

## SECTION 1 INTRODUCTION

### **A. Domestic sale of goods in Singapore governed by the Sale of Goods Act ("SGA")**

9.1.1 The law relating to the domestic sale of goods in Singapore is governed by the SGA (Cap 393, 1999 Rev Ed). This is based on the English Sale of Goods Act 1979, which was re-enacted in Singapore in SGA applies in the context of the general common law, and English cases are commonly used in the interpretation of the SGA. Unless the context requires otherwise, section numbers in this chapter refer to the SGA.

### **B. SGA applies to any contract for the sale of goods**

9.1.2 The SGA applies to any contract for the sale of goods i.e. a contract in which the seller transfers or agrees to transfer property in goods to the buyer for a money consideration called the price. Goods are defined in section 61(1) to include all personal chattels apart from things in action and money. If some consideration other than money is supplied, for example where goods are exchanged for other goods, the SGA does not apply.

### **C. Consumer Protection (Fair Trading) ("CPFTA") applies to consumer sales alongside the SGA**

9.1.3 The CPFTA (Cap 52A, 209 Rev Ed) contains provisions that apply specifically to the sale of goods to consumers. These apply alongside the SGA and are discussed in section 11 of this chapter.

## SECTION 2 FORMALITIES AND ELEMENTS OF THE CONTRACT

### **A. No formal requirements for creation of contract**

9.2.1 There are no formal requirements for the creation of a contract of sale of goods. Such a contract can be made in writing, orally, partly in writing and partly orally, or it may be implied from the conduct of the parties (section 4).

### **B. Capacity to enter into sale contracts determined according to general law**

9.2.2 Capacity to enter into sale contracts is determined according to the general law relating to capacity to contract, but the SGA specifically provides that where necessaries are sold and delivered to a minor (section 3) or to a person who is incompetent to contract because of mental capacity or drunkenness, he must pay a reasonable price for the goods.

### **C. Price of goods can be fixed or decided by certain methods**

9.2.3 The price of goods can be fixed by the contract, decided according to a course of dealing between the parties, or decided in the way agreed under the contract (section 8). Where the price cannot be decided by any of these methods, the buyer must pay a reasonable price.

### **D. Goods can be existing goods or future goods**

9.2.4 Goods under a contract of sale can be existing goods, which are owned or possessed by the seller, or future goods, which are to be manufactured or acquired by him after the contract of sale (section 5(1)).

### ***E. Goods can be specific goods or unascertained goods***

9.2.5 Goods can also be classified into specific goods or unascertained goods. Specific goods are defined in section 61 as "goods identified and agreed on at the time a contract of sale is made". Unascertained goods are not defined in the SGA, but can be taken to be goods that are not identified nor agreed upon at the time the contract is made. Unascertained goods are generally of three main types: generic goods; goods not yet in existence; and an unidentified part of a specified whole (for example 100 out of the 1000 bottles of wine in this cellar). When unascertained goods are identified and appropriated to the contract, they become ascertained goods.

## SECTION 3 TERMS OF THE CONTRACT

### ***A. Terms classified into conditions, warranties and innominate terms***

9.3.1 Two types of contractual terms are specifically mentioned in the SGA, conditions and warranties. This reflects the two types of terms commonly in use during the time that the SGA was first enacted in England in the 19th Century. Breach of a condition will give the innocent party the right to terminate the contract, whereas breach of a warranty gives rise to a right to claim damages but not to end the contract. Under the general law of contract, a third type of term has gained prominence, namely, the innominate or intermediate term, a breach of which will entitle the innocent party to end the contract only if such breach deprives him of substantially the whole benefit of the contract. The classification of a term is usually a matter of construction of the contract, but it can sometimes be provided for by statute. Under Singapore contract law, if a term is not construed as a condition, it will in most instances be construed as an intermediate term rather than a warranty, and the innocent party will usually have the right to end the contract if the breach is serious enough (*RDC Concrete v Sato Kogyo* [2007] 4 SLR(R) 413, *Sports Connection v Deuter Sports* [2009] 3 SLR 8830).

### ***B. Stipulations as to time of payment not of essence***

9.3.2 Section 10(1) specifically provides that stipulations as to time of payment are not of the essence of the contract unless a different intention appears from the contract. That something is of the essence of the contract is another way of saying that it is a condition of the contract. Under section 10(2), whether other time stipulations are of the essence of the contract depends on the terms of the contract. Case law has established that clauses regarding the time of delivery in ordinary commercial contracts of sale of goods are usually of the essence (*Himatsing & Co v P R Joitaram* [1970] 2 MLJ 246).

### ***C. Terms implied by the SGA***

#### *(1) SGA contains implied terms*

9.3.3 Sections 12 to 15 contain terms that are implied in a contract for the sale of goods. Some are implied conditions, others implied warranties. Except as provided for by sections 14 and 15, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale (section 14(1)).

