Czech University of Life Sciences Prague

Department of Economics and Management

Master Thesis

ELEMENTS OF A SALES CONTRACT

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Recommended information sources

1. Barnard, A. 2005, "A Different Way of Saying: On Stories, Text, A Critical Legal Argument for Contractual Justice and the Ethical Element of Contract in South Africa", South African journal on human rights, vol. 21, no. 2, pp. 278-292.

2. Burton, S.J. & Oxford University Press 2009, Elements of contract interpretation, Oxford University Press, Oxford.

3. Ricks, V. 2013, "Assent Is Not an Element of Contract Formation", University of Kansas law review, vol. 61, no. 3, pp. 591.

4. (Sale of Goods Act, 1962 (ACT 137) 1962)

Declaration

I declare that I have worked on my diploma thesis titled Elements of a Sales Contract by myself, and I have used only the sources mentioned at the end of the thesis. As the author of the diploma thesis, I declare that was written by me, with the help of specific literature and other sources which are included as well as frequent co-discussions with my supervisor Mgr. Bc. Sylva Řezníková, Ph.D., MA.

In Prague on ______________________________

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Dedication

This paper is dedicated to my institution mentors and the members of the thesis committee for their guidance and encouragement while I worked on this dissertation. They not only enlightened me with the academic knowledge but also gave me valuable advice whenever I needed it the most.

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ELEMENTS OF A SALES CONTRACT

NÁLEŽITOSTI KUPNÍ SMLOUVY

Abstract

The study aimed to evaluate Ghana's sales contract regulations, focusing on the Sale of Goods Act of 1962. (ACT 137). It specified the seller's and buyer's primary responsibilities and optional responsibilities. Again, the study looked at a sales contract's mandatory and optional aspects in Ghana's jurisdiction. The Vienna Convention on Contracts for the International Sale of Goods (Vienna, 1980) was used to conduct a comparative analysis or discussion (CISG). The study revealed that the buyer's primary obligations in a contract of sale are to pay the price and accept delivery of the goods, as outlined in Section 21 of the Sales Act 1962. Section 22 also states that, unless otherwise agreed, the buyer must be ready and willing to pay the price in exchange for delivery of the products. The following are the seller's essential obligations, as outlined in section 8 of Act 137: (1) In a sale of certain commodities, the seller's primary obligation is to deliver those things to the buyer. (2) The seller's principal obligation in selling unidentified items is to deliver goods to the client that are substantially equivalent to the description or sample. (3) Any term in a sale contract that is incompatible with or repugnant to the seller's fundamental responsibility is null and void to the degree of the incompatibility or repugnance.

Keywords: Contract, Sales, Buyer, Seller, Law

Abstrakt

Cílem studie bylo zhodnotit regulaci kupních smluv v Ghaně se zaměřením na zákon o prodeji zboží z roku 1962 (ACT 137), který upřesňuje základní a volitelné povinnosti prodávajícího a kupujícího. Práce se zabývá povinnými a volitelnými aspekty kupní smlouvy v jurisdikci Ghany. K provedení srovnávací analýzy a diskusi (CISG) byla použita Vídeňská úmluva o smlouvách pro mezinárodní prodej zboží (Vídeň, 1980). Studie ukázala, že hlavní povinností kupujícího v rámci kupní smlouvy je zaplatit cenu a převzít dodávku zboží, jak je uvedeno v § 21 zákona o prodeji zboží z roku 1962. V § 22 se rovněž uvádí, že není-li dohodnuto jinak, musí být kupující připraven a ochoten zaplatit cenu výměnou za dodání produktů. Níže jsou uvedeny základní povinnosti prodávajícího, jak je uvedeno v části 8 zákona 137: (1) Při prodeji určitých komodit je hlavní povinností prodávajícího tyto komodity dodat kupujícímu. (2) Základní povinností prodávajícího při prodeji neidentifikovaného zboží je dodat zákazníkovi zboží, které je ve své podstatě ekvivalentem popisu nebo vzorku. (3) Jakákoli podmínka v kupní smlouvě, která je neslučitelná se základní odpovědností prodávajícího nebo jí odporuje, je neplatná do míry neslučitelnosti nebo odporu.

Klíčová slova: Smlouva, Prodej, Kupující, Prodávající, Zákon

TABLE OF CONTENTS

Abstract **8**

1. Introduction **11**

2. Objectives and Methodology **15**
2.1 Objectives 15
2.2 Methodology 15
2.2.1 Doctrinal Methodology 15
2.2.2 Comparative Approach 16

3. Literature Review **18**
3.1 Nature of Sales Law in Ghana 18
3.2 Fundamental Elements of the Sale of Goods Act 21
3.2.1 Definition of Sale of Goods 21
3.2.2 The Obligations of Buyer and Seller 23
3.3 Enforcement of Sales Contract 25
3.4 Mechanisms for Sales Contract Enforcement 26
3.5 Breaches of Sales Contract 30
3.5.1 Breach Conditions 30
3.5.1.1 Repudiation 30

4.0 Practical Section **32**
4.1 Fundamental Duties of a Seller in a Sales Contract 32
4.1.1 Review of Cases Involving Duties of a Seller in a Sales Contract 34
4.1.2 Inferior Goods 36
4.1.3 Transfer in Property 38
4.2 Fundamental Duties of a Buyer in a Sales Contract 41
4.2.1 Payment of the Price. 41
4.2.2 Time for Payment. 41
4.2.3 Duty to take Delivery. 42
4.3 Review of Cases Involving Duties of a Buyer in the Sales Contract 43
4.4 Enforceability of a Sales Contract in Ghana 47
4.4.1 Offer and Acceptance 47
4.4.2 Acceptance 49
4.4.3 Intention to Create Legal Relations 50
4.4.4 Capacity to Contract 52
4.4.5 Consideration 55

5. Conclusion **56**
References 58

1. Introduction

In our daily lives, people make contracts whether they realize it or not. There are bargains and consensual transactions to help fulfill daily needs and wants. With this said, the question is raised as to 'what a contract is". A contract refers to an agreement consisting of an exchange of promises and undertakings. Various scholars have defined contract, but according to Sir Frederick Pollock, "every agreement and promise enforceable at law." A contract is thus a legally enforceable agreement that creates, defines, and governs mutual rights and obligations among its parties. A contract typically involves the transfer of goods, services, money, or a promise to transfer any of those at a future date.

Contracts are essentially about promises and undertakings that the contracting parties undertake voluntarily and are thus bound. The bad performance or failure to fulfill the undertaking or contractual obligation affords the party to whom the promise was made to have a cause of action for breach of contract. In the event of a breach of contract, the injured party may seek judicial remedies such as damages or rescission. Contract law, the field of the law of obligations concerned with contracts, is based on the principle that agreements must be honored.

The sale of a good or an object that may be moved at the time of purchase, is a transaction in which both the buyer and the seller gain. On the other hand, sales transactions can be complicated, and they do not always go easily. Problems can emerge at any point throughout the sale, and at least one of the parties may lose money. Legislators and courts construct regulations governing the sales of products in acknowledgment of these realities and the fundamental significance of orderly trade to society.

The buyer's key responsibilities are accepting the merchandise and paying the buying price. The buyer has the discretion to reject the items if they are non-conforming. The seller has

four options or a combination of two or more options if the items match the conditions of the sales contract but are mistakenly rejected by the buyer. The buyer's primary responsibilities are to accept the products and pay the purchase price. If the items are nonconforming, the buyer has the option to reject them. If the items meet the terms of the sales contract but are incorrectly rejected by the buyer, the seller has four choices or a combination of two or more options.

According to De Ly[1], domestic law governs sales law in several jurisdictions. This resulted in a slew of possible problems in international sales contracts, which had to be resolved using conflict resolution rules. This domestic conflict model reflected a Westphalian worldview in which global sales transactions should be handled by domestic courts using domestic conflict rules to determine whether local or foreign domestic sales law should be applied. The drawbacks of such a paradigm, such as high transaction costs and a lack of a fair playing field or forum shopping, are well-known and will not be discussed in this study. It should be mentioned that after decolonization in the 1950s, this approach became even more complicated. With the diversity of sales law in over 200 nations worldwide, it no longer delivers appropriate answers. The predominant type of sales contract is the contract for the Sale of Goods. The increasing use of the Sale of Goods contract demands an efficient and proper legal system to settle any emerging issues as a result of a breach of the contract. The law enforces obligations on commercial parties when they get into a binding contract of sale, and these parties must carry out these obligations. It is imperative to extensively evaluate the law on sales contracts when determining the obligations of the parties to a sales contract regulated by contract law. This is because the law offers remedies to innocent parties when contractual obligations are not fulfilled.

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[1] De Ly, F. (2005). Sources of International Sales Law: An Electric Model. Journal of Law and Commerce. Vol 25. Pg 1

In Ghana, the law governing the sale of goods is provided for by the Sale of Goods Act, 1962 (Act 137). The Act under Section 1 states, "A contract of sale of goods is a contract by which the seller agrees to transfer the property in the goods to the buyer for a consideration called the price, consisting wholly or partly of money." From this definition, it is seen that there must be an agreement which is the offer and acceptance (title) in consideration of the goods, and there must be wholly or partly money or otherwise. Section 2 of the Act provides for capacity. The contract of sale, like all other contracts, may be either in writing or by word of mouth, or both, and it may also be implied from the party's conduct.[2]

Section 5 of the Act lists the types of goods that form the subject of the contract of sale. Section 82 of the Act defines 'goods' to include 'movable property and growing crops or plants and any other things attached to or forming part of the land which are agreed to be severed before sale by or under the contract of sale. The goods must strictly be movable. Immovable goods such as buildings and land interests, among others, are not inclusive.[3] The types of goods specified under Section of the Act are specific goods, unascertained goods, or future goods. Specific goods are identified and agreed on when a contract of sale is made.[4] The goods do not need to be physically present before the parties at the time of contracting. Unascertained goods are not identified at the time of a contract of sale.[5] Future goods to be manufactured, grown, or acquired by the seller after entering a contract of sale are provided for in s.5(2) of Act 137.[6] Future goods are not yet in existence as the name suggests, and the title in them cannot pass until they come into existence.

