



# The Law of Sale of Goods

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## 1. CONTRACT OF SALE

Section 2(1) of the sales of goods ordinance,

"A contract of sale of goods in a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called 'the price'."

This ordinance applies to all types of movable property other than money.

### Sale and Agreement to Sell

#### "A Sale"

According to section 2(3) of the sales of goods ordinance,

"Where under a contract of sale the property in the goods is transferred from seller to the buyer, the contract is called 'a sale'."

#### "An Agreement to Sell"

"Where the transfer of the property in the goods is to take place at a future time or subject to some condition, thereafter to be fulfilled, the contract is called an agreement to sell."

An agreement to sell become a sale when the time pass or the conditions are fulfilled.

### Essential Elements of a Contract of Sale of Goods

#### 01) Existence of a seller

According to section 59(1) of sale of goods ordinance, a 'seller' means a person who sells or agrees to sell goods.

#### 02) Existence of a buyer.

According to section 59(1) of the sale of goods ordinance a 'buyer' means a person who buys or agrees to buy goods.

#### 03) Property (the ownership)

## 2. THE CAVEAT EMPTOR RULE

By this rule it means that 'the buyer should beware and carefully examine the quality and fitness of the goods purchase by him. If the buyer failed to do so, then he should face the loss if the goods turn out to be defective.

But this rule is subject to several exceptions. Those exceptions are included in sale of goods ordinance as implied conditions and warranties.

## Implied Conditions and Warranties

01) Under the 13 of the sale of goods ordinance the following condition and warranties are implied in every contract of sale.

- Section 13(a) - Implied condition
- Section 13(b) - Implied Warranty
- Section 13(c) - Implied Warranty

### Section 13(a)

According to section 13(a), the seller should have the right to sell goods. Where the seller has no title, he is liable in damages to the buyer.

### Rowland v. Divall

Rowland bought a motor car from Divall and used it for 4 months. Divall had not title to the car and consequently Rowland had to handover the car to the real owner. Rowland filed a case against Divall to recover total purchase money he had paid. It was held that Rowland was entitled to recover it in full, notwithstanding the fact that he had used it for 4 months.

### Section 13(b)

According to section 13(b), the buyer shall have and enjoy quiet possession of the good.

It meant that buyer should receive undisturbed undisputed possession from the seller.

### Manson v. Bermingham

A bought a type writer from B. A had to renovate it before use. Court held that B had breached the warranty about the quiet possession, and A was entitled to claim damages.

### Section 13(c)

The goods shall be free from any charge or burden in favor of third party, not declared to the buyer before or at the time when the contract is made.

02) According section 14 of the sale of goods ordinance following condition is implied in every contract of sale of goods by description.

### Section - 14 – Implied condition

Where there is a sale of goods by description, the goods shall correspond with the description.

In other words, where there is a contract for the sale of goods by description, as an example where the buyer does not examine the goods before purchase but merely relies on the seller's description of them, there is an implied condition that

the goods shall be similar to the description (shall correspond with the description).

Re Moore and Co. v. Launderer and Co.

M sold to L 3100 cases of Australia canned fruits of 30 this each. About half of the consignment carried only 24 this each. L rejected the goods. Court held that since the goods delivered did not correspond with the description of the ord. L Could reject the whole.

- Sometime the buyer does not see the good then, he will be buying on description. Sometimes having seen the goods, he may still be buying on description.

Grant v. Australian Knitting Mills

Dr. Grant went to a shop and asked for a cloth. Woolen cloth was shown to him. He bought it generally manufacturers use a chemical called Salphide in manufacturing process. But before they sell, they should remove that chemical. But the cloth which Mr. Grant bought, it wasn't removed. It caused to an allergy to Mr. Grant.

Mr. Grant sued that shop. It was held that, the cloth Mr. Grant bought did not correspond with the description, he could reject that.

- Where there is a sale by sample as well as a description, the goods shall correspond both with the sample and the description.

Nichol v. Godts

A agreed to sell some oil described a "foreign refined grape oil warranted only equal to sample". B delivered oil equal to the quality of the sample, but which was not real foreign refined grape oil. It was held that could refuse to accept it.

03) According to section 15 of the sale of goods ordinance,

- Section 15(1) - Implied Condition
- Section 15(2) - Implied Condition

Section 15(1)

Where 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 or judgment, there is an implied condition that the goods are reasonably fit for such purpose. But this does not apply where the goods are sold under a trade name.