#### *(2) Implied condition that seller has right to sell goods*

9.3.4 Under section 12(1), there is an implied condition in a contract of sale that the seller has the right to sell the goods. This condition would be breached where, for example, the seller does not have title to the goods and is unable to pass a good title to the buyer. However, the condition does not apply where the parties agree that the seller should transfer only such title in the goods as he might have. Where section 12(1) has been breached in a pure contract of sale of goods (as opposed to one which involves elements of service as well, such as a contract to build and deliver a ship), the buyer would be able to terminate the contract and get his money back for total failure of consideration without accounting to the seller for any use that he might have had of the goods (Rowland v Divall [1923] 2 KB 500).

### *(3) Implied warranties that goods are free from encumbrances*

9.3.5 Sections 12(2)(a) and 12(2)(b) provide for implied warranties that the goods sold are free from any encumbrances unknown to the buyer, and that the buyer will enjoy quiet possession of the goods.

### *(4) Implied condition that goods correspond with description in sales by description*

9.3.6 Section 13 provides that where there is a sale of goods by description, there is an implied condition that the goods correspond with the description. Even where the goods are exposed for sale and are selected by the buyer, it is still possible for this implied condition to apply. However, not every contract in which descriptive words are used would be a sale of goods by description under this section. For example, the section would not apply if the buyer did not rely on the seller's descriptive statement (Harlingdon & Lienster Enterprises Ltd v Christopher Hull Fine Art Ltd [1991] 1 QB 564), or if the words did not relate to a substantial ingredient as to the identity of the thing sold (Reardon Smith Lines v Hansen Tangen [1976] 1 WLR 989).

9.3.7 The implied condition must generally be complied with strictly. For instance, in the English case of Arcos Ltd v E A Ronaasen & Son ([1933] KB 470), section 13 was breached when wooden staves that were nine-sixteenth of an inch thick were delivered under a contract describing them as being half an inch thick, even though the deviation did not affect their intended use for making barrels. On the other hand, a defect in the goods may not take them outside their description if this does not alter their character, for instance, if the goods are contaminated (Ashington Piggeries Ltd v Christopher Hill Ltd [1972] AC 441). If so, section 13 would not be breached.

### *(5) Implied condition that goods are of satisfactory quality*

9.3.8 Where a seller sells goods in the course of a business, section 14(2) provides that there is an implied condition that the goods are of satisfactory quality. However, this condition does not apply to any defect which is specifically drawn to the buyer's attention before the contract is made, nor if the buyer examines the goods before the contract, to any defect which that examination ought to have revealed.

9.3.9 Under section 14(2A), goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price (if relevant) and all other relevant circumstances. This inquiry is (i) an objective one undertaken from the point of view of a reasonable person placed in the buyer's position armed with his knowledge and background, and (ii) considering at every stage any and all factors that may be relevant to the hypothetical reasonable person (Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd ([2006] SGHC 242, National Foods Ltd v Pars Ram Brothers (Pte) Ltd [2007] 2 SLR(R) 1048). Under section 14(2B), the quality of goods includes their state and condition, and aspects of quality may include, in appropriate cases, their fitness of all the purposes for which the goods of the kind in question are commonly supplied, their appearance and finish, freedom from minor defects, safety and durability. The test of satisfactory quality is therefore a flexible one where the various factors have to be balanced and evaluated against each other. For instance, a car that has minor scratches may be subjected to different standards depending on whether it is sold as a new car or as a second hand car at a correspondingly lower price; and a car that cannot be driven safely might nevertheless be of satisfactory quality if its description, price or the circumstances show that it was sold as scrap metal and not a roadworthy vehicle.

### *(6) Implied condition that goods are reasonably fit for purpose which goods are bought*

9.3.10 Where the seller sells goods in the course of a business and the buyer makes known expressly or by implication to the seller any particular purpose for which the goods are being bought, section 14(3) provides that there is an implied condition that the goods supplied are reasonably fit for that purpose. This is regardless of whether that is a purpose for which such goods are commonly supplied. The implied condition of fitness for purpose does not apply where the circumstances show that the buyer does not rely on the skill and judgement of the seller or that it would be unreasonable for him to do so. Where the buyer requires the goods to possess some special quality to enable him to use them for some special purpose, and the buyer made known to the seller such special purpose, the standards exacted by s 14(3) would be higher than those exacted by s 14(2). In such cases, the seller would be liable if the goods were not reasonably suited for that special purpose, even though they may be of satisfactory quality in general (*National Foods Ltd v Pars Ram Brothers (Pte) Ltd* [2007] 2 SLR(R) 1048).

*(7) Implied condition that bulk corresponds with sample in quality*

9.3.11 Section 15 provides that where goods are sold by sample, there is an implied condition that the bulk will correspond with the sample in quality, and that the goods will be free from any defect making their quality unsatisfactory, that would not have been apparent on a reasonable examination of the sample. If the sale is by sample as well as by description, the goods must correspond with both the sample as well as the description.

***D. Ability of seller to exclude or restrict liability arising under implied terms controlled by the Unfair Contract Terms Act***

9.3.12 The ability of a seller to exclude or restrict any liability that might otherwise arise under the implied terms in sections 12 to 15 of the SGA is controlled by section 6 of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed). The terms implied by section 12 (the right to sell, freedom from encumbrance and quiet enjoyment) cannot be excluded at all, whilst the conditions implied under sections 13, 14 and 15 (correspondence with description, satisfactory quality, fitness for purpose and sale by sample) cannot be excluded or restricted as against a person dealing as a consumer. In the case of a buyer who is not dealing as a consumer, the operation of sections 13 to 15 may be excluded or restricted by a contract term only if it satisfies the requirement of reasonableness.

