions under the Sale of Goods Ordinance.

In the absence of an agreement to the contrary, the following conditions are implied in every contract of sale of goods.

- I. The seller has a right to sell the goods

If therefore, the seller has no title to the goods, he is liable in damages to the buyer. In the case of Rowland v Divall, R bought a motor-car from D and used it for four months. D had no title to the car, and consequently R had to surrender it to the true owner. R sued to recover the total purchase money he had paid to D. The Court held that R was entitled to recover in full, notwithstanding that he had used the car for four months. This case makes it clear that in order for there to be a valid sale of goods contract the seller have to have the right to sell such goods.

- II. Sale of goods by description

Where there is a sale of goods by description, the goods sold must correspond with the description. The English case of Moore & Co v Landaner & Co illustrated this rule. In this case, M sold L 3,100 cases of Australian canned fruits and the cases were to contain thirty tins each. M delivered the total quantity, but about half the cases contained twenty-four tins and the remainder thirty tins. L rejected the goods. There was no difference in market value between goods packed as twenty-four tins and goods packed as thirty tins to the case. The Court, however, upheld the buyer's right to reject the whole consignment because the goods delivered did not correspond with the description of those ordered. When selling goods by description it is mandatory that the description given should be almost identical to the goods which are actually being sold.

- III. Sale of goods by description and sample

Where goods are sold by showing a sample as well as by description the goods must correspond both with the sample and the description. In Nicholas v Godts, N agreed to sell to G some oil described as "foreign refined rape oil, warranted only equal to samples." N delivered oil equal to the quality of the samples, but which was not "foreign refined rape oil." The court held that G, the buyer could refuse to accept the oil. Therefore, if in case the goods do not match to either the description or sample given at the time of making the sale, the buyer has the right to refuse to accept such goods.

#### IV. Merchantable quality of goods sold

The goods sold must be of a "merchantable quality". Goods are not of merchantable quality if in the state in which they are sold, they have defects unfitting them for their ordinary use or their condition is such that no one, with knowledge of their true condition, would have taken them but rather rejected them.

In such cases they are not merchantable. In the case of Wren v Holt, a customer went to a restaurant and ordered some beer to drink. The beer given to him had been contaminated with arsenic and because of this the customer fell ill. He sued the owner of the restaurant for having supplied goods (beer) that was not 'fit for the purpose' and was also 'not merchantable'. The court agreed and awarded him damages.

It must be noted that if the buyer had examined the goods or had been given the opportunity to inspect the goods, then no condition is implied as regard defects which such inspection would have revealed. In Thornett v Beers & Son, B went to T's warehouse to buy some glue. The glue was stored in barrels and every facility was given to B for its inspection. B did not have any of the barrels opened, but only looked at the outside. He then purchase the glue but later found that the glue was defective. The court held that B could not complain of the defect or breach of merchantable quality because he had all the time and opportunity to inspect and test the glue but had chosen not to do so. In such a case, the buyer cannot later complain that the goods were bad and not what he wanted.

#### V. Sale of goods by Sample

The following rules will apply where the sale is by sample.

1. The bulk sold must correspond in quality with the sample shown to the buyer.
2. The seller must give the buyer a reasonable opportunity to compare the bulk with the sample.
3. The bulk of the goods supplied must be of merchantable quality because an inspection of the sample may not reveal any defects.

In the case of Drummond v Van Ingen, the seller submitted a sample of cloth which the buyer approved. The seller knew that the buyer was intending to re-sell the cloth to several tailors as material for tailoring work. When the bulk of the material was delivered, they were found to be unmerchantable for tailoring purposes - although the bulk was similar to an equal to the sample approved by the buyer. The court held that the defects in the material could not be discovered by the inspection of the sample and the buyer was not liable to pay for the bulk. Therefore, if the defect were not latent then the buyer has the right to refuse to pay for the goods.