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[2] Section 3 of the Sale of Goods Act, 1962 (Act 137)
[3] *Halaby v Wiredu* [1973] 2 GLR 249
[4] Section 81 of the Sale of Goods Act, 1962 (Act 137)
[5] Section 5 (1) of the Sale of Goods Act, 1962 (Act 137)
[6] *Howell v Coupland* [1876] 1 QB 258

The price in a contract of sale may be fixed in three manners. It may be set by the contract or fixed in a manner agreed upon by the parties or determined by the course of dealing with the contracting parties.[7] Where the price is not defined in the ways specified above, the buyer shall pay a reasonable price for the goods. What amounts to moderate is a question of fact to be determined depending on the facts or circumstances of each case. The price must be determined at the time of contracting, and any sign of uncertainty threatens the contract's conclusion.[8] The cost of the goods may be determined by valuation.[9]

Sales contract enforceability is unresolvedly connected to the necessity to safeguard the different interests of the parties engaged in the transaction. According to Seiburgh (2018), for ascertaining the enforceability of the obligations resulting from the sale of goods, an exploratory evaluation involves the question of whether the subject matter is adequately determined to comprise a binding sales contract. In the sales of Goods Acts of Ghana, the formation of an enforceable commercial sales contract is reliant primarily on an offer and acceptance. The undertaking of a request and the expression of approval demands an intention to create legal relations that must be objectively determined. This covers the critical analysis of whether a rational individual (the promisee) could have presumed that the promisor intended to be legally bound. This indicates that whether an offer involves an intention to create legal relations is to be determined from the standpoint of a rational person in the receiver's position. The requisite of an intention to create legal relations is not fulfilled where a buyer is aware that a seller made an error in the offer and where there is an ambiguity for the buyer if the seller made a neutral expression of an intention to be legally bound.

[7] Section 6 (1) of the Sale of Goods Act, 1962 (Act 137)
[8] *Foley v Classique Coaches Ltd*. [1934] 2 KB 1
[9] Section 7 of the Sale of Goods Act, 1962 (Act 137)

2. Objectives and Methodology

2.1 Objectives

The study sought to assess the fundamental duties of a seller in a sales contract, evaluate the fundamental obligations of a buyer in a sales contract and examine the enforceability of sales contracts in Ghana.

2.2 Methodology

The current study employed qualitative research of doctrinal and comparative analysis. Qualitative research allows the researcher to do an interpretative study of specific issues where the researcher is key to the sense. A doctrinal approach was used initially to analyse the legal principles in the Sales Act of Ghana 1962, the rational connections and implications of these rules, and their underpinnings. A comparative analysis was also done to examine how the CISG deals with similar issues and its interpretations.

2.2.1 Doctrinal Methodology

According to Salter and Mason [10], doctrinal research comprises an elaborate and extremely expertise commentary and an organized expounding of legal doctrines. In contract law, this approach is acceptable as contract law is grounded on the interpretation of statutes and cases. It is imperative to know that contract laws are based on logical conclusions and not exact science. Holmes[11] stipulates that they are organized judgments that can be determined by elements such as history, culture, politics, and economics. These coinciding elements are a merge of diverse academic areas of study[12].

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[10] Salter, M. and Mason, J. (2007). Writing Law Dissertations: An introduction and Guide to the Conduct of Legal Research. Pearson/ Longman. ISBN: 0582894352,9780582894358 P164-166

[11] Holmes, O.W. (1897). The Path of the Law. Harv L Rev pp 457-465

[12] Vick, D. (2004). Interdisciplinarity and the Discipline of Law. Journal of Social Science pp 163- 164

Though doctrinal research is mainly seen as intellectually strict and inward-looking[13], this study seeks to offer exhaustive scrutiny of the obligations of the seller and buyer and the enforceability of these obligations. This research is unwaveringly doctrinal in its approach as it comprises of identification of legal principles and a critical qualitative analysis of legal materials. It does not entail any intense scope of interdisciplinarity. Mainly, the Sale of Goods Acts 1962 will be used for doctrinal research. The author will undertake an analytical review of sales contracts and their associated issues in the jurisdiction of Ghana. This literature will include laws made by parliament or Executive Instruments, reports, scholarly articles, publications, and other relevant literature.

2.2.2 Comparative Approach

The research used a comparative law to juxtapose other foreign laws to the national law on contracts. Comparative law is principally a tool for enhancing domestic law and legal doctrine.[14] Comparative law aims to advance and understand the domestic legal system by analyzing how foreign jurisdiction deals with similar issues[15]. The foremost aim of comparative law is acquiring knowledge and ongoing learning. Zweigert and Kotz,[16] demonstrate that knowledge acquisition is the main aim of using comparative law. Comparative law[17] provides better legal solutions and recommendations that could be adopted into domestic law though it is always not practical due to social and economic

[13] (ibid)
[14] Van Hoecke, M. (2011). Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? 1st edition, Hart Publishing

[15] Collins, H. (1991). Methods and Aims of Comparative Contract Law. Oxford Journal of Legal Studies, 399

[16] Zweigert, K. and Kötz, H. (1998). Introduction to Comparative Law. 3rd edition, Oxford University Press
[17] Sieburgh, C. (2017). Primary EU law and Private law concepts, Cambridge Intersentia. Pp 1-46

structural disparities. Foreign laws cannot be adopted into domestic law without considering its consistent conceptual scheme.

Comparative law can also advance International Commercial Law by harmonizing the contract of Sale of Goods by contributing to the present legal system and harmonizing law[18]. There is a coordination of divergent legal systems by omitting the most significant disparities and making minimum essential conditions. This can be accomplished if countries adjust their domestic laws by incorporating international conventions already existing at the regional and international levels.

One of this thesis' aims is to use comparative law to asses how courts deal with the buyer's remedy of avoidance in different jurisdictions and to assess whether English law could provide a more efficient solution to the existing issues. The current study used comparative law to determine the obligations of the buyer and sellers in different jurisdictions and how these obligations are enforced.

[18] Glenn, P. (2012). Aims of Comparative Law.Elgar Encyclopedia of Comparative Law. 2nd edition, Cheltenham Edward Elgar

3. Literature Review

3.1 Nature of Sales Law in Ghana

Article 11 of the 1992 Ghana Constitution[19] states that the laws of Ghana shall comprise:

- The Constitution;
- Enactments made by or under the authority of the Parliament established by the Constitution [or legislation];
- Any Orders, Rules, and Regulations made by any person or authority under a power conferred by this Constitution [or subsidiary or subordinate legislation];
- The existing law or the written and unwritten laws of Ghana that existed immediately before the coming into force of the 1992 Constitution; and
- The common law [or the English common law, English doctrines of equity, and the rules of customary law].

The Sale of Goods Act of 1962[20] (ACT 137) is a Ghanaian law that governs contracts for the sale and purchase of goods. The Sale of Goods Act serves several purposes. A contract in which a seller transfers or agrees to transfer ownership of goods to a buyer for monetary consideration. An agreement to sell is used when ownership is to be transferred later. A contract of sale is a legal agreement between a seller and a buyer to exchange products, services, or property for a predetermined amount of money paid or promised to be paid. It is a particular form of legal agreement.

A contract in which a seller transfers or agrees to transfer ownership of goods to a buyer for a monetary consideration. An agreement to sell is used when ownership is to be transferred

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[19] The 1992 Constitution of Ghana, Ghana Publishing Company

[20] SALE OF GOODS ACT, 1962 ACT 137, Laws of Ghana, http://elibrary.jsg.gov.gh/fg/laws%20of%20ghana/2%20REP/SALE%20OF%20GOODS%20ACT,%201962%20ACT%20137.htm

later. The Sale of Goods Act lays down a modest number of compulsory legal standards concerned with an array of presumptions and implicit terms, which try to represent the commercial expectations in the most regularly accepted sales contracts. In the absence of a written agreement to the contrary, these terms will govern any contract that falls within the Act's scope.

The act or law is in nine sections which contain 84 subsections combined. The Sale of Goods Act establishes several mandatory legal regulations about various presumptions and implicit terms intended to reflect commercial expectations in the most regularly agreed-upon sales contracts. In the absence of a written agreement to the contrary, these terms will govern any contract that falls within the Act's scope.

In section 1 of the act[2], a contract of sale is defined as; (1) A contract of sale of goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price, consisting wholly or partly of money, (2) Whereby one or more contracts, a person has agreed for value to bail goods to a bailee on such terms that the property in the goods will or may at the option of the bailee pass to the bailee then, this Act, that person is deemed to have agreed to transfer the property in the goods to the bailee, and the bailor shall be deemed to be the seller, and the bailee shall be deemed to be the buyer. (3) There may be a contract of sale between one part owner and another. (4) A contract of sale may be absolute or conditional.

When the sales of Goods Act in Ghana are compared to other similar laws in other jurisdictions, in England, for example, The Sale of Goods Act of 1979 codified the Contract Sale of Goods under English law[21]. Its main objective is to strengthen the bond between the

[21] Robert Bradgate, Commercial Law (3rd edn, Oxford University Press 2000), 26.

Seller and the Buyer. As a result, the 1979 Act continues to be the foundation of English law regarding rights under a contract for the sale of goods[22]. In contrast, Saudi law does not codify the contract for the sale of goods[23]. Because of this, the two legal systems' clarity levels with English law are more definite than in Saudi law. Its well-established statute governing the Contract of Sale of Goods, which dates to 1893, is the reason for this. As a result, the 1979 Act may serve as a straightforward remedy in the situation.

In Nigeria, The Sale of Products Act, 1893, English legislation that Nigeria adopted long before gaining political independence, serves as the primary regulation governing the sale of goods in the nation[24]. In Nigeria, the Sale of Goods Law has broad application. Most states that have not done this still rely on and use the Sale of Goods Act, 1893, even if some of the Federation's States have re-enacted them into their state laws with minor modifications to meet their local requirements[25].