Frost v. Aylesbury Dairy Co. Ltd.

A gave milk to E, which was consumed, by that killed F's wife. The purpose of the milk was well known. Since A had been aware of this, he was in breach of condition.

- Where the buyer relies on his own judgment on that of this advisors and not on that of the seller no condition is implied.

- Where he relied partly on his own judgment and that of seller, the condition is implied.

### Section 15(2)

Where goods are bought from a seller who deals in goods of that description there is an implied condition that the goods shall be of "merchantable quality." (whether he be the manufacturer or not)

This applied to only where goods are sold by description by a seller.

### Provision

But if the buyer has examined the goods then there is no implied condition with regard to defect which such an examination ought to have revealed.

### Grant v. Australian Knitting Mills

It was held that, cloth was unmerchantable, because they have not removed Salphide.

### Niblet v. Confections Materials Co. Ltd.

Held that the removal of Wrappings of this milk, made the sale of the tins commercially impossible and therefore unmerchantable.

### Provision

But if the buyer has an opportunity to examine the goods, this condition is not valid.

### Thronett v. Beers and Sons

**A** wanted to buy some glue. The glue was stored in barrels and the every facility given to **A** to inspect. He did not have all of the barrels opened but only looked at the outside. Held that as the examination of the inside of the barrels would have revealed the nature of glue, there was no condition as to merchantable quality proviso was valid as **A** had a chance to inspect.

But this proviso is not valid where the defects cannot be revealed by an ordinary examination.

### Hold Case

**A** wanted to buy beer cans. Beer was mixed with a chemical called 'arsenic'. Even though **A** had a chance to inspect beer cans the provision is invalid because by an ordinary examination it's hard to inspect the ingredients. That poisonous chemical therefore it was held to be unmerchantable.

- Merchantable quality according to Consumer Credit Act of no 29 of 1982. Section 4(2),

'There shall be an implied condition that the goods will be merchantable quality, but such a condition shall not be implied-'

- a) Defects of which the owner could not reasonably have been aware at the time the agreement was made.
- b) If the hirer has examined the good a sample therefore, as regards defects which the examination ought to have revealed.
- c) If the goods are secondhand goods and the agreement contains a statement to that effect.

04) According to section 16 of the sale of goods ordinance,

If the sale is by sample there is an implied condition that the goods shall correspond with the sample and the buyer will have a reasonable opportunity of comparing the bulk with the sample and also that the good shall be free from defects rendering them 'unmerchantable' which would not be apparent on a reasonable examination of the sample.

If the sale is by sample, there are three condition.

- 1) Condition  
The goods shall correspond with the sample.
- 2) Condition  
The buyer should have a reasonable opportunity to compare the bulk with the sample.
- 3) Condition  
The goods shall be free from defects rendering the 'unmerchantable' which would not be apparent on a reasonable examination of the sample.

### 3. CLASSIFICATION OF GOODS

#### (i) Specific goods and Ascertain goods

Specific goods mean goods identified and agreed upon at the time a contract of sale is made.

Ex: I want to buy this wooden chair.

Ascertain goods mean goods agreed but not yet identified at time a contract of sale is made.

Ex: I want to buy 2 wooden chairs out of these 10 wooden chairs.

Here they have agreed to sell 2 wooden chairs but yet they haven't identified specifically those 2 chairs.

#### (ii) Unascertained goods

If goods are not specific and ascertain, those goods are unascertained. Future goods can be consider as unascertained goods. Future goods mean goods to be manufactured or acquired by the seller after the making of the contract of sale.

Ex: \* I will buy 200 tons wheat from the stock in next year.

\* Goods yet to be grown or manufactured. I'll buy 200 tons from the crop when grown.

#### 4. TRANSFER OF THE PROPERTY (OWNERSHIP) OF GOODS

According to general rule goods should be ascertained or specific goods before property can pass. That means ownership of unascertained goods cannot be passed.