***E. Right to terminate contract for slight breach of implied condition***

*(1) Amendments made to the SGA to prevent unfairness*

9.3.13 The innocent party's right to terminate a contract for a breach of condition is a general feature of Singapore contract law. This would mean that a breach of any of the implied conditions imposed by the SGA would entitle the buyer to reject the goods and terminate the contract, even if the consequences of the breach are trivial. This might lead to unfairness, and amendments were made to the SGA in 1996 (based on similar amendments in the UK) to address the problem in certain circumstances.

*(2) Buyer who does not deal as consumer unable to reject goods for slight breach of implied condition*

9.3.14 Under section 15A, a buyer who does not deal as a consumer may not be able to reject goods for any breach of the conditions implied by sections 13, 14 and 15 (correspondence with description, satisfactory quality, fitness for purpose and sale by sample) if the breach is so slight as to make it unreasonable for him to reject the goods. In such a case, he can treat the breach of condition as a breach of warranty. However, section 15A does not apply where a contrary intention appears in, or is to be implied from, the contract, in which case the implied conditions will apply with full force regardless of the severity of the breach. Further, the rights of a buyer who deals as a consumer is not affected by section 15A.

## SECTION 4 PASSING OF PROPERTY

### **A. Whether property in goods has passed could be relevant for various purposes**

9.4.1 Whether property in goods has passed from the seller to the buyer could be relevant for various purposes. These include to determine who is the owner of the goods if either the buyer or seller becomes insolvent whilst the goods are in his possession; to see if risk has passed from the seller to the buyer (since risk generally passes with property); and to establish the seller's entitlement to sue for the price.

### **B. General rule that property passes according to intention of parties**

9.4.2 The general rule under section 17 is that property in specific or ascertained goods passes according to the intention of the parties, having regard to the terms of the contract, the conduct of the parties and all the circumstances of the case. Under section 16, property in unascertained goods cannot pass until they are ascertained, regardless of the intention of the parties. This is subject to section 20A which will be discussed below. Section 18 provides five default rules which apply, unless a different intention appears, to determine when property in goods passes. These rules are divided according to the type of goods and the sale contract concerned.

### **C. Default rules under Section 18**

#### *(1) Property passes when contract is made, in unconditional contract for goods in deliverable state*

9.4.3 Rule 1 provides that in an unconditional contract for the sale of specific goods in a deliverable state (i.e. such a state that the buyer would be bound under the contract to take delivery of them), property in the goods passes when the contract is made, even if payment or delivery, or both, might be postponed. This rule might apply, for instance, when a customer selects an item in a shop. However, rule 1 might not accord with the parties' expectations in modern consumer contracts. A shopkeeper might not intend property in goods to pass to the customer before payment has been made. Conversely, a customer might not wish property and therefore risk in the goods to pass to him before the goods are delivered, as he might then have to bear the loss if the goods are accidentally damaged in the interim. In appropriate cases, the courts will probably be prepared to find in Singapore, as they have in England, that rule 1 has been displaced because the parties have displayed a contrary intention.

#### *(2) Property passes when seller has done something to put goods in deliverable state, where he is bound to do so*

9.4.4 Rule 2 governs the sale of specific goods where the seller is bound to do something to the goods for the purpose of putting them in a deliverable state, and it provides that property passes when the thing is done and the buyer has notice that it has been done. An example might be the sale of a complicated machine that is still in its dismantled state and has to be assembled by the seller before delivery.

#### *(3) Property passes when seller has done some act to determine price of goods, where he is bound to do so*

9.4.5 Under rule 3, where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act to the goods for the purpose of determining their price, property passes under this rule when the thing is done and the buyer has notice that it has been done.

#### *(4) Property passes when buyer does any act adopting the transaction, in goods delivered on sale or return*

9.4.6 Rule 4 applies where goods are delivered on sale or return, or on approval or other similar terms. Here, property in the goods will pass to the buyer when the buyer signifies his approval to the seller or does any other act adopting the transaction, or he retains the goods beyond a certain time without giving notice of rejection.

*(5) Property passes when goods of description and in deliverable state are unconditionally appropriated to contract, in sale of unascertained goods or future goods by description*

9.4.7 Rule 5 applies to the sale of unascertained goods or future goods by description. Property will pass when goods of that description and in a deliverable state are unconditionally appropriated to the contract. In order for unconditional appropriation to take place, case law requires that the contract goods must be identified, separated from other goods where applicable, and irrevocably attached to the contract. In practice, it is often difficult to decide if this has taken place and the cases show a range of results depending on the type of goods and the general circumstances of the case. Two cases from England illustrate this. In *Aldridge v Johnson* ((1857) 7 E & B 885), the buyer agreed to buy 100 quarters of barley out of 200 quarters which he had inspected and sent some sacks to contain the goods. The court decided that property passed as soon as the seller filled the sacks, even before the goods left the seller's possession. In contrast, in *Carlos Federspiel & Co SA v Charles Twigg & Co Ltd* ([1957] 1 Lloyd's Rep 240) property in bicycles manufactured to the buyer's order by the seller was held not to have passed even after the bicycles were made and packed into containers with the buyer's name and address, probably because the seller had yet to ship them as it was supposed to do.

