

Study Session 3

CONTRACT OF SALE AND BUSINESS

Introduction

Dear Learners, welcome to session 3 on introduction to business. This unit will take us to the discussions on the contract of sales as it relates to business. Under this topic students will identify and discuss the rights and duties of parties to the sales contract. Moreover, it discusses about the regulatory framework on the transfer of ownership in goods and services under the sales contract. It also shows the fundamentals of international sales contracts.

Enjoy attending this session!

Study Session Outline

- I. Features of Sales Contracts
- II. Transfer of property in goods
- III. Rights and obligations of the parties
- IV. Contracts of sale at international context

Duration

Study Session under this unit requires a 2 hours of formal study time.

Learning Outcomes of Study Session 3

After attending this session, you will be able to:

- Identify the Fundamental features of Law of sales:
- Explain the rights and duties of sellers and buyers
- Discuss the transfer of goods/services

UNIT 3: Contract of sale and Business

Buying and selling things is regulated under a section of company law known as sales law. It is a set of guidelines that govern the creation, performance, and breach of a sales contract. Hence Sales contract is the regulatory framework in the transaction of buying and selling of goods and services. As long as the buyer or seller breaches a set of obligations, specified under the regulatory framework of their contract, they might be held responsible for the consequences of their actions. When a dispute arises between a buyer and a seller, the court will use provisions of sales law and general contract law to resolve it.

3.1 Nature of the contract of sale

According to *Ciro, Goldwasser, & Verma, R. (2011)*, it is generally agreed that following essential requirements are vital for the formation of contract of sale of goods (MacIntyre, 2018):

1. **The requirement of two parties:** Both the buyer and the seller must be present in order for a sale of goods contract to be valid. Buyer and seller can also be organizations, rather individual persons, depending on the circumstances.
2. **Offer and Acceptance:** Offer and acceptance are another critical part of a contract of sale. The buyer most likely made the offer, and the seller most likely accepts the offer. However, this position can be reversed in some circumstances.
3. **Consent:** Another crucial factor is the agreement of the people involved. The contract of sale must be based on consent of parties which is free from any defect in consent for example, duress would render an agreement between two parties to be unenforceable. It is necessary that both parties understand what they are doing and give their consent to it.

4. **Capacity:** Contract of ale may be invalidated upon the requires of the party who is not capable of contracting for reasons such as either of the parties have taken excessive advantages because of the incapacity of the other contracting party. If a person lacks the required mental capability to make informed decisions, then products that are essential and suitable for their daily lives are considered necessities..

5. **Price:** The consideration in a sales contract for goods is represented by the price. In most cases, the cost is expressed in money. There are two more ways to express it: monetary or in kind. The price can be set in a variety of ways. According to the contract, the price could be set at any time during the transaction, or in a way based on the agreement of the contracting parties.

6. **Time:** Unless explicitly stated otherwise in the contract, the deadline for payment is not taken into consideration. It is additionally specified that the agreement between the parties regulates whether or not any other time stipulations are of essence. If no deadline for delivery is specified,

Thus, in Amadi Thomas versus Thomas Aplin & Co Ltd (1972), the seller agreed to deliver the products at a specified time but failed to do so. The court determined that the moment of delivery is critical. Thus, failure to adhere to the contract's timetable amounts to breaching the agreement.

7. **Goods:** Other than money, goods are considered in general movable and immovable property which are tangible. In this context Land, is exceptionally excluded from the meaning of good subject to sale. This might be associated with modality of transfer of ownership rights which is different in case of land compared with other movable properties.

3.2 Features of Sales Contracts

According to MacIntyre, (2018) the qualities and nature of sales contracts should be clear to commercial businesses that participate in purchasing and selling activities. It is a kind of agreement

where one party consents to deliver and at the same time transfer ownership of a product to another party in consideration for payment in money or in kind of its equivalent. The seller is the party who has the duty to supply the goods. Under sales contract, buyers are the parties who are obligated to pay for the goods.

3.3 Formation of contract of sale.

Four fundamental elements are required in order to form a contract of sale, those are: offer, & acceptance, intention/consent to create legal relations and consideration. For a small-scale transaction, all of this is obviously there in an instant; yet, for a large one, there may be a prolonged negotiation in order to conclude the final contract.

3.4 Transfer of property

Basically, a contract of sale presupposes a transfer of ownership of a product from the vendor to the buyer. That's why transferring property in products from seller to buyer is such a significant event. When the buyer obtains ownership of the products and the associated duties from the seller, the property is said to be transferred from the seller to the buyer. Possession of goods differs from "property in goods" or "ownership of goods" in that the latter refers to having physical custody or control over the former (*MacIntyre, 2018*).

3.5 Rights and obligations of contracting parties to the sales contract

Rights and duties of sellers

Rights

- ✓ As long as certain conditions are met, the goods will be held in reserve for sale.
- ✓ Assume that the customer accepts a product when the buyer does not.

- ✓ Only deliver the products upon the requires of the buyer

Duties

- Provide a carriage of goods to a buyer; determine and prepare the items as per the stipulations of the contract; and transfer ownership of the products to the buyer in an absolute and effective manner.
- To accomplish the contract's requirements for delivery of the goods.

Rights and duties of the Buyer

Rights

- To get delivery of the products in accordance with the contract
- To receive products that are in line with to the contract's description, quality, and quantity;
- Buyers have rights to reject goods that do not fit to the contract's description, quality, or quantity;
- To reject the contract when items are delivered in installments without prior agreement to that effect.

Duties

- To pay the price for the products in exchange for their possession
- To make a request for delivery of the items.
- To need the things to be delivered at a fair hour.
- To accept installment delivery of the items and pay for them as per the agreement.

3.6 International contracts of sale

As discussed above, international sales contract also encapsulates at least two parties, the buyer and seller. Moreover, a skillfully written international sales contract will specify which country's laws will apply, which venue will be used to resolve problems and which dispute resolution process

will be used, such as arbitration instead of litigation. The UNCISG, Convention that govern the International Sale of Goods, is the applicable body of laws that regulate international sales contract. When commodities are sold internationally, contracts should include a phrase outlining the contents and conditions of the sale, preferably one of the eleven Incoterms codes (International Commercial Terms) (*Bridge, 2018*). If the commodity is not shipped on a negotiable marine bill of lading, the contract for the sale of the commodity should specifically provide when, where and how ownership of the commodity shifts from the seller to the buyer. International businesses are commonly carried out in the absence of a formal international purchase agreement. The supplier sends a quotation usually in the form of a *proforma* invoice, and the buyer submits a purchase order in place of it. This may be adequate for habitual sales between well-known parties who have already established a relationship as a result of their preceding interactions with one another. When dispute arises between parties, however, it may result in unexpected issues that were not anticipated. Gaps created by significant concerns that were not addressed in the foreign sale contract and that had not been resolved in past transactions between the parties, are filled by Dispute resolving authorities.

The CISG in addition to being a widely accepted treaty, serves as a model for a variety of regional and national legislation. (*Bridge, 2018*). The publication of a Legal Guide to Uniform Instruments in the Field of International Commercial Contracts (with a focus on sales) in 2020, has been approved by the UN Commission on International Trade Law.

Self-assessment Test Questions

- Define a contract and a contract of sale
- Explain the Rights and duties of sellers
- Explain the Rights and duties of buyers
- Name two main forms of contracts
- Mention set of rules that regulate international sales contract?