##### (i) Transfer of the property in unascertained goods

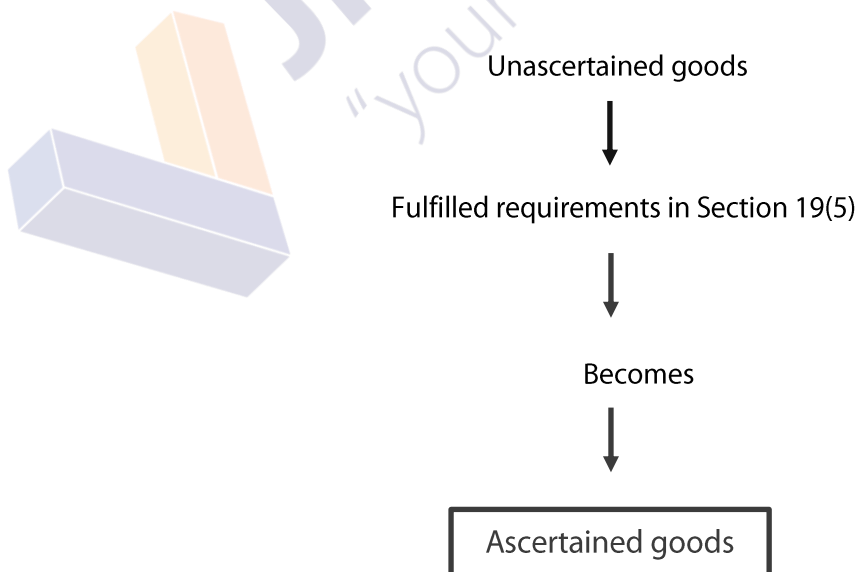
According to section 17 of the sale of goods ordinance, where there is a contract for the sale of unascertained goods no property in that goods is transferred to the buyer.

##### Exception

Section 19(5) of the sales of goods ordinance,

- Where there is contract for the sale of unascertained goods or future goods, by description, and good of the description and in a deliverable state,
- Unconditionally appropriated to the contract,
- Either by the seller with the assent of the buyer or by the buyer with the assent of the seller,

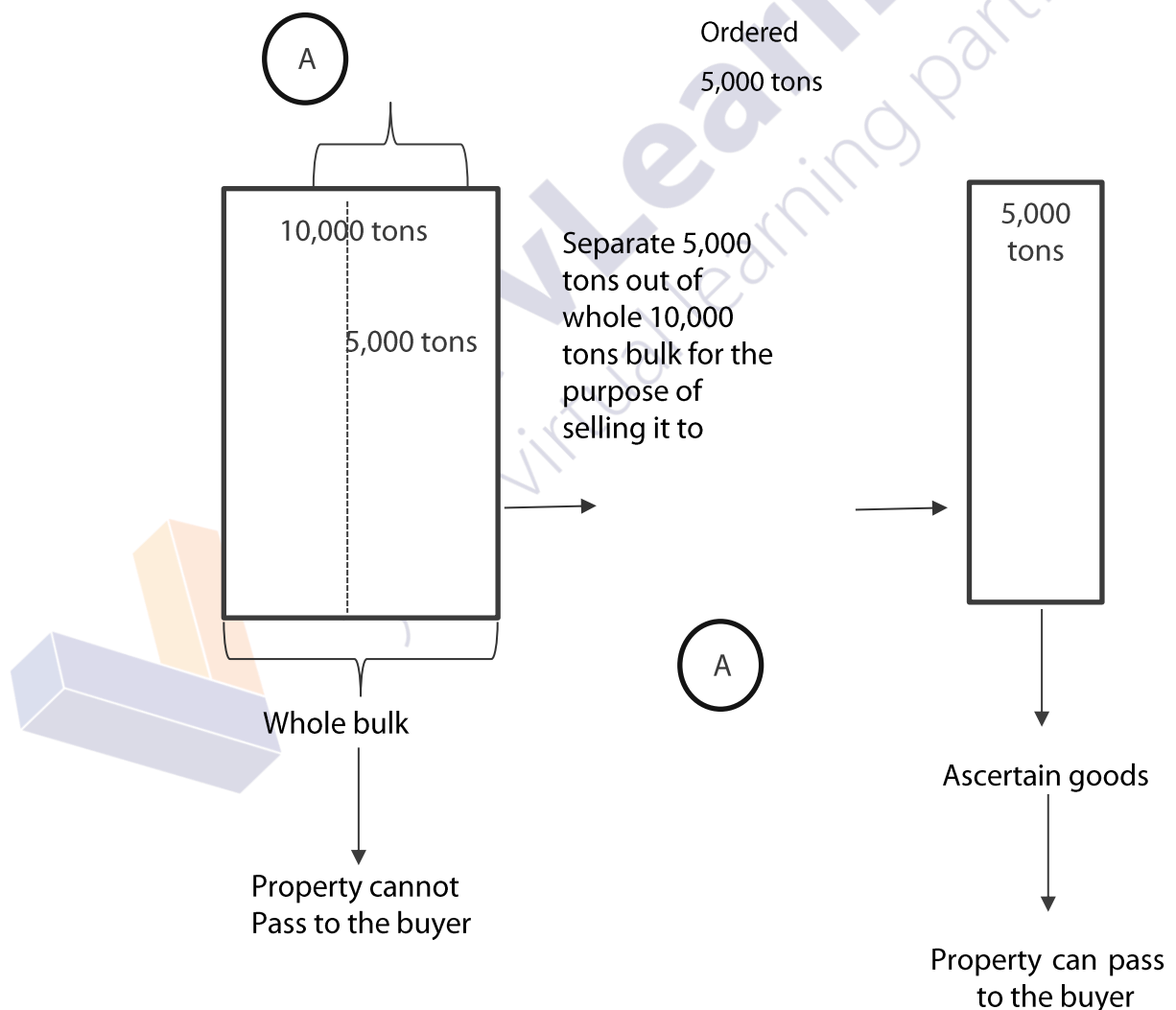
The property in goods passes to the buyer.