#### ***D. Seller reserves right of disposal to goods until certain conditions fulfilled***

9.4.8 Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to a contract, section 19 allows the seller to reserve the right of disposal to the goods until certain conditions are fulfilled. In this case, property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled, notwithstanding delivery of the goods to the buyer or to a carrier for transmission to him. This section confers validity on reservation of title clauses, also known as *Romalpa* clauses, whereby a seller retains title to the goods sold until these have been paid for by the buyer (*Armour v Thyssen Edelstahlwerke* [1991] 2 AC 339).

#### ***E. Transfer of an Undivided Share in a Bulk***

*(1) Section 20 enacted to protect buyers who bought goods forming part of identified bulk*

9.4.9 In 1996, a new section 20A, modelled on similar amendments to the English statute, was enacted to protect buyers who had bought goods which formed part of an identified bulk and who had paid for these goods or part of them. An example might be where a buyer has agreed to buy 100 crates of wine out of 1000 similar crates stored in a particular warehouse. Prior to section 20A, if the seller became insolvent before the buyer's goods were separated from the bulk, the goods would still be unascertained and property would not have been able to pass to the buyer.

*(2) Buyer given undivided share in bulk*

9.4.10 The effect of section 20A was to give the buyer in such a situation an undivided share in the bulk so that he could look directly to the proceeds of sale of the bulk and was not relegated to merely having a personal right against the insolvent buyer. The undivided share of the buyer would be such share as the quantity of goods paid for and due to him out of the bulk bears to the quantity of goods in the bulk at that time. If a buyer has agreed to buy and has paid for 100 out of the 1000 items in the bulk, his share at that point in time would be one tenth of the bulk. The buyer's undivided share may fluctuate depending on the quantity of goods he has paid for, the quantity of goods already delivered to him, the quantity of goods in the bulk at the relevant time, the number of other buyers who have a right to share in the bulk, and whether the goods in the bulk are sufficient to meet the shares of all the buyers.

*(3) Property in goods passed to buyer upon appropriation to contract*

9.4.11 Once the unascertained goods are appropriated to the contract, property in them will pass to the buyer in the normal way and he will no longer be a co-owner of the bulk.

## SECTION 5 RISK AND PERISHMENT OF THE GOODS

### ***A. Goods remain at seller's risk until property transferred to buyer***

9.5.1 Where goods are at the risk of one party, he has to bear the loss if the goods are damaged, lost or destroyed. Section 20(1) provides that the goods remain at the seller's risk until the property in them is transferred to the buyer, and that risk passes to the buyer once property passes regardless of whether the goods have been delivered. This section is subject to a contrary agreement between the parties, and in such cases property and risk may be separated. Where delivery is delayed through the fault of either the buyer or the seller, section 20(2) provides that the goods are at the risk of the party at fault "as regards any loss which might not have occurred but for such fault".

### ***B. Contract void in mistake as to good's existence***

9.5.2 Where, in a contract for sale of specific goods, the goods, without the knowledge of the seller, have perished at the time of the contract, section 6 provides that the contract is void. This is the only type of mistake which is governed by the SGA. Other instances of mistake are covered under the general law of contract.

### ***C. Contract void when goods perish after agreement but before risk passed***

9.5.3 Section 7 provides that where in an agreement for the sale of goods, the goods perish without fault of the buyer or the seller after agreement to sell but before risk passes to buyer, the agreement is avoided. This is a statutory statement of the doctrine of frustration as applied to the specific situation. In line with the approach taken in section 6, other frustrating events are left to be considered under the general law of contract.

## SECTION 6 TRANSFER OF TITLE BY NON-OWNER

### ***A. General rule that buyer acquires no better title to goods than seller had***

9.6.1 The general rule under section 21 is that where a person who is not their owner sells goods, the buyer acquires no better title to the goods than the seller had. This rule is often expressed in Latin as *nemo dat quod non habet*. According to this rule, a thief cannot pass good title to stolen goods, and the original owner of the goods does not lose his title to them. In a conflict between the ownership interest of the true owner and the legitimate expectations of a buyer who buys in good faith and without notice of his seller's lack of title, the law chooses to protect the former.

### ***B. Exceptions to Nemo Dat principle set out in the SGA and the Factors Act***

9.6.2 Although the general rule prefers property rights over commercial interests, there are exceptions to the rule, and a non-owner might in certain circumstances transfer a better title than he himself had. These exceptions are set out in sections 21 to 25 of the SGA

and sections 2, 8 and 9 of the Factors Act (Cap 386, 1994 Rev Ed), which is a re-enactment of the English Factors Act 1889 (52 & 53 Vic c 45).

9.6.3 The *nemo dat* rule does not apply where (i) a non-owner sells goods under the authority or with the consent of the owner (an agency situation); (ii) the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell (an estoppel situation); (iii) a mercantile agent sells goods in certain circumstances under section 2 of the Factors Act; (iv) there is a contract of sale under any special common law or statutory power of sale, or under a court order; (v) where a person with a voidable title sells goods before the contract is avoided to a buyer who buys in good faith and without notice of the seller's defect in title; (vi) where there is a sale by a seller in possession of the goods; and (vii) where there is a sale by a buyer in possession of the goods.