Globally, the United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted at a Diplomatic Conference in Vienna on 10 April 1980, is a uniform set of rules on contracts for the international sale of goods and is one of the pillars of the international community's vision of a broad scale unification of law about international trade[26]. Currently, the CISG has 83 Contracting States from all corners of the globe. Ghana signed the CSIG in 1980 but is yet to ratify it.

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[22] P.S. Atiyah, Pragmatism and Theory in English Law (13th edn, Stevens & Sons 1987), 32 (see section 6.2.2.1. The Buyer's Right to Specific Performance in English Law, 215).

[23] The Saudi legal system still preserves the traditional model of an Islamic (Sharia) legal system; see Schwenzer (N 5), 27.

[24] Obilade, O. A. (1979). The Nigerian Legal System. Ibadan: Spectrum Books Ltd

[25] Nwocha, M. (2018) Law of Sale of Goods in Nigeria: Interrogating Key Elements of the Sale of Goods Act Relating to the Rights of Parties to a Sale of Goods Contract. Beijing Law Review, 9, 201-210. doi: 10.4236/blr.2018.92014.

[26] Murphy, M.T., 1988. United Nations Convention on Contracts for the International Sale of Goods: Creating Uniformity in International Sales Law. Fordham Int'l LJ, 12, p.727.

It should be emphasized that when the Sale of Products Act was adopted, the legislation only foresaw the presence of the two types of words mentioned above in a contract for the sale of goods. However, it was stated in several rulings in the 1950s and 1960s that the distinction between a condition and a warranty was not absolute. This change manifested in two ways. On the one hand, it was argued that specific terms referred to as fundamental terms were more significant than circumstances. However, it was also claimed that further provisions fell between the condition and the warranty; these words were known as innominate or intermediate terms. Practically, it made little difference whether a term was referred to as a conditional or a basic term. Therefore, regardless of the situation, any violation of a contract provision, no matter how trivial, gave the innocent party the right to renounce the contract and treat it as discharged.

3.2 Fundamental Elements of the Sale of Goods Act

3.2.1 Definition of Sale of Goods

The exchange of commodities, services, or property from seller to buyer for an agreed-upon value in cash or the promise to pay that amount is known as a sale[27]. It is a particular kind of legal agreement. According to Section 2(1) of the SOGA, a contract for the sale of goods is one in which the seller transfers or agrees to transfer the buyer's ownership of the items in exchange for a monetary consideration known as the price. The contract is a sale when ownership of the items is transferred from the seller to the buyer. The Act's S.2(4), however, refers to an agreement to sell when there is no actual property transfer, but the agreement calls for the transfer to occur later or is subject to other conditions.

[27] LawTeacher. November 2013. Essay on The Sale of Goods Act 1979. [online]. Available from: https://www.lawteacher.net/free-law-essays/commercial-law/definition-of-sale-of-goods-act-commercial-law-essay.php?vref=1 [Accessed 18 July 2022].

Under the Sale of Goods Act of 1930[28], "goods" are defined as "every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the Contract of Sale." 13 A contract for sale's "goods" is its subject. The following categories of goods are possible: i.e., (I) Current goods, (II) Future goods, and (III) Contingency goods. Existing goods are already created, physically present, and in someone's possession or ownership. The two types of existing things are (a) specific and ascertained and (b) generic and unascertained. Specific products are products that can be identified clearly and recognized things[29].

Generally, all goods are either present or future; they are never both. As a result, the products that make up a contract of sale may be present-day or future-day goods. However, English and other sales laws treat future commodities varyingly[30]. For instance, under section 5(1) of the 1979 Act, an English Contract of Sale may be for items already in existence or those that will be. The categories of products are identified here, and it is suggested that they may already exist or represent goods in the future. Additionally, future product developments are described as existing but not yet owned by the Seller under the 1979 Act.349. The 1979 Act clarifies that future commodities may be legally acquired.

[28] Singh, S., Tracing The History Of The Sale Of Goods Act, 1930.
[29] Badruzzaman, M., Analysis of General Principles of Sale of Goods Law in Bangladesh.
[30] 8 The Sale of Goods Act 1979, S. 5(1) provides that “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 him after the making of the contract of sale, in this Act called future goods”.

3.2.2 The Obligations of Buyer and Seller

Under the Sale of Goods Act 1962,[31] the duties of the buyer are outlined in section 3 under the subsection's obligations of the buyer, payment, and delivery. The fundamental obligations or duties of the seller are shown in section 2 of the act. The essential requirement for contracts involving the sale of things is that the seller delivers the items and the buyer pay for the goods. However, Article 2 further offers detailed guidelines for payment and delivery of goods. For instance, Section 2-503 specifies that a seller must provide a buyer with "whatever notice reasonably required to enable [the buyer] to take delivery." Section 2-508 stipulates that a seller may "fix" an error by delivering the correct goods within the timeframe specified in the contract if the seller initially delivers the incorrect items. It is inferred that the buyer will not be released from the need to pay if the seller does "fix" the error.

The duties deriving from section 27 of the 1979 Act must subsequently be followed by the Buyer accepting the goods and making the required payments under this Contract[32]. In addition, section 28 of the Act states that, unless otherwise agreed, the Seller's obligation to deliver the goods and the Buyer's commitment to pay the price for them are current conditions under English law. As a result, unless otherwise agreed, the Seller shall be ready and prepared to deliver the Goods to the Buyer, and the Buyer shall be ready and willing to pay the Price. In cases when the time of delivery and payment are not specified in the Contract of Sale, these must be regarded as contemporary conditions[33].

[31] SALE OF GOODS ACT, 1962 ACT 137

[32] Ndubuisi Nwafor, Comparative and Critical Analysis of the Doctrine of Exemption/Frustration/Force Majeure under the United Nations Convention on the Contract for International Sale of Goods, English Law and UNIDROIT Principles (PhD thesis, University of Stirling 2015), 18-19

[33] The Sale of Goods Act 1979, s. 27 provides that "It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, following the terms of the contract of sale"

The Sale of Goods Contract is treated as a set of reciprocal obligations under Saudi law, imposing legal obligations on both the Seller and the Buyer. As a result, under the Contract's provisions for the Sale of Items, the Seller is obligated to deliver the goods to the Buyer, who is then responsible for accepting them and fulfilling the Contract's payment obligations. Furthermore, good faith must be upheld in the performance of the contract under Saudi law's Contract of Sale[34].

A contract of sale and an agreement to sell are outlined in the 1979[35] Act. In an agreement to sell, the right to sell the goods may be exercised when the property goes to the buyer, but in the event of a Sale, the implied term for the seller is that he has the right to do so. The Act further distinguishes between two circumstances: before and after the execution of a Contract of Sale, in cases where the Seller is ineligible to sell items under a Contract of Sale[36].

Ethiopia[37] asserts that the vendor is required to fulfill several requirements. The seller takes on a few responsibilities under the sales contract. These commitments include delivering, transferring ownership, and guaranteeing the buyer against flaws in possession and non-conformity with the agreement and other duties. Non-performance occurs when certain obligations are not met. The seller also has joint commitments with the buyer in addition to these. Under the terms of the selling agreement, the seller takes on a few responsibilities. These obligations include delivering, transferring, ownership, guaranteeing the buyer against

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[34] Section 4.4.3. The Position of Saudi Law on Good Faith in the Performance of the Contract for the Sale of Goods, 131.

[35] The Sale of Goods Act 1979, s. 12(1) provides that "In a contract of sale [there is the implication for the] Seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass"

[36] Ibid, s. 12(5A) provides that "As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition"

[37] Abrham Yohannes, ETHIOPIAN LEGAL BRIEF, 2017

flaws and non-conformity with the contract, and any other duties imposed on him by the sale contract and gap-filling clauses under Article 2273 of the Civil Code. The failure to fulfill these duties constitutes a breach of the sales agreement.

3.3 Enforcement of Sales Contract

Effective contract enforcement has long been recognized as critical to the functioning of markets *(Beckman and Boger, 2004)*[38]. Contract enforcement, formal and informal, is a crucial prerequisite for effective interchange and investment in economic activities in general and the agri-food industry in particular. Contracts can be enforced using several methods. Contracts can be legally enforced through public organizations such as official courts (Scott, 2002)[39].

According to *Fafchamps (1996),* [40]sub-Saharan Africa is frequently seen as a region where contract discipline is lacking. According to the idea, due to Africa's laid-back mentality, supplies are delayed, quality is uncertain, and payments are late. Firms must retain precautionary stocks, scrutinize goods, and spend time and money on payment collection, which boosts business costs. *Biggs er al., (1994)*[41] contends that the failure to honour contractual obligations deters investment, particularly from international enterprises, who, it is believed, may find a more disciplined business environment elsewhere, such as in East Asia. It also hinders Africa's ability to sell manufactured goods to the West, as illustrated by the experiences of US garment importers.

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[38] *Beckmann, V., & Boger, S. (2004). Courts and contract enforcement in transition agriculture: theory and evidence from Poland. Agricultural Economics, 31(2-3), 251-263.*
[39] *Scott, C. (2002). Private regulation of the public sector: a neglected facet of contemporary governance. Journal of Law and Society, 29(1), 56-76.*
[40] *Fafchamps, Marcel. "The enforcement of commercial contracts in Ghana." World Development 24.3 (1996): 427-448.*
[41] *Hess, T. M., Sumberg, J., Biggs, T., Georgescu, M., Haro-Monteagudo, D., Jewitt, G., ... & Knox, J. W. (2016). A sweet deal? Sugarcane, water and agricultural transformation in Sub-Saharan Africa. Global environmental change, 39, 181-194.*

In Mok Beer Bar v GADA[42], having determined that the delay in receiving the goods was not attributable to the seller, the Court considered the import of Section 27(3), which provides that whoever is at fault for a delay in delivery bears the risk of any damage or deterioration which might not have occurred but for the delay. It was held that the delay was the respondent's fault that notwithstanding, the Court conceded that the agreement to keep the goods created a bailor-bailee relationship.