Ex: A, buyer wanted to buy 5,000 tons of wheat of a cargo which totals 10,000 tons. Here it could not pass the property because of section 17 of the sale of goods ordinance which at present requires the goods to be ascertained before property can pass.

In such a case the property (ownership) of the subject matter of the contract will pass when the goods are appropriated to the particular contract in some way.

According to above example if the seller set aside 5,000 tons of wheat from the whole bulk for the purpose of selling that to buyer A, that 5,000 tons are appropriated to the contract. At that time ascertained goods convert into specific or ascertained goods, so that it would pass the property of the goods to the buyer.

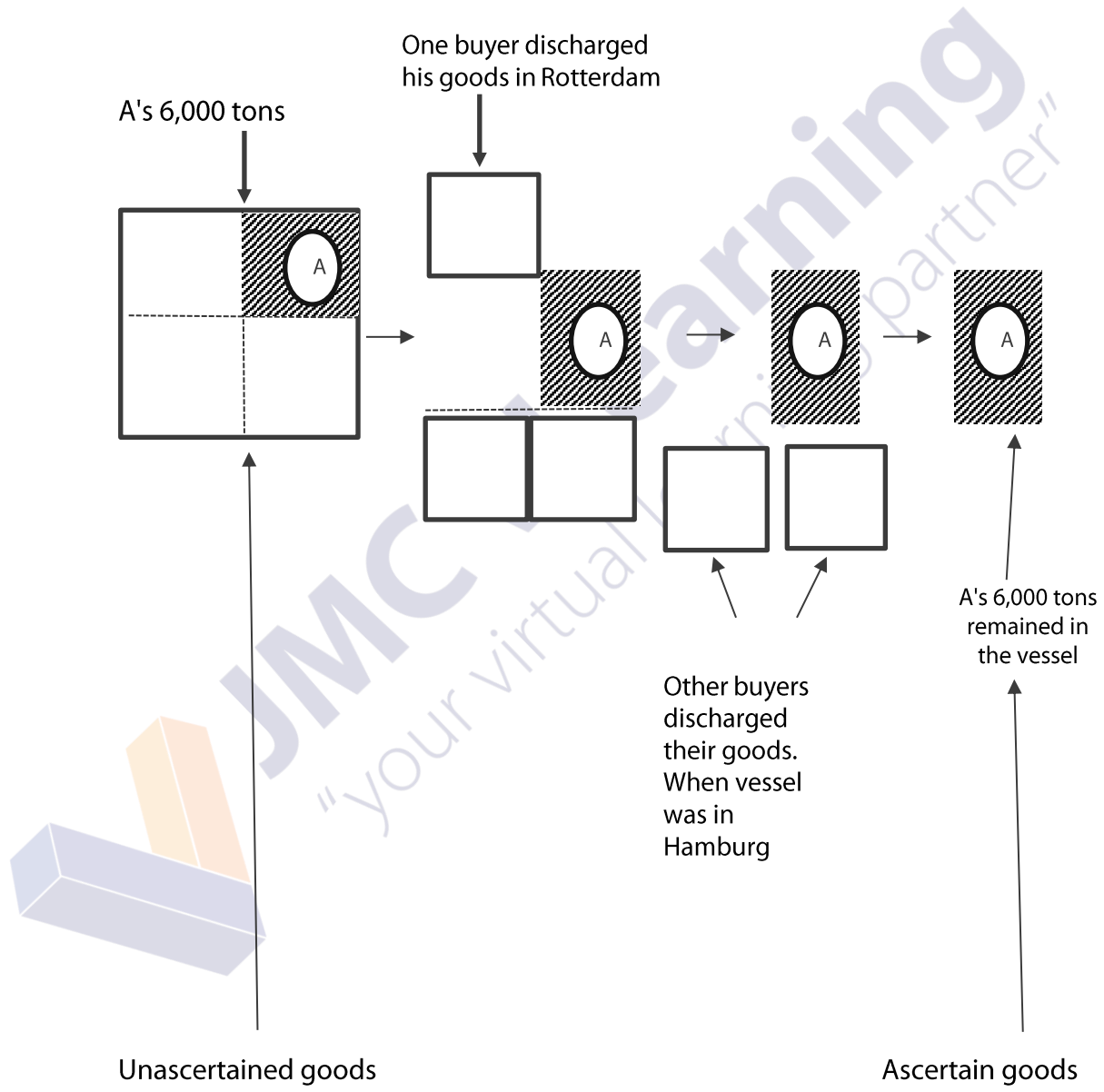


**East Port Navigation Corporation**



**A** bought 6,000 tons of Copra From a undivided bulk of 22,000 tons from a cargo. Other buyer discharged their goods, when the vessel sailed in Rottredam and in Hamberg 6,000 tons of Copra which bought by **A** were remained in the ship. It was held that appropriation could also occur automatically.

Here seller did not do anything positive to appropriate them, when other buyers discharge their goods, automatically it separated and remained. Court held that it separated and remained. Court held that here unascertained goods automatically convert in to ascertained goods when other buyers discharge their goods from the vessel.



(ii) Transfer of the property in ascertained goods

According to section 18(1) of the sale of goods ordinance,

Where there is contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

According to section 18(2) to ascertain the intention, can use,

- Terms of the contract
- The conduct of the parties
- Circumstances of the each case

If it is difficult to ascertain the intention of the parties with above there rules for ascertaining the intention.