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## SECTION 7 DUTIES OF THE SELLER AND BUYER

### ***A. Duty of seller to deliver goods, and duty of buyer to accept and pay for them***

9.7.1 Under section 27, it is the duty of the seller to deliver the goods, and the duty of the buyer to accept and pay for them in accordance with the terms of the contract. Section 28 provides that delivery of the goods and payment of the price are concurrent conditions. The seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for the goods. Neither party can claim that the other is in breach if he himself is not ready and willing to perform his obligations.

### ***B. Buyer's right to reject goods***

#### *(1) Buyer entitled to reject goods upon breach of condition*

9.7.2 The buyer has the duty to accept goods only in accordance with the terms of the contract. If there is a breach of condition, or if the breach of an innominate term is sufficiently serious, the buyer may be entitled to reject the goods and terminate the contract under the general law.

#### *(2) Buyer entitled to reject goods if wrong quantity delivered*

9.7.3 Under section 30, the buyer can choose to reject the goods if the seller delivers the wrong quantity. Other than deviations which fall under the *de minimis* principle (limited to microscopic deviations where precise accuracy is not commercially reasonable), this section generally operates strictly against the seller, unless the buyer does not deal as a consumer, and the excess or shortfall in quantity is so slight that it would be unreasonable for the buyer to reject the goods (section 30(2A)). Further, the buyer is not bound to accept delivery by instalments unless this is agreed between the parties (section 31).

#### *(3) Buyer loses right to reject goods upon acceptance in non-severable contract*

9.7.4 In a non-severable contract, section 11(3) provides that a buyer will lose his right to reject the goods and terminate the contract for breach of condition once he has accepted the goods. Section 35 sets out the situations where a buyer is deemed to have accepted goods. These are (i) where the buyer intimates to the seller that he has accepted the goods; (ii) where the buyer does an act inconsistent with the ownership of the seller; and (iii) where the buyer retains the goods beyond a reasonable time without intimating to the seller that he has rejected them. It is always a question of fact whether or not a reasonable time has elapsed so as to preclude a buyer from rejecting the goods. In *Eastern Supply Co v Kerr* [1971-1973] SLR(R) 834, a buyer who had used the car for



two weeks without having it examined by an expert despite various defects surfacing successively during that time was held to have accepted the car before he eventually rejected it. However, under section 35(6), a buyer is not to be deemed to have accepted goods merely because he requests or agrees to have the goods repaired by the seller, or resells and re-delivers the goods to a sub-buyer.

#### *(4) Buyer does not necessarily right to reject goods upon partial acceptance*

9.7.5 Section 11(3) is subject to section 35A which provides that where there is a breach by the seller that affects some or all of the goods, a buyer who accepts part of the goods does not necessarily lose the right to reject the rest. However, in a contract for the sale of goods making up one or more commercial units (i.e. a unit the division of which would impair the value of the goods or the character of the unit such as a pair of shoes or a set of encyclopaedia), if the buyer accepts any goods included in the unit, he is deemed to have accepted all the goods making the unit (section 35(7)).

#### *(5) Buyer entitled to reject defective instalments, but not necessarily rest of contract*

9.7.6 Rejection of goods in a severable contract is only dealt with partially by the SGA. A defective instalment can be rejected if, for instance, there is a breach of condition or a shortfall or excess, but it does not always follow that the rest of the contract can be discharged for this isolated breach. Section 31(2) provides for the situation where there is a contract for the sale of goods by stated instalments which are to be separately paid for and there is a breach by the buyer or seller in respect of one or more instalments. In such cases, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation but not a right to treat the whole contract as repudiated. English case law suggests that this section should be applied by looking at the ratio quantitatively which the breach bears to the contract as a whole and the degree of probability that such a breach will be repeated (*Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd* [1934] 1 KB 148).

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## SECTION 8 UNPAID SELLER'S REAL REMEDIES AGAINST THE GOODS

### ***A. Seller unpaid when whole of price not paid or tendered***

9.8.1 Sections 38 to 48 provide an unpaid seller with real rights against the goods themselves. A common requirement before any of these rights would be available is that the seller has to be an unpaid seller. Under section 38(1), a seller is unpaid when the whole of the price has not been paid or tendered, and this could be the case even if partial payment has been made, or the seller has sold on credit.

### ***B. Right of lien available to unpaid seller where property passed to buyer***

9.8.2 Where property has passed to the buyer, an unpaid seller might in certain circumstances have a right of lien over the goods, a right to stop the goods in transit, or a right to resell the goods (section 39(1)). A right of lien is a right of an unpaid seller who is in possession of the goods to retain them until payment or tender of the price. This right is available provided that the goods are sold without any stipulation as to credit, or the credit has expired, or the buyer has become insolvent. Even where the seller has lost possession of the goods, he would have a right of stoppage in transit if the buyer becomes insolvent, and this entitles him to resume possession of the goods as long as they are in the course of transit and to retain them until payment or tender of the price. An unpaid seller who has exercised his right of lien or stoppage in transit may pass a good title to his buyer if he resells the goods (section 48(2)).