Under Section 27(4), the fault-provision in Section 27(3) does not apply where the seller or buyer acted as a bailee of the goods. In other words, whatever liabilities a bailee has in respect of goods damaged or lost goods would be enforceable against the seller-bailee/buyer-bailee, notwithstanding Section 27(3). Section 21 further states that the fundamental obligations of the buyer are to pay the price and accept the goods. Accordingly, it was the respondent's duty to take his goods after he had paid for them, a duty which he had failed to perform.

3.4 Mechanisms for Sales Contract Enforcement

Contracts are not honored unless economic agents are capable and willing to fulfill their responsibilities[43]. People will be ready to comply only if there is a mechanism to punish contract violations. There are three types of enforcement mechanisms: those based on guilt, those based on coercion, and those based on recurrent interaction. Each person has a sense of guilt. Individuals' ability to feel guilty for failing to keep a business promise varies.

[42] *The Proprietor; Mok Beer Bar V. Gada (1978) JELR 67047 (HC)*
[43] *Arrow, K. J. (1973). Information and economic behavior.*

Honesty is primarily a result of upbringing, or "secondary socialization," as psychologists refer to it. It is also said to be influenced by religious beliefs and cultural values[44].

Contract enforcement and, eventually, coordination are influenced by how contract design considers issues likely to affect enforcement. It also depends on how much buying corporations integrate contract conditions that farmers like while ignoring terms that benefit the firms[45]. A formal or informal contract specifies all obligations of each contracting party, and parties must comply with their obligations (execution of contract terms)[46].

Fafchamps,[85] identified two sorts of coercive enforcement mechanisms: legal and illegitimate. The state's monopoly over legitimate force is ultimately used to enforce contracts through the courts. The state's support allows creditors to confiscate a debtor's assets, giving unmovable property collateral value. Contractual commitments can also be enforced with illegitimate force. Parties can engage in outright insults and violence or employ goons and bribe cops to intervene.

The use of force is not required in most circumstances; implicit or explicit threats are sufficient. Threats, on the other hand, are not necessarily credible. Using compulsion to enforce contracts, whether lawful or illegitimate, is costly. Legal fees are often too exorbitant for modest transactions to justify going to court. When the threat of coercion is not credible, it fails to compel compliance unless the offending party can persuade the aggrieved party to

[44] *Platteau, J. P. (1996). The evolutionary theory of land rights as applied to sub-Saharan Africa: a critical assessment. Development and change, 27(1), 29-86.*
[45] *Abebe, G. K., Bijman, J., Kemp, R., Omta, O., & Tsegaye, A. (2013). Contract farming configuration: Smallholders' preferences for contract design attributes. Food Policy, 40, 14-24.*
[46] *Acheamfour, V. K., Kissi, E., Adjei-Kumi, T., & Adinyira, E. (2019). Review of empirical arguments on contractor pre-qualification criteria. Journal of Engineering, Design and Technology.*

go to court or resort to violence at any cost - for example, to maintain a tough-guy reputation *(Kreps et al., 1992)*[47] or because his/her moral conscience compels him/her to do so.

The third enforcement mechanism is based on the *quid pro quo* principle: "I'll keep doing what I'm doing if you keep doing what you're doing" (*Axelrod, 1984*[48]; *Fudenberg & Maskin, 1986*[49]). The possibility of retaliation induces compliance with contractual duties. Parties must repeatedly interact over time for such a mechanism to work. The most basic type of retaliation is the unwillingness to transact further (*Eaton & Gersovitz, 1981*[50]; *Kletzer, 1984*[51], *Grossman & van Huyck, 1988*[52]).

The connection must be worth preserving for this punishment to be effective. A group who were not parties to the pact may also inflict retaliation. Any kind of collective punishment necessitates the establishment of a coordination mechanism and disseminating information on contract compliance within the group (*Kandori, 1992*[53]; *Raub & Weesie, 1990*[54]). Reputation serves as a means of communication and collaboration. Reputation-based enforcement techniques are vulnerable to misinformation: they do not work successfully unless a complementing mechanism verifies the accuracy and authenticity of the shared data.

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[47] *Krebs, T. (2003) "Human Capital Risk and Economic Growth," The Quarterly Journal of Economics 118: 709-744.*

[48] *Axelrod, R. (1981) "The Emergence Of Cooperation Among Egoists." Amer. Pol. Sci. Rev. 75: 306-318.*

[49] Fudenberg, D., Levine, D., & Maskin, E. (2009). The folk theorem with imperfect public information. In *A Long-Run Collaboration on Long-Run Games* (pp. 231-273).

[50] *Eaton, J., & Gersovitz, M. (1981). Debt with potential repudiation: Theoretical and empirical analysis. The Review of Economic Studies, 48(2), 289-309.*

[51] *Kletzer, K. M. (1984). Asymmetries of information and LDC borrowing with sovereign risk. The Economic Journal, 94(374), 287-307.*

[52] *Grossman, H. I., & Van Huyck, J. B. (1993). Nominal sovereign debt, risk shifting, and reputation. Journal of Economics and Business, 45(3-4), 341-352.*

[53] *Kandori, M. (1992). Social norms and community enforcement. The Review of Economic Studies, 59(1), 63-80.*

[54] *Raub, W., & Weesie, J. (1990). Reputation and efficiency in social interactions: An example of network effects. American journal of sociology, 96(3), 626-654.*

The World Bank (2003) polled enterprises in 50 developing and transition nations, ranging from highly impoverished African and South Asian countries to middle-income Latin American and East Asian countries. Firms were asked how they had settled their most recent dispute over the payment of an overdue bill, among other things. Almost two-thirds of respondents said they had reached an agreement without going to court. The findings of a similar question presented in surveys of entrepreneurs by *Johnson et al. (2002)*[55] in transition states showed that the number of people who went to court ranged from 39% in Poland to 20% in Ukraine to merely 6% in Russia.

Regulations prescribing the procedures to be followed and limiting who can serve as an arbitrator or mediator are used by certain governments to prevent private dispute settlement mechanisms. Various prohibitions on alternative dispute resolution procedures impede businesses in Bolivia and Tanzania from fully utilizing them *(Kahkonen, Lee, Meagher, and Semboja 2001[56]; Fleisig and Pena 2003[57]).* In Colombia and Peru, on the other hand, where the government has passed legislation allowing for the use of alternatives, the results have been positive. In 2001, the Bogotá Chamber of Commerce's commercial arbitration chamber handled 371 cases totaling $3.2 billion in claims. In 2000, the Lima Chamber of Commerce settled 182 commercial disputes in fewer than six months (IDB 2002).

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[55] *Johnson, S., McMillan, J., & Woodruff, C. (2002). Courts and relational contracts. Journal of Law, Economics, and organization, 18(1), 221-277.*

[56] *Kähkönen, S., Lee, Y., Meagher, P., & Semboja, H. (2001). Contracting practices in an African economy: industrial firms and suppliers in Tanzania. College Park, MD: University of Maryland, IRIS Center Working Paper, 242.*

[57] *Fleisig, H., & de la Peña, N. (2003, June). Legal and regulatory requirements for effective rural financial markets. In paper for "Paving the Way Forward: An International Conference on Best Practices in Rural Finance", Washington, DC (pp. 2-4).*

3.5 Breaches of Sales Contract

Only when a legally enforceable purchase contract is in place between a buyer and a seller during a sale of goods can there be a breach of contract. Purchase agreements may be either unconditional or conditional, meaning they may impose no limits on the buyer or conditions like the buyer's ability to obtain financing. Whether the agreement is absolute or conditional, a breach of contract occurs when either the buyer or the seller fails to uphold its terms. Immediately after a contract is breached, the guilty party must remedy the breach. Most major solutions are specific performance, damages, or contract restitution, or contract cancellation. Types of contract breaches are anticipatory, actual, minor and material.

3.5.1 Breach Conditions

According to the general rules, specific performance of a contract for the sale of personal property will typically not be granted because there is an adequate legal remedy, such as an action for damages for breach of contract, even though statutes in some jurisdictions authorize the specific performance of contracts for the sale of personal property. Therefore, a court of equity will not, unless there is some specific reason, specifically enforce a contract for the sale of ordinary articles of commerce, which can always be bought in the market, such as barroom fixtures, cattle, coal, corn, cotton, logs or lumber, pianos, sauerkraut, whisky, used cars, or an existing business, unless damages in lieu thereof would be insufficient.

3.5.1.1 Repudiation

When one party makes it evident that they do not intend to adhere to the conditions of a purchase contract agreement, this is known as an anticipatory breach. Whether the transaction is meant to happen or the denial is expressed verbally or physically, it still counts as a refusal. The opposing party has the right to sue for breach of contract and demand

payment or delivery of the product as soon as he becomes certain that the sale of the products will not go through. There are three ways someone can be rejected; each one is just as serious as the next.

Express repudiation is the outright, unequivocal, and unambiguous refusal to uphold the terms of a purchase agreement. A vague statement or qualified itself may be a warning sign, but it is not an express denial. Express repudiation can occur from either a buyer or a seller. Examples include saying out loud or writing, "There's no way I'm going to buy this piece of equipment" or "I will not be providing this piece of equipment as promised."

Repudiation by action can also happen due to a buyer or seller's actions or inaction. Repudiation through step is defined as conduct that makes it evident the sale cannot or will not be happening. For instance, if a buyer signs a purchase agreement for a piece of equipment but later discovers the same item elsewhere for a lower price and buys it there instead, the buyer has repudiated the agreement through their actions, and the seller may now bring a claim for breach of contract against them.

Repudiation by transfer might take place without either party even being aware of it. The most common outcome of a seller transferring a purchase contract to a third party is repudiation by transfer. Assume, for instance, that a buyer signs a contract to buy a piece of equipment that the seller had previously leased and is now selling since the lease is ending. If, before delivery, the seller transfers the equipment title to the leassor, repudiation by transfer has occurred, and the buyer is no longer purchasing the equipment from the party specified in the contract.

4. Practical Section

Commercial companies that engage in purchasing and selling procedures must understand the qualities and nature of sales contracts. A contract of sale is a contract in which one party agrees to deliver and transfer ownership of a good to a second party, who must then pay for the good in money or its equivalent. The vendor or seller is the party who is responsible for delivering the goods. The vendee or buyer is the one who is responsible for paying for the item.