**(i) Rule: - Section 19(1) of the sale of goods ordinance**

Where there is an unconditional contract for the sale of specific goods,

In deliverable state,

The property of goods passes to the buyer. It is immaterial the time of payment.

Nilabdeen v. Faruq

Nilabdeen sold his lorry to Faruq for Rs. 17,500 and promised to pay rest of the money Rs. 40,000 when he received Finance Facility. It was held that even though this was a specific good, property was not passed because there was a condition of that sale, to pay Rs. 40,000 later. It was not unconditional contract.

Underwood v. Borough Castle

There was contract to sell a condensing engine of 30 tons. But it was attached to the land surface. It was held that, it was not in a deliverable state unit it removed / separated from the land. So the property of the engine cannot pass to the buyer.

**(ii) Rule :- Section 19(2) of the sale of goods ordinance**

Where there is an unconditional contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done and buyer has notice thereof.

Philip Head & Sons v. Show Front

A carpet was sold to the **B** but seller had to fit the carpet. Carpet was stolen the property of the carpet did not pass because the carpet was not in a deliverable state. The seller had to fit the carpet for the purpose of putting them into deliverable state.

**(iii) Rule: - Section 19(3) of the sale of goods ordinance**

Where there is a contract for the sale of specific goods in deliverable state, but the seller is bound to weight, measure test or do some other act to the goods for the purpose of ascertaining the price.

**(iv) Rule: - Section 19(5) of the sale of goods ordinance**

When goods are delivered to the buyer on sale or return,

- a) When buyer inform his approval or acceptance to the seller.
- b) If he does not inform his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods on the expiration of such time and if no time has been fixed on the expiration of reasonable time.