**C. Right to withhold delivery available to unpaid seller where property not passed to buyer**

9.8.3 Where property has not passed to the buyer, the seller has rights to withhold delivery similar to and co-extensive with his rights of lien and stoppage in transit where property has passed to the buyer (section 39(2)). The seller also has power under the general law to pass good title to the next buyer upon resale, as property in the goods remains with him in this case.

**D. Right of unpaid seller to resell goods limited by contract with original buyer**

9.8.4 Even where an unpaid seller has the power to pass good title to a buyer upon resale of the goods, he may not necessarily have the right to sell the goods in the sense that he may still be liable under his sale contract with the original buyer since this contract is not rescinded by the mere exercise of the unpaid seller's lien or stoppage in transit (section 48(1)). An unpaid seller will have the right to resell as against the original buyer where he has expressly reserved the right to resell the goods in case the buyer should make a default (section 48(4)), where the goods are perishable, or where he has given notice to the buyer of his intention to sell, and the buyer does not pay or tender the price within a reasonable time (section 48(3) and *R V Ward Ltd v Bignall* [1967] 1 QB 534).

## SECTION 9 SELLER'S ACTIONS FOR BREACH OF CONTRACT

**Seller entitled to price of goods where property passed to buyer**

9.9.1 Where property in goods has passed to the buyer and he wrongfully neglects or refuses to pay for them according to the terms of the contract, the seller may sue the buyer for the price of the goods (section 49(1)). This action might be available even for goods that have not yet been delivered, as long as property has passed. Where the price of goods is payable on a certain day irrespective of delivery, the seller may bring an action for the price even if property has not passed and the goods have not been appropriated to the contract (section 49(2)). An action for the price might be more advantageous for the seller than one for damages, as there is no obligation to mitigate his losses under the former.

**B. Damages for non-acceptance***(1) Seller entitled to damages for non-acceptance*

9.9.2 In a case where the buyer has refused to accept and pay for the goods, section 50 allows the seller to sue for damages for non-acceptance. Where property has not passed to the buyer, this may be the seller's only option, whereas where property has passed, the seller may alternatively be able to bring an action for the price as described earlier.

*(2) Measure of damages for non-acceptance is the loss directly and naturally resulting from buyer's breach of contract*

9.9.3 The measure of damages for non-acceptance is the loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract (section 50(2)).

*(3) Assessment of damages where there is an available market*

9.9.4 Where there is an available market for the type of goods in question, section 50(3) provides that the measure of damages is prima facie based on the difference between the contract price and the market or current price of the goods at the time when they

ought to have been accepted, or if no time was fixed for acceptance, at the time of refusal to accept. The first part of this principle would generally lead to assessment of damages at the date of the breach of contract. However, where the contractual date for performance has passed but the parties agree to extend that date and continue to perform their obligations beyond that date, the market price at the date of the breach may not be the relevant date for assessment of damages (*Prestige Marine Services Pte Ltd v Marubeni International Petroleum (S) Pte Ltd* [2012] 1 SLR 917). The rule in section 50(3) is just a prima facie rule, and it can be displaced where its application is inappropriate.

#### *(4) Measure of damages unclear where seller resells goods at price different from market price*

9.9.5 Were a seller resells the goods at a price that is different from the prevailing market price, it is unclear whether the seller's damages should still be the measure provided for in section 50(3) which is based on a hypothetical sale based on the market price, or whether the actual resale price can be taken into account to increase or reduce the damages that can be claimed. It is unlikely that a seller who resells for less than the market price would be awarded his full loss, but where the seller resells for a price that is higher than the market price, a court might be unwilling to overcompensate him and might limit the amount of damages to his actual loss, unless the court decides that the seller by his actions (for instance in delaying the resale) has assumed the risk of market movements and should therefore be able to reap any resulting benefits just as he would have to suffer any loss.

#### *(5) Assessment of damages where there is no available market*

9.9.6 Where there is no available market, the general principle in section 50(2) – damages based on loss directly and naturally resulting from the breach - will apply. In a one-off contract, the court will mainly have regard to the value of the goods to the seller as at the date and place of the breach. Any relevant evidence may be admissible to prove this value, and in determining that value at the date of the breach, a court can have regard to resales which take place within a reasonable period thereafter (*Swiss Singapore Overseas Enterprises Pte Ltd v Exim Rajathi India Pvt Ltd* [2010] 1 SLR 573). As the damages would be fixed at the date of the breach, any further loss or gain sustained by the innocent party subsequently would not, save in the most exceptional circumstances, affect the measure of damages

#### *(6) Meaning of "available market"*

9.9.7 The SGA does not define "an available market". Guidance from case law suggests that this involves the availability of buyers and sellers and their ready capacity to supply or absorb the relevant goods (*Charrington & Co, Ltd v Wooder* [1914] AC 71). The word "available" must be given a temporal and geographical meaning: the buyers and sellers should be immediately accessible and within a reasonable distance of the place where the breach of contract occurs. Another formulation is that an available market means that the situation in the particular trade in the particular area was such that the particular goods could freely be sold, and that there was a demand sufficient to absorb readily all the goods that were thrust on it so that if a purchaser defaulted, the goods in question could be easily disposed of (*W L Thompson Ltd v Robinson (Gunmakers) Ltd* [1955] 2 WLR 185). Whether there is an available market is a question of fact and tangible evidence is important. Past precedents can be useful for the purpose of drawing general principles for application to the facts at hand, but the citation of past precedents to persuade a court to adopt precise factual findings should be treated with caution (*Panwah Steel Pte Ltd v Burwill Trading Pte Ltd* ([2006] 4 SLR(R) 559).