In this section of the study, various sales contract cases within and outside Ghana's jurisdiction are evaluated or discussed based on the themes of buyer and seller obligations, enforcement, and mechanisms of enforcing sales contracts.

4.1 Fundamental Duties of a Seller in a Sales Contract

A seller's duties under the Sale of Goods Act, 1962 (Act 137) can be divided into two fundamental duties, comprising delivery, the existence of the goods, and title, and the second part of the duties dealing mainly with the sale-description, quality, and quantity of the goods. The seller under a sale for specific goods is to deliver the goods to the buyer[58] and, with unascertained goods, deliver goods that correspond to the description or sample given to the buyer by which they were sold.[59]

In the sale of specific goods, there is an implied condition on the seller's part that the goods are in existence at the time the contract was made.[60] Where the seller breaches this implied condition, the buyer has the right to rescind the contract and sue for damages.

[58] Section 8 of the Sale of Goods Act, 1962 (Act 137)
[59] ibid
[60] Ibid Section 9

The seller must have the right to sell the goods at the time when property in the goods is to pass on. The seller's right to sell here does not mean he has title in the goods. Where the seller does not have title to the goods, he can get the right to sell the goods from the person in whom property or title of the particular goods is vested; it is even possible for a seller to own the goods but not have the right to sell the goods due to a third party's rights especially in trademarks and its infringements.[61] The seller is obliged to deliver the goods to the buyer in exchange for the price unless otherwise agreed by the parties. Delivery is the voluntary transfer of goods from one person to another[62]- the seller or agent to the buyer or agent. Delivery can be,

1. actual physical handover of the goods to the buyer or his agent,
2. by handing over documents of title- this is where the seller transfers the document of title to the buyer giving the latter legal control of the goods. This must be followed with the intention to pass property or title once the buyer is given possession of the documents[63],
3. constructive delivery-where parties conduct themselves as if a transfer of property has occurred without an actual or symbolic transfer and
4. handing the buyer the means of obtaining actual control of the goods.[64]

The delivery must be made at a reasonable hour. What is defined as reasonable here is also a question dependent on the case's circumstances (the goods and the time the goods were needed). If no time for delivery is fixed, the goods shall be delivered at a reasonable time. Time of delivery is a condition in the contract; thus, a breach of it births repudiation of the contract and a claim for damages.[65] Unless a contrary condition appears, the place of delivery

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[61] *Niblett v Confectioners Materials Co. Ltd.* [1923] 3 KB 387
[62] Section 81 of the Sale of Goods Act, 1962 (Act 137)
[63] *Tabury v GCB* [1980] 1 GLR 90
[64] Section 18 of the Sale of Goods Act, 1962 (Act 137)
[65] Section 16 of the Sale of Goods Act, 1962 (Act 137)

shall be the seller's place of business if the seller has one and, if not, their residence. Where the contract was made in another place for the sale of specific goods, that place shall be the place of delivery of the goods.[66] It is implied that; the seller shall deliver goods corresponding precisely with the description.[67] The seller is obliged to sell goods that answer the description at the time of the sale.[68] The seller is again obliged to deliver goods that are free from defects. The goods must be quality and fit for the purposes they are to be used.[69]

Articles 31-35 of the CISG define a seller's performance duties under a contract. As a result, Article 35(1) CISG states that "the seller must deliver products in the quantity, quality, and description specified in the contract, and the manner specified in the contract." As a result, the contractual description of the products is the deciding factor in assessing whether the commodities comply with the contract. Thus implying, the features are based on the contract's nomenclature and description of the expected quality rather than on objective quality standards. A Turkish company pledged to supply 1,000 tons of fresh cucumbers to a customer doing business in Germany in one illustrative CISG case on Article 35(1) CISG. However, the seller allegedly delivered less than that quantity. Because the CISG was in effect, the seller was compelled to provide products in the quantity specified in the contract, and delivery of fewer than 1,000 tons was considered a contract violation.

4.1.1 Review of Cases Involving Duties of a Seller in a Sales Contract

The plaintiff in *Kwetey v Botchway*[70] had mortgaged his home to the Agricultural Development Bank to obtain a loan to rebuild a broken marine engine. The bank restored all

66 Section 19 of the Sale of Goods Act, 1962 (Act 137)
67 Section 11 of the Sale of Goods Act, 1962 (Act 137) & Re Moore & Co. Ltd. v Landauer & Co. Ltd. [1912] 2 KB 519
68 Parker v Palmer [1821] 4 B & A 387
69 Section 13 of the Sale of Goods Act, 1962 (Act 137)
70 *Kwetey V. Botchway And Another (1979) Jelr 65542 (Hc)*

clients' engines that had broken down. The bank intended to sell a boat that legally belonged to the plaintiff. The court determined that the bank had no claim to the yacht and that Kwetey and ADB had a creditor-debtor relationship. Dispositions under the voidable title by mercantile agents in possession, disposition by the seller in possession, and disposition by the buyer in possession are all exceptions to this rule.

In his business, the seller must ensure that (a) the items are free of defects and (b) the buyer has the right to reject the goods, refuse to pay for them, and claim damages. He must, however, show that the faults existed when the contract was signed. *Continental Plastic Engineering Co LTD v IMC Industries Technik-GMBH* [71]was a case where the defendants were Continental Plastic Engineering Co LTD and IMC Industries Technik-GMBH. The plaintiff's company sold an HBD plastics machine to the defendant in July 1998. The defendant's corporation purchased the equipment as seen or examined without warranty and delivered it to the plant without inspection. The machine had a price tag of $40,000 when it was purchased. The plaintiff's company claimed that the defendant inspected the machine before selling it and declared it to be in excellent and perfect working order. It was decided that a seller is liable for all flaws in the goods due to an implied condition. On the other hand, the seller is not responsible for defects that he fully discloses to the buyer at the time of the sale contract.

In *Pyne & Associates V African Motors*[72], an appeal from the Court of Appeal's ruling that holding a vehicle with problems for 11 months equates to acceptance, transfer of property, and assumption of all risks, rendering the repudiation of the contract unlawful. The court evaluated whether the Court of Appeal made an error in interpreting the relevant sections of

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[71] *Continental Plastics Engineering Co Ltd v IMC Industries-Technik GMBH [2009] SCGLR 298*
[72] Pyne & Associates Vrs African Motors (J4 38 of 2013) [2017] GHASC 15 (27 July 2017)

the Sale of Goods Act in this instance. The court followed the rule that when a man sells an item, he warrants that it is suited for a specific purpose. According to the court, the plaintiff knew why they bought the four-wheel vehicle and had the responsibility and chance to inspect it before accepting the sale. According to the court, the faults were not latent, and could have been easily recognized. The plaintiffs also relinquished their rights by continuing to use the car after becoming aware of the flaws, according to the court. As a result, the court upheld the Court of Appeal's decision and dismissed the appeal.

Additionally, in *Andreas Bschor Gmbh & Co KG Vrs Birim Wood Complex Ltd*[73] and Another, the parties agreed to work together on the delivery and installation of a sawmill. The transaction, however, was not covered by a properly drafted contract. Furthermore, it became clear that the plaintiff gave the defendant a defective plant unfit for its intended function. The court looked at the Sale of Goods Act, 137 of 1962 (the act) and determined that a promise's breach is determined by the type of promise: fundamental obligation, condition, or warranty. If a primary obligation or condition is breached, the party not in default has the right to repudiate the sale contract, and if the seller is in breach, the buyer has the right to reject the products. The court determined that the defendant was entitled to general damages due to the sawmill's failure to be fit for purpose due to the fault. The appeal was therefore upheld.

4.1.2 Inferior Goods

The first example is *Sackey v Fattal*[74], the manufacturer shipped the goods of Sackey's first order, and while they were still in transit, Fattal managed to obtain a portion of the shipment to show Sackey. When Sackey examined these "shipped samples," he realised they were

[73] *Andreas Bschor Gmbh & Co KG Vrs Birim Wood Complex Ltd and Another (J4 9 of 2015) [2016] GHASC 68 (22 March 2016)*
[74] *Sackey V. Fattal (1959) JELR 69012 (CA)*

slightly different than what he ordered, but he accepted them anyway. In the case of the second order, Fattal could not obtain the "shipped samples" on time, and by the time he was able to get them, Sackey had already paid him the total price for both shipments. When the full shipments were finally delivered, both contained goods much inferior to the "order samples."

Counsel for the defendants contended that where a buyer of goods has accepted the goods, in the sense of taking them into physical possession, he cannot then complain about defects in the goods or claim damages for failure on the part of the seller to deliver goods of contract quality. In other words, the buyer only has two options and no more; he can either reject all the goods or tender full payment of the price upon accepting the goods. The Court held that where part of the goods is inferior to the sample, the buyer may reject the whole or retain the whole and claim damages in respect of the defective part. This mirrors Sections 11 and 12, which deal with the sale of goods by sample and description, respectively, and state that there's an implied condition that the goods will correspond with the sample/description provided. A breach of the condition generally entitles the innocent party to terminate the contract or accept and sue for damages.

Secondly, in *Rockson v Armah*[75], Rockson sold his Mercedes Benz vehicle to Armah in a credit sale. Upon examining it, Armah discovered that the vehicle had recently been in an accident. Rockson initially disputed the extent of the damage but later admitted it and promised to fix it. The attempt at fixing it began with Messrs. R.T. Briscoe, but Rockson found that their charges were too high, so with Armah's acquiescence, he took it to a cheaper wayside fitter. Two months after Armah had taken delivery of his "fixed car," it broke down again, and Armah discontinued payment. The Court found on the evidence that Armah only

[75] *Rockson V. Armah (1975) JELR 84691 (CA)*

agreed to abide by the terms of the contract of sale if Rockson put the car in as near a condition as it was pre-accident. Armah's willingness to accommodate repairs at a moderate price did not mean Rockson had to do shoddy work.