## 5. REMEDIES FOR BREACH OF CONTRACT OF SALE OF GOODS

### Remedies of Unpaid Seller

- **Real Remedies**

According to section 39(1) unpaid seller is entitled to the following remedies even where the goods have already passed in to buyer,

- a) A lien
- b) Stoppage in transit
- c) Limited right to resale

**(a) The Seller's Lien**

The right to retain possession of goods until payment of the price. According to section (40). This is available when:

- The goods have been sold without stipulation as to the credit.
- The goods have been sold on credit that has already expired.
- When the buyer becomes insolvent.

According to section (42), a lien is lost when:

- When the goods are delivered to a carrier for the purpose of transmission to buyer, without reserving the right of disposal.
- When the buyer / agent obtains possession of the goods.

## (b) Right to Stoppage in Transitu

### Section (43)

The right of stoppage in transit is the right a seller has in stopping the goods while they are in transit, resuming possession of them and retaining possession until payment is made. It is available when

- The buyer becomes insolvent
- The goods are in transit

The seller's right in transitu is not affected by any sale on the buyer's part unless the seller has consented to it.

## (c) Right of Sale

### Section 47(1)

The exercise of the right of stoppage in transitu does not rescind the contract and give the seller a right to resale.

### Section 47(2)

Where an unpaid seller resells the goods, the buyer obtains a good title against the original buyer.

### Section 47(3)

The seller may resell the goods only when,

- The goods are of a perishable nature.
- Where he gives notice to the buyer of his intention to resell and the buyer does not pay a price within reasonable time.
- Where the seller expressly reserves the right to resell if the buyer should default.

The seller may recover any damages from the buyer if he should sustain any loss on the resale of the goods.

### • **Personal Remedies**

In addition to the real remedies mentioned above, the unpaid seller has two personal remedies against the buyer they are,

- a. The action for the price of the goods
- b. The action for non-acceptance

### (i) **The Action for the Price**

#### Section 48(1)

The action for the price lies when the property in the goods has passes to the buyer.

Section 48(2)

When the price is payable on a day certain irrespective of delivery, an action for the price may be brought all though the property in the goods has not passes and the goods have not been appropriated to the contract.

**(ii) The Action for Non-acceptance**

Section 49(1)

This arises when the buyer refuses / neglects to accept the goods.

The measure of damages is the loss resulting from the buyer breach of contract. This is loss of profit on the sale hen the goods are at a fixed retail price and supply exceeds the demand.

According to section 49(3)

Where there is an available market for the goods, prima facie measure of damages is the different between the contract price and the market price.

Section (37)

When the seller is ready and willing to deliver the goods and request the buyer to take delivery which the buyer does not do within a reasonable time, the seller may recover from the buyer,

- Any loss occasioned by the buyer's refusal / neglect to take delivery.
- A reasonable charge for the care and custody of the goods.

• **Remedies of the Buyer**

Only personal remedies.

Where the seller is acting in breach of contract, the buyer has several remedies against him.

**(i) Action for Non-delivery**

Arises when the seller wrong fully neglects / refuses to deliver the goods to the buyer.

Measure of Damages

The estimated loss resulting naturally from the breach of contract, as in the case of non-acceptance.

Ex: When there is an available market for the goods, the difference between the contract price and the market price at the time when the goods should have been delivered or if no time for delivery was fixed, from the time of the refusal to deliver section 50(3).

Where the buyer has bought for resale and the seller knows of his, the measure of damages – difference between the contract price and the retail price.

**(ii) Action for Recovery of the Price**

Where the buyer has paid the price but the goods are not delivered, he can recover the amount paid.

**(iii) Action for Specific Performance**

A buyer may get his contract specifically performed only when the goods are specific and ascertained.

The remedy is discretionary and will be granted where the damages are not an adequate remedy.

**(iv) Rejection of Goods**

The buyer is entitled to reject the goods on a breach of condition.

Where the breach of condition is that the goods are not of the contract description, the property will not pass, so that the buyer has the right to reject.

Vigers v. Sanderson Bros

Laths was sold above the specification mentioned below and the contract provided that the property was to pass as soon as the goods were shipped. The goods were shipped, the goods were shipped which were not of the specified length. It was held that the buyers could that the provision in the contract cannot apply to any others.

The captain of a ship is merely an agent to receive good for the purpose of carriage and is not an agent to accept delivery.

**(v) Action for Damages for Breach of Warranty**

Dering a breach of warranty, the buyer can either,

- Set up the breach of warranty in diminution / extinction of the price.
- Maintain an action for damages.