### ***C. Seller entitled to damages for refusal to take delivery***

9.9.8 Where the seller suffers losses as a result of the buyer's refusal to take delivery of the goods within a reasonable time of a request by the seller, the seller can sue for any loss caused by the buyer's refusal to take delivery, as well as a reasonable charge for the care and custody of the goods (section 37(1)).

### ***D. Parties entitled to interest or special damages available under general law***

9.9.9 Section 54 preserves the rights of the seller to sue for interest or special damages in any case where these may be recoverable by law. This provision applies equally to the rights of the buyer.

## SECTION 10 BUYER'S ACTIONS FOR BREACH OF CONTRACT

### **A. Buyer entitled to damages for non-delivery**

9.10.1 Where the seller wrongfully neglects or refuses to deliver the goods, the buyer may sue the seller for non-delivery (section 51(1)). The provisions for damages for non-delivery are based on the same principles as those for damages for non-acceptance discussed above. Section 51(2) expresses the measure of damages to be the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. Where there is an available market, section 51(3) provides that the measure of damages is prima facie the difference between the contract price and market or current price of the goods at the time they ought to have been delivered, or if no time was fixed, at the time of refusal to deliver. In practical terms, a buyer should be able to succeed in getting substantial damages for non-delivery only where the market price is higher than the contract price. Otherwise, the buyer can go into the market and buy replacement goods more cheaply than he would have got them under the contract, and would have suffered no loss.

### **B. Damages not confined to market price rule where sub-sale not fulfilled by substitute goods**

9.10.2 Usually, the market price rule would apply even if the buyer has contracted to resell the goods to a third party, as he should still be able to fulfill the resale contract by buying in the available market (*Williams v Agius* [1914] AC 510). Sometimes, however, the sub-sale cannot be fulfilled by substitute goods from the market, for instance, because the sub-sale was for specific goods. In such a case, if the seller knew or ought to have known of the resale, the buyer may be able to recover the difference between the contract price and the resale price instead of being confined to the market price rule, as well as any damages that he may have to pay the sub-buyer (*Re Hall & Pim's Arbitration* [1928] All ER 763). The same would apply where there is no available market and the seller knew or ought to have known that the buyer had resold or was intending to resell the goods. Here, the buyer can claim loss of profits as he would not be able to buy substitute goods to fulfil the sub-sale. (*PT Master Mandiri v Yamazaki Construction (S) Pte Ltd* ([2000] 1 SLR(R) 950).

### **C. Court has discretion to award specific performance**

9.10.3 Where the contract is one for the delivery of specific or ascertained goods, a court has the discretion under section 52 to direct that the seller must perform the contract specifically. Whether specific performance will actually be awarded in such contracts will depend on the general principles under which the remedy is available at common law.

### **D. Buyer entitled to damages for breach of warranty**

9.10.4 Under section 53(1), where the seller has breached a warranty of the sale contract, or where the buyer elects or is compelled to treat a breach of condition as a breach of warranty, the buyer can bring an action against the seller for damages for breach of warranty. Alternatively, the buyer can set up the breach of warranty in diminution or extinction of the price that he has to pay to the seller. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty (section 53(2)). In the case of a breach of warranty of quality, the loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they fulfilled the warranty (section 53(3)). Any profit on a sub-sale that the buyer may make is irrelevant, and if the goods had gone up in value at the time of delivery, the buyer

would be entitled to compensation on the basis of the higher value of conforming goods (*Gimpex Ltd v Unity Holdings Business Ltd and others* [2015] 2 SLR 686).

### ***E. Buyer's right at common law to recover interest or special damages not affected by the SGA***

9.10.5 Section 54 provides that the buyer's right at common law to recover interest or special damages is not affected by the Act. Applying this section, where a buyer suffers consequential losses as a result of the seller's breach of contract, he may be able to claim for these losses over and above the losses directly and naturally resulting from the seller's failure to deliver or breach of warranty. Thus a buyer who sues for breach of warranty of quality may be able to recover for personal injuries caused by using the defective goods, and a buyer who sues for non-delivery under section 51(3) may be able to claim additional damages for wasted freight or losses on a sub-sale contract. Such claims would be subject to the limitations imposed by the general law, like remoteness of damage.

### ***F. Buyer's right to recover money for total failure of consideration not affected by the SGA***

9.10.6 The buyer's right to recover money for total failure of consideration under the general law is also not affected by the SGA (section 54).