That notwithstanding, the Court held, citing *Fisher, Reeves & Co v Armour*,[76] that where a buyer elects to keep a defective car for an inordinately long time, it is not open to him after that to avoid the transaction. Further, according to Section 51, a buyer may not reject goods that he has accepted. What does it mean to have accepted goods? According to Section 52(b), a buyer is deemed to have accepted goods if he does not, within a reasonable time, after delivery of the goods, inform the seller that he rejects them. The Court observed the critical importance of time in whether a contract may be repudiated. In sum, a long retention must be equated with acceptance, and what a reasonable time is, is a question of fact that may differ from case to case.

4.1.3 Transfer in Property

The seller's fundamental obligations are covered in Section 8. It stipulates that the seller's primary responsibility in the sale of products is to deliver those goods to the buyer. The seller must supply things that match the description given when the unascertained commodities are sold. Therefore, to the extent of the discrepancy, any clause in a contract of sale that conflicts with or contrary to the fundamental obligation is void. No property in the products is passed to the buyer under a contract for the sale of goods, under Section 25, until and until the goods are determined.

In the matter of *Christopher Hill v. Ashington Piggeries* [77] and others, according to the court's ruling in All ER 847, it is irrelevant if the seller lacks the essential skill or judgment or that,

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[76] *Fisher, Reeves & Co. v. Armour & Co., 3 K.B. 614 (1920).*
[77] *Ashington Piggeries Ltd v. Christopher Hill Ltd, 1972 A.C. 441 (1972).*

in the current state of knowledge, no one could use skill or judgment to identify the specific quality of the goods that deemed them inappropriate for that purpose. Therefore, the seller gives the buyer a reasonable impression that he is capable of using enough skill or judgment to make or choose goods that will be suitable for the specific purpose for which he knows the buyer will use them by presenting himself to the buyer as a manufacturer or dealer of goods of that kind.

The contract of sale in *Kursell v. Timber*[78] Operators covered all merchantable wood growing in a Latvian forest on a specific date. The contract said the buyers would have fifteen (15) years to harvest the wood. The title would have passed if the trees had been determined. If not, the contract would be broken, and title would not have transferred. According to the Court, the contract was broken because the trees were not ascertained. Unless the goods are unascertained, they can only pass when the parties wish it to pass AFTER the goods are ascertained, property in the goods passes when the parties intend it to pass under Section 26.

Also, in *Jerome v Bentley*[79], Tatham received a diamond ring from Jerome with the conditions that if he could sell it for more than £550, he could keep any more money for himself, and if he could not sell it in 7 days, he was to give it back. Twelve days later, Bentley purchased the ring in good faith, believing that he was the rightful owner, and Tatham sold it to him for £175. Tatham had no right to sell the ring, so Jerome sued Bentley for conversion once they resold the ring. The Court determined that Tatham did not belong to a recognized class of agents. He was just the person who had been given a ring to sell. When the seven

[78] *Kursell v. Timber Operators and Contractors Ltd.*, 1927 K.B.1 298 (1927).
[79] *Jerome v. Bentley & Co*, 1952 All E.R.2 114 (1952).

(7) days were up, his only responsibility was to deliver and therefore had no authority to deal with it in any other way except for its safe custody.

Similarly, *Commonwealth Trust v Akotey*[80], Akotey sent 1050 bags of cocoa together with consignment notes by rail to Laing. He had sold cocoa to Laing before, but this time there was no contract since Laing's offer of £2.50 was deemed to be too low. Laing did, however, hold the merchandise and the consignment notes. He turned over the consignment notes after selling the commodities to Commonwealth Trust. The Court decided that Akotey's behavior precluded him from establishing his title. Akotey must be held accountable for enabling the loss of his title so far as the commodities were not supplied to Laing by Akotey's agent's fraudulent act but rather by Akotey himself.

In addition, the Court stated that it would be against the general principles of mercantile practice and law to permit the owner of his goods to reverse a purchase made by a third party in good faith and for total value after the owner had allowed the goods to enter the possession of another with all the marks of possession and apparent title.

Finally, in *Henderson v Williams*[81], at Williams' warehouse, Grey had 150 bags of sugar stored away. Fletcher deceitfully persuaded Grey to instruct Williams to transfer the sugar bags to him. After that, Fletcher sold Henderson the sugar. When Grey later found the forgery and instructed Williams not to deliver the products, it was already too late. Williams was estopped from disputing Henderson's claim, the court ruled.

[80] *Commonwealth Trust v. Akotey*, 1926 A.C. 72 (1926).
[81] *Henderson v. Williams*, No. 3: 12-cv-489 (VLB) (D. Conn. Mar. 13, 2013).

4.2 Fundamental Duties of a Buyer in a Sales Contract

4.2.1 Payment of the Price.

Under the Sale of Goods Act, 1962 (Act 137) and even the Common Law, the buyer has the fundamental duties in a contract for the sale of goods to pay the price and accept the goods and their delivery under Section 21 of Act 137.

Section 22 of the Act states, "Unless otherwise agreed, the buyer shall be ready and willing to pay the price in exchange for the delivery of the goods. Thus, the buyer must pay the price of the goods he has bought or agreed to buy, and, in the absence of a contrary agreement, he is not entitled to claim possession of the goods unless he is ready and willing to pay the price by the contract. The buyer can pay cash, but other forms of payments such as cheques or other negotiable instruments may be used if there is a massive transaction upon agreement by the seller. Where the seller accepts payment by cheque (to the extent that these continue to be used), bill of exchange, or other negotiable instruments, this is usually treated as conditional payment only. If it is not honored, the seller may sue the buyer on the cheque or the contract of sale for the price of the goods.

4.2.2 Time for Payment.

The buyer is to pay the price at the time expressly agreed on under the contract and in the manner agreed on. Section 23 states, "Unless otherwise agreed, stipulations as to the time of payment or the time of delivery are not conditions of a contract of sale." This means that, although the buyer must pay the price agreed at the appointed time, section 23 makes this duty a warranty, not a condition. In other words, a buyer who fails to pay the price on the day fixed is guilty of a breach of contract for which the seller may be able to recover damages

if they have suffered any. Still, they are not entitled to treat the contract as repudiated and resell the goods elsewhere.

4.2.3 Duty to take Delivery.

Upon payment of the price agreed upon, the buyer must take up delivery of the goods. The question now must be answered whether the buyer's duty to take delivery at a particular time is of the essence. Section 23, as quoted above seems to be that this is no more of the essence than the time of payment. Thus, where the buyer fails to take delivery of the goods at the time agreed does not justify the seller in disposing of them to someone else under the failure was over a long time to make the seller think that the buyer has abandoned the contract. Moreover, suppose a contract is for the sale of goods of a perishable nature. In that case, the buyer's duty to take delivery at the right time is of the essence, and default by the buyer justifies the seller in reselling the goods immediately.

Comparatively, a buyer is required by Article 6 CISG to pay the purchase price within the agreed-upon deadline and to accept the item's delivery. The seller's place of business shall be the performance site unless the contract states otherwise. In addition to these responsibilities, a buyer is required to examine or cause the examination of the products under Article 38 CISG. In addition, under Article 39 of the CISG, the seller must be notified of any nonconformity within a reasonable time.

Furthermore, a buyer's obligation to pay the price of the goods includes taking any procedures and complying with any formalities necessary by the contract's stated terms, as well as any laws and regulations, to enable payment to be made (Article 54 CISG). As a result, the buyer's inability to establish a letter of credit, make payment, or comply with contract terms is a breach of the buyer's principal "duty to pay the price," as defined by Article 54 CISG.

4.3 Review of Cases Involving Duties of a Buyer in the Sales Contract

In *Charles Rickards Ltd v Oppenheim*[82], the plaintiff committed to providing the defendant with a Rolls-Royce chassis by March 20, 1948. The chassis was not ready for delivery by the 20th of March, but the defendant insisted on delivery. He stated on June 28 that he would not accept delivery beyond July 25. On the 18th of October, the plaintiff submitted a delivery request. The defendant was adamant in his refusal to accept. It was determined that he had the legal right to do so. The buyer has the right to be bound by the contract as part of his duty of inspecting the items to ensure they are of good quality.

The buyer must show that the faults existed at the time the contract was signed. In the case of *Continental Plastic Engineering Co LTD v IMC Industries Technik-GMBH*[83], the plaintiff company sold a plastics machine HBD to the defendant company in July 1998. The defendant corporation purchased the equipment as seen or examined without warranty and delivered it to the plant without inspection. The machine had a price tag of $40,000 when it was purchased. The plaintiff company claimed that the defendant's company inspected the machine before selling it and declared it to be in perfect working order. It was decided that a seller is liable for all flaws in the goods due to an implied condition.

No contract of sale is judged to have existed if the price has not been paid, so no obligation must be fulfilled. The contract may fix the price in a contract of the sale price, left to be fixed in a way, therefore, agreed to, or determined because of dealing between the parties, according to Section 6 of Act 137. And, if the preceding regulations do not decide the price, the buyer is required to pay a reasonable price. In *May and Butcher Ltd v R*[84], the government

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[82] *Charles Rickards Ltd v. Oppenheim, 1950 K.B.1 616 (1950).*
[83] *Continental Plastics Engineering Co Ltd v. IMC Industries – Technik Gmbh (2009) SCGLR*
[84] *May and Butcher Ltd v. R*, 1934 K.B.17n 2 103, 1934 K.B.17n, H.L.2 21 (1934).

disposals board was established to sell tents. They agreed to sell tents to the plaintiff for E1,000 as a security deposit for their acquisitions. They both agreed on the price and the due date for payment. In 1923, the tents were removed by a new disposals board, which refused to sell them. They declared that they did not consider themselves to be bound by the contract anymore. The court determined that the parties had not reached an agreement. The tents had never been sold and no contract had been signed.

The courts had to decide whether cell phone towers (monopoles) should be classified as movable (and thus goods) or non-movable (and thus non-movable) in the 2008 case *Crown Castle Inc. et al. v. Fred Nudd Corporation et al*[85]., in which the telecommunications company Crown Castle sued a cell phone tower installation firm for the construction of faulty towers (and therefore realty). Monopolies were eventually proved to be products. Trade fixtures are items affixed to real estate (for example, a counter or a bar) and utilized for commercial purposes. They are classified as goods. Software licenses are neither tangible nor transportable and have been considered in various ways, including products, a mixed sale (a tangible item attached to an intangible object), and pure services. Because soil and clay may be extracted and transferred, they can be classified as goods even if they are part of immovable land. Crops sold while still growing on the soil are also considered goods, even though they are physically immobile.