## SECTION 11 CONSUMER PROTECTION IN SALE CONTRACTS

### ***A. Consumer Protection (Fair Trading) Act ("CPFTA") enables consumers to bring actions for unfair practice and gives them additional remedies for defective goods***

9.11.1 Some provisions of the SGA treat buyers who are consumers more favourably than buyers that are businesses, and these instances have been discussed earlier in this chapter. In addition, the CPFTA contains provisions that apply to a consumer buyer in two different ways. First, a consumer may bring an action against a seller for unfair practice under Part II of the CPFTA. Second, under Part III of the CPFTA, where goods do not conform to the contract, the consumer may have additional remedies of repair, replacement, reduction in price, or rescission. The remedies available to a buyer under the CPFTA are in addition to those conferred by the SGA, and it is not possible to contract out of them (section 13 CPFTA). CPFTA would therefore apply even if goods are sold without warranty (*Speedo Motoring Pte Ltd v Ong Gek Sing* [2014] 2 SLR 1398).

### ***B. Unfair practice under Part II of CPFTA***

*(1) A consumer who has bought goods from a supplier has a right of action for unfair practice*

9.11.2 Part II of CPFTA provides that a consumer who has entered into a consumer transaction involving an unfair practice may bring an action against the supplier. This Part is of general application to consumer transactions, and is not specifically targeted at sale contracts. In the context of the current discussion relating to the sale of goods, the definition of a "consumer" in Part II applies to an individual who has bought goods otherwise than exclusively in the course of a business, and the definition of a "supplier" applies to someone who sells goods to consumers in the course of a business. The definition of a "consumer transaction" applies to a sale of goods by a supplier to a consumer as defined above. In an action brought by a consumer under Part II, where a court finds that a supplier has engaged in an unfair practice in respect of that consumer, it can make a range of orders, including those for restitution, specific performance, repair of goods, or variation of the contract. The court can also award damages for any loss suffered by the consumer as a result of the unfair practice.

## *(2) What constitutes "unfair practice"?*

9.11.3 Under section 4 of the CPFTA, it would constitute unfair practice for a supplier, in relation to a consumer transaction (i) to do or say anything if as a result a consumer might reasonably be deceived or misled; (ii) to make a false claim; or (iii) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction. The statute also sets out a list of specific unfair practices (schedule 2). These include representing that goods have performance characteristics, qualities or benefits that they do not have; representing that goods are of a particular standard, origin or method of manufacture if they are not; or representing that goods have a particular history when the supplier knows that this is not the case.

## **C. Consumer rights in respect of non-conforming goods under part III of CPFTA**

### *(1) Buyer deals as a consumer and goods do not conform to the contract*

9.11.4 Part III of CPFTA contains Singapore's "Lemon Law". It applies where the buyer deals as a consumer and the seller delivers goods that do not conform to the contract at the time of delivery. "Dealing as a consumer" under Part III has the same meaning as in Part 1 of Unfair Contract Terms Act (Cap 396, 1994 Rev Ed). A buyer deals as a consumer if he does not make the contract in the course of business, the seller makes the contract in the course of business, and the relevant goods are of a type ordinarily supplied for private use or consumption. In relation to a sale contract, goods do not conform to the contract when there is a breach of an express term of the contract or of a term implied by sections 13, 14 or 15 of the SGA.

### *(2) Buyer gets additional rights of repair, replacement, reduction in price or rescission*

9.11.5 In the situation described in paragraph 9.11.4 above, the buyer has (in addition to his rights under the SGA) the right under the CPFTA to require the seller to repair or replace the non-conforming goods (section 12C). In certain circumstances, instead of repair or replacement, the CPFTA alternatively allows the buyer to require the seller to reduce the price of the goods or to rescind the contract for such goods (section 12D). Such circumstances include where repair or replacement is impossible (section 12C(3)(a)); where repair or replacement is disproportionate in comparison with price reduction or rescission (section 12C(3)(c)); and where the buyer has requested the repair or replacement but the seller has not carried out the remedy within a reasonable time (section 12D(2)(c)). As regards the buyer's choice between the remedies of repair and replacement, this may be restricted if one remedy is clearly disproportionate in comparison with the other in terms of costs to the buyer (section 12C(3)). Matters which will be taken into account in determining disproportionality include the value of the goods if they had conformed to the contract; the significance of the non-conformity; and the potential inconvenience to the buyer (section 12C(4)). Where a buyer applies to court for a remedy or to rescind the contract under Part III of CPFTA, the court has a wide discretion to order another statutory remedy under Part III if it considers this to be more appropriate (section 12F(3) and (4)).

### *(3) Goods are deemed not to conform at the time of delivery if they do not conform within a 6-month period*

9.11.6 Part III of the CPFTA will apply only if goods do not conform to the contract at the time of delivery. This can be difficult for the buyer to prove. The Lemon Law helps the buyer by providing a 6-month time period during which the statutory remedies under Part III are presumed to be applicable. Goods are presumed not to have conformed at the time of delivery if they do not conform to the applicable contract any time within the period of six months starting from the date on which the goods were delivered to the buyer (section 12B(3)). This means, for example, that even if a car appears to be working well at the time it was delivered but breaks down four months later, it will be presumed to be non-conforming at the date of delivery. The seller is entitled to rebut this presumption if he can show that the goods conformed at the time of delivery, or if he can show that the presumption is incompatible with the nature of the goods (section 12B(4)).