The equipment was sold to the defendant company as seen or inspected without a warranty and delivered to the factory without inspection. The cost of the machine was $40,000. The plaintiff company contended that before selling the machine, the defendant company inspected it and certified it in perfect condition. It was held that a seller is, by an implied

[85] *CROWN CASTLE USA INC. v. FRED A. NUDD CORPORATION*, No. 05-CV-6163T (W.D.N.Y. Dec. 29, 2010).

condition, liable for all the defects in the goods. The seller is not responsible for defects he fully discloses to the buyer at the time of the contract of sale. The equipment was sold to the defendant company as seen or inspected without a warranty and delivered to the factory without inspection. The cost of the machine was $40,000. The plaintiff company contended that before the machine was sold, the defendant company inspected it and certified it in good and perfect condition. It was held that a seller is by an implied condition liable for all the defects in the goods. The seller is however not liable for defects which he fully discloses to the buyer at the time of the contract of sale.

In the matter of *McRae v Commonwealth*[86], the plaintiff was awarded a tender from the defendant that included an oil tanker. They eventually learned that there was no oil tanker after they had paid the salvage costs. The plaintiff was entitled to damages, according to the court. There was a valid contract in place, and it was broken. It is evident that in this case, the seller failed to deliver the goods of an oil tanker to the customer, even though he had breached his fundamental responsibility.

In the matter of *Nanor v Auto Parts Limited*[87], a lottery winner intended to buy a Nissan Homer Bus from the defendant. The defendant failed to make delivery after receiving payments, insisting on a sum to be paid by the plaintiff, which he did. The buses were delivered, but the defendant sold them to separate people. The court determined that the Nissan Homer Bus had been sold under a contract. The contract was not void due to a change in the delivery date. There was a failure to transfer goods after the price had been paid in this case. The seller's obligations included infringing on his right to deliver the products, which he did.

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[86] *McRae v. Commonwealth*, 635 S.W.3d 60 (Ky. 2021).
[87] *NANOR V. AUTO PARTS LTD (1992) JELR 66796 (HC)*

Birch v Asempa [88]is also relevant to the seller's duties. The plaintiff ordered and paid for cement blocks to be delivered to him at the seller's location. After collecting the blocks, he left some at the seller's location to be retrieved later. When he returned three years later to collect the blocks, he discovered they had vanished. He filed a lawsuit to get the remaining blocks. According to the court, the seller's primary obligation under section 8 of Act 137 was to deliver the items after they were paid for, which the seller performed. It was impossible to hold the defendant accountable.

Also, in the case of *Tawiah v. Ghana Civil Aviation Authority & Ors*[89], the buyer paid $16,000 at a public auction for the seller's outdated and unserviceable storage tank. He approached the vendor four days later to collect the tank, but the seller refused to give it under the pretense that the Ministry of Health had requested that the tank be released to Pantang Hospital to meet a national need. The buyer was unsatisfied with the explanation and filed a breach of contract action against the seller, claiming damages for non-delivery of goods or a violation of the seller's fundamental obligation to deliver specific goods to the buyer. The court held that the measure of damages for non-delivery of goods to the buyer or a breach of the seller's fundamental obligation to deliver specific goods to the buyer was the loss that the seller could have reasonably foreseen at the time the contract was made as likely to result from the breach of contract.

Unless the vendor requires a specific form of payment, a buyer has the right to pay in any manner witnessed in the business. Payment should be made when the items are delivered to the buyer unless the parties agree otherwise. Finally, the essential obligations of a seller and a buyer are stated explicitly in sections 8 and 12 of the Sales of Goods Act 137. These parts

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[88] *Birch v. Asempa and Anor [1992] 2 GLR 416*
[89] *Tawiah and Others Vrs Brako and Others () [1973] GHACA 1 (27 February 1973);*

are thorough or complete when seen in conjunction with the related topics and examples supplied above. There are a few minor details to consider, but sections 8 and 12 of the Sales of Goods Act will limit the seller's and buyer's obligations.

4.4 Enforceability of a Sales Contract in Ghana

There are essential elements in a contract for it to be able to be imposed under the law. According to the law of contracting in Ghana, the following elements are the traditional tools that ensure enforceability.

1. An offer and acceptance
2. Intention to create legal relations
3. Capacity to contract and
4. Consideration.

4.4.1 Offer and Acceptance

As stated above, for a contract to be enforced, there must be an offer and an acceptance of that offer made. Contracts are promises or bargains or negotiations, and the most usual way to make it is for one party to propose the terms and conditions on which he or she is prepared to transact with the other party and for the latter to either accept or reject or even modify the proposal made. Thus, for courts to determine if a contract has been made, they look out for the; promise made by one party, which makes the offer and the acceptance by the other party. The questions then are, what is the offer? And what is seen as acceptance?

In the case of *NTHC Ltd v Antwi*,[90] an offer was defined as an indication in words or by conduct by ban offeror that he or she is prepared to be bound by a contract in the terms

[90] [2009] SCGLR 117

expressed in the offer, if the offeree communicates to the offeror his or her acceptance of those terms.[91]

An offer may be made to a particular individual, groups, or classes of persons or to the world at large.[92] For an offer to be valid, there must be a final and definite promise. The offeror must show that he or she is willing to enter a bargain and that he is prepared to be bound by the terms stated once the offeree accepts the terms. Thus, an offer solicits a definite acceptance leading to a contract.

An offer is differentiated from an "invitation to treat," which is an attempt to initiate the bargaining process by soliciting or attracting offers from the party to whom it is addressed and is not intended to result in any immediate binding obligation. In *NTHC v Antwi*,[93] the Supreme Court of Ghana stated per Date-Bah JSC that, "… the offer has to be definite and final and must not leave significant terms open for further negotiation…. Suppose a communication during negotiations is not the final expression of an alleged offeror's willingness to be bound. In that case, it may be interpreted as an invitation to the other party to use it as a basis for formulating a proposal emanating from him or her that is definitely enough to qualify as an offer." Usually, sellers of goods or services would have to solicit offers by publicly displaying the goods, making advertisements or announcements, sending around price catalogues, and many other forms. With this said, advertising goods and

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[91] Per Date-Bah JSC, in *NTHC Ltd v Antwi* [2009] SCGLR 117, 125

[92] Christine Dowuona-Hammond, *The Law of Contract in Ghana* (Frontiers Printing & Publishing Limited, 2016) 19

[93] [2009] SCGLR 117

services[94], tender notices[95], display of goods in a shop window with prices attached[96], circulation of catalogues, etc. all constitute an invitation to treat.

4.4.2 Acceptance

To make a contract enforceable, there must be an acceptance of the offer as discussed above by the party to whom the offer was made. An acceptance has been defined as the final and unqualified expression of assent to the terms of the offer.[97] It may be by words, conduct,[98] or in writing. For it to be known that an offer has been accepted, two factors must be observed: (a) the fact of acceptance and (b) the communication of acceptance.

For acceptance by conduct, the court has noted in the case of *Brogden v Metropolitan Railway Co.*[99] that endorsement could be implied from the parties' selling and buying coal on the specified terms in the draft contract. The contract thus came into effect when the company ordered its first load of coal from Brogden upon those terms or when Brogden supplied it.

The acceptance coming from the offeree must be a final and unqualified assent to the terms of the offer. The offeree must unreservedly accept the offer made as a whole. There should be no reply to the offer which varies the terms of the offer or introduce new terms. This amounts to a counteroffer and not acceptance under law. The counteroffer's presence cancels the offeror's original offer and creates a new offer by the offeree. Once the offeror's original offer has been countered, it is nullified and cannot be subsequently accepted by the offeree.

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[94] *Dormenyor v Johnson Motors Ltd* [1989-90] 2 GLR 145
[95] *Spencer v Harding* (1870) L.R.5 C.P.561
[96] *Fisher v Bell* [1961] 1 QB 394
[97] Christine Dowuona-Hammond, *The Law of Contract in Ghana* (Frontiers Printing & Publishing Limited, 2016) 36
[98] *Brogden v Metropolitan Railway Co*. (1877) 2 App. Cas. 666
[99] (1877) 2 App. Cas. 666

This position is illustrated in the case of *Hyde v Wrench,*[100] where the court held that by the plaintiff's letter of 8th June, he had rejected the original offer and could no longer change his mind to accept it.

Generally, a mere inquiry for further information about the offer which does not introduce new terms is not a counteroffer and therefore does not destroy the offer. What will make a reply to an offer amount to either a counter-offer or just a mere inquiry is dependent on the facts of the case. This is espoused in *Domins Fisheries Ltd. V Breman-Vegesacker-Fisheries*[101]. Subsequently, a conditional assent to an offer is not acceptance of that offer. Communication of the acceptance of offers must be an external manifestation of assent either by words or by the act. Acceptance is invalid unless it has been adequately communicated to the offeror. The offeror must have actual notice of the communication of the acceptance[102]. Aside from actually telling the offeror acceptance, it could be done in several ways. Either by modern communication methods such as post[103], by telex[104], electronic mail, etc. Where the offeror has prescribed the mode of acceptance, the offeree has no choice but to follow the prescribed method. Otherwise, the communication of the acceptance is not valid. Still, where the offeror is not insisted on the specified way, an acceptance communicated by another mode that is no less advantageous to the offeror will effectively conclude the contract.

4.4.3 Intention to Create Legal Relations

Parties may have reached an agreement in that there is an offer and acceptance, but despite these factors, their understanding may not be necessarily enforceable under the law. In

[100] (1840) 3 Beav. 334
[101] [1973] 2GLR 490
[102] *Fofie v Zanyo* [1992] 2 GLR 475
[103] *Adams v Lindsell* 1 B& Ald 681
[104] *Entores v Miles Far East Corporation* [1955] 2 All ER 498

everyday domestic lives, some mutual agreements are or may not be enforceable contracts under the law because they were not intended to be enforceable in courts if they are dishonoured. Thus, not all agreements or contracts have the intention to create legal relations. The courts, in establishing that an agreement is intended to create legal relations looks at two broad categories of contracts;

1) Social, family, or domestic agreements and
2) Agreements of a business or commercial nature.[105]

It is strongly presumed that agreements of domestic nature are not intended to create legal relations, whereas agreements of a commercial or business nature are designed to create legal relations.

Where the parties have expressly stated in terms of the agreement that that agreement is not intended to create legal relations, that agreement will not create legal relations and be enforceable in court provided the agreement is not illegal.[106] Where the parties have not stated so expressly, the courts will look at the agreement's nature and the terms to determine whether or not it is intended to create legal relations.[107]

Generally, engagements of pleasure such as invitations to dinner, games, or other kinds of social engagements are not usually not treated as giving rise to enforceable obligations because it is presumed that the parties do not intend to create legal relations.[108] Domestic agreements entered into by family members especially are presumed to have no intention to create legal relations. Agreements between husband and wife are not intended to create legal

[105] Christine Dowuona-Hammond, *The Law of Contract in Ghana* (Frontiers Printing & Publishing Limited, 2016) 59
[106] *Rose & Frank Co. v Crompton Bros* [1923] 2 KB 26
[107] *Hammond v Ainooson* [1974] 1 GLR 17
[108] *Coward v Motor Insurers Bureau* [1963] 1 QB 259

relations only except where the spouses are not living together in amity, i.e., where they are divorced, separated, or about to be separated.[109]

Also, it is presumed that parent-child agreements are not intended to create legal relations.[110] Commercial agreements are designed to create legal relations unless otherwise expressly stated by the parties not to do so.[111]

4.4.4 Capacity to Contract

Although all persons can enter a contract, not all have the full legal capacity to enter legally binding contracts. For public policy reasons, such persons are deemed to need protection when creating contractual relations are concerned. They are; infants or minors, mentally incompetent persons, and drunken or intoxicated persons.

Infants or Minors: Generally, at common law, a contract made by an infant was voidable at his option.[112] Who then is an infant has been answered by different jurisdictions who peg the age of majority at different ages. Before 1969, a person under 21 was considered a minor for a contract until the Family Law Reform Act of 1969 in the UK lowered the age to 18.

In Ghana, the Interpretation Act, 2009 (Act 792) defines a minor as a child, and Article 28 of the 1992 Constitution of Ghana provides that a child is a person below the age of 18 years. The Companies Act, 2019 (Act 992) under Section 12 provides that a person's age

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[109] *Merritt v Merritt* [1970] 1 WLR 1211
[110] *Jones v Padavatton* [1969] 2 All ER 616
[111] *Edwards v Skyways Ltd* [1964] 1 All ER 494
.[112] M.P. Furmston, *Cheshire, Fifoot and Furmston's Law of Contract* (16th edn, Oxford university Press, 2012)

18 years or above may apply for incorporation of a company. Thus, it is safe to say that a minor in Ghana is a person below the age of 18 years.

In common law, the general rule is that contracts between a minor and an adult are not binding on the minor but on the adult, meaning the contract cannot be enforced against the minor but can be enforced against the adult. However, specific contracts are binding on a minor under common law for necessaries, beneficial contracts of service, and voidable contracts.

Contract for necessaries: At common law, where a minor enters into a contract to purchase 'necessaries,' such a contract is binding on the minor. 'Necessaries' refers to goods and services without which a person cannot reasonably exist, including food, clothing, lodging, education, training in a trade, and medical services. It has been held, however, that 'necessaries' is not confined only to articles necessary for the support of life but also includes articles services fit to maintain the particular person in his station of life. The minor is liable to pay a reasonable price for the goods. This has been espoused in the case of *Chapple v Cooper*[113] where it was held that the contract entered into by a married minor for the purchase of a coffin to bury her husband was one for 'necessaries' and was liable to pay for it.

For the minor to be liable it must be proven that the necessaries are not only suitable to the minor's condition but are also to his requirements at the time of delivery[114]. So, if the minor did not require the goods or services, the price cannot be recovered.[115]

Beneficial contract for service: A minor may be bound by a contract for an apprenticeship or of service or to acquire some instruction or training for a profession since it is to his

[113] (1884) 13 M & W 252
[114] Section 2 (3) of the Sale of Goods Act, 1962 (Act 137)
[115] *Nash v Inman* [1908] 2 KB 1

advantage that he acquires the means of earning his livelihood. The binding contract is entered into with an instructor or trainer as an apprenticeship.[116] Trading contracts do not bind minors. Trading contracts under common law do not qualify as necessaries and are unenforceable against him no matter how beneficial the terms are to him. Thus, a minor cannot be sued for non-delivery of goods he has contracted to sell or for the payment of the price of goods delivered to him for the trade.[117]

Voidable contracts: Contracts here are voidable because they are binding on a minor unless and until he repudiates the contract during his minority or within a reasonable time after attaining majority. They include leases, purchase of shares, etc.

Mentally incompetent persons, insane persons, or persons who are not *compos mentis* are not bound by contracts he has entered into. It can be proven that at the time of contracting, he was incapable of understanding the nature of the contract and that the other party had actual or implied notice of his incapability.[118] The burden of proof lies on the mentally incapacitated person.

Drunken or intoxicated persons have the same contractual capacity as mentally incapacitated persons. If at the time of contracting, a person is drunk or intoxicated not to know the consequences of his actions and the other party knows of the drunken state, the drunken person is not bound by the contract. However, he has the option of ratifying the contract when he is completely sober.[119]

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[116] *Clements v London & Northwestern Railway* [1894] 2 QB 482
[117] *Whywall v Campion* (1738) 2 Stra. 1083
[118] *Boughton v Knigh*t (1873) LR 3 PD 64
[119] *Matthews v Baxter* [1873] LR 8 Exch 132

4.4.5 Consideration

Consideration is a fundamental part of a contract. After offer and acceptance to complete a valid contract, it is seen as the third factor. A promise is given for consideration in a bargain when the promisor asks for something in return for his promise and gets what he asks for. Thus, a promise is not legally binding unless something of value, such as a return promise or an act, has been given in exchange for that promise.

Consideration has been defined in the case of law as something which is of value in the eye of the law, moving from the plaintiff; it may be some detriment to the plaintiff or some benefit to the defendant, but at all events, it must be moving from the plaintiff.[120] This definition was later found limiting as the benefit/detriment equivalent did not apply in all cases. Consideration was now seen as the price of a bargain in exchange for the party's promise. It was defined in the claim of *Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd*[121] per Lord Dunedin as an act or forbearance of one party, or a promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable. Therefore, consideration may consist of the performance of an act, a counter promise, or a forbearance requested in exchange for the other party's promise. The adequacy of considerations is for the parties to consider at the time of contracting and not when the contract is to be enforced.[122]

[120] *Thomas v Thomas* (1842) 2 QB 851
[121] [1915] AC 847
[122] *Bolton v Madden* (1873) LR 9 QB 53

5. Conclusion

The study sought to assess Ghana's laws concerning sales contracts with a specific interest in the Sale of Goods Act 1962 (ACT 137). It identified the fundamental responsibility of the seller and buyer and the optional responsibility of the seller and buyer. Again, the study assessed the obligatory and optional sales contracts in Ghana's jurisdiction. A comparative analysis or discussion was done with the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG).

A contract of sale is an agreement between the seller and the buyer to transfer the seller's property in goods to the buyer in exchange for a price that may be wholly or partially made up of money. To move goods, you must have a title or ownership. When the parties agree, the property is transferred. The delivery property, which requires that the products be in a deliverable state, will also pass. A statement confirming that the buyer is bound by the contract's conditions to accept delivery of the goods. When goods are sold by a person who is not the owner of the goods and does not sell them under the authority or with the owner's consent, Section 28 of Act 137 applies.

The Fundamental Obligations of the Buyer are defined in Section 21 of the Sales Act 1962 as the buyer's fundamental obligations in a contract of sale are to pay the price and accept delivery of the goods. Furthermore, Section 22 specifies that the buyer must be ready and willing to pay the price in exchange for delivery of the products unless otherwise agreed. Unless otherwise agreed, specifications as to the time of payment or the period for accepting delivery are not conditions of a contract of sale, according to Section 23. Section 24 states that the Buyer is not obligated to accept delivery in instalments unless otherwise Agreed..

Section 47 of Act 137 deals with damages for non-acceptance by the buyer as follows; (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods by the terms of the contract, the seller may maintain an action against him for damages for non-acceptance. (2) In a contract for the sale of goods to be delivered by instalments — (a) if each instalment is to be separately paid for, subsection (1) shall apply to each instalment separately: Provided that where the buyer has by his words or conduct shown an intention to repudiate the contract the seller may, if he accepts the repudiation, maintain an action for damages for non-acceptance in respect of all the goods; (b) in any other case, such a breach as is referred to in subsection (1,) in respect of one or more instalments shall be treated for that subsection as though it were a breach in respect of the whole contract or of all the remaining part of the contract, as the case may be.

The fundamental obligations of the seller are outlined in Section 8 of the Sale of Products Act (137) 1962 as follows: (1) In a sale of particular things, the seller's fundamental obligation is to deliver such goods to the buyer. (2) In the sale of unidentified items, the seller's primary obligation is to deliver to the customer goods substantially identical to the description or sample by which they were sold. (3) Any term in a contract of sale incompatible with or repugnant to the seller's fundamental responsibility is void to the extent of the incompatibility or repugnance.

The essential obligations of the seller are listed in section 8 of Act 137 as follows: (1) The seller's primary obligation in selling specific commodities is to deliver those goods to the buyer. (2) In the sale of unidentified items, the seller's primary obligation is to deliver to the customer goods substantially identical to the description or sample by which they were sold. (3) Any term in a contract of sale incompatible with or repugnant to the seller's fundamental responsibility is void to the extent of the incompatibility or repugnance.

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