

Commercial Law

Helen Campbell, Lecturer

What is “Commercial Law”?

- ▶ Commercial Law concerns the relationships that arise in the course of a trade or business transaction
- ▶ For our purposes, we will look only at the sale of goods
- ▶ Contract law is at the heart of the sale of goods

Contract of Sale

- ▶ Regulated by statute: the Sale of Goods Act 1979 (SGA)
- ▶ SGA applies only to contracts for the sale of goods. In such contracts, the seller transfers the property in goods to the buyer for a money consideration (the price)
- ▶ Such contracts involve a Seller and a Buyer, whereby Seller agrees to deliver goods to the Buyer for consideration
- ▶ Consideration must be money. Buyer may pay immediately (sale for cash) or at a later date (sale for credit)

What is NOT a Contract of Sale?

- ▶ **Barter/Exchange:** if the Seller delivers goods in exchange for other goods/services
- ▶ **Bailment:** a transfer of goods from one person (bailor) to another (bailee) for a limited purpose. Bailee must return goods to the bailor when instructed to do so (cloakroom)
- ▶ **Gift:** one party transfers property to another without consideration
- ▶ **Hire-purchase Agreement:** a contract for the use of goods, where the Buyer has the option to purchase them

A Word About Agency

Agency is a relationship where one person (the **agent**) is authorized to act as a representative of another (the **principal**)

An agent has the power to bind the principal to a contract with a third party (including a contract for the sale of goods)

Examples of agents? Of principals?

How Are “Goods” Defined?

“All personal chattels other than things in action and money”

Chattels are all property other than land

Chattels real are interests connected to land (homes, leases)

Chattels personal are interests in everything else

Of Chattels personal, there are 2 types:

1. *Choses (or things) in possession*—articles which can be seen, touched and moved (“tangible” “movable”)
2. *Choses (or things) in action*—debts, copyrights, negotiable instruments, securities (“intangible”)

How Are “Goods” Classified?

1. “Existing”
2. “Future”

Specific—goods are identified and agreed upon at the time of the contract

Unascertained—goods that are not identified and agreed upon at the time of the contract

Ascertained--unascertained goods which are subsequently identified and agreed on

What Are the Duties of the Seller?

1. Duty to Pass Good Title (“ownership”)

--“Good Title” means that the buyer takes the goods from free the rights of third parties

2. Duty to Deliver

--“Delivery” is the voluntary transfer of possession from one person to another. Delivery may be either physical or symbolic

--Seller may deliver the goods, or instruct the Buyer as to their location for pickup

Duties (continued)

3. Duty to Deliver Goods at the Right Time

Query—is the time of delivery “of the essence” of the contract?

4. Duty to Supply the Right Quantity of Goods

This duty is generally applied strictly. Any shortfall or excess entitles the buyer to reject the goods. The Seller’s promise to deliver the shortfall in future installments does not absolve him of this duty)

Duties (continued)

5. Duty to Supply Goods of the “Right” Quality

The goods must:

- ▶ Correspond with their description
- ▶ Be fit for the particular purpose for which they are bought

In a “*sale by sample*”, the bulk must:

- ▶ Correspond with the sample
- ▶ Be of satisfactory quality

Duties of the Buyer

1. Duty to Pay the Price

- ▶ In the absence of prior agreement, the price must be paid in cash
- ▶ The contract may provide for payment by check or other negotiable instrument; however, the check must be honored by the bank before seller is regarded as having been paid
- ▶ The contract may provide for payment by credit card (multiple contracts here)
- ▶ The contract may provide for payment by documentary credit (letter of credit). Here, payment is effected through the banks of both parties

Duties (continued)

2. Duty to Take Delivery and Accept the Goods

- ▶ Buyer must be ready/willing to take delivery, provided that the goods are delivered in the way agreed on in the contract
- ▶ “Acceptance” has occurred when buyer informs seller he accepts the goods

Remedies Where the Sales Agreement is Breached



Remedies of the Seller

































1. Lawsuit (Breach of Contract)
2. If the Seller is in possession of the goods, he may file a Lien (i.e., the Seller can retain the goods until the buyer pays the full purchase price)
3. If the goods are already on their way to the Buyer, the Seller can file a Right of Stoppage in Transit to resume possession
4. In certain circumstances, the Seller may have a **Right to Resell the Goods**

Remedies of the Buyer

1. Lawsuit (Breach of Contract), claiming damages for non-delivery
2. Suit in Equity (Specific Performance)
3. Rejection of the Goods
4. Right to Repair/Replace the Goods
5. Right to a Price Reduction

Vocabulary

fall Words

 fall	 clouds	 squirrel
 leaves	 rain	 owl
 tree	 wind	 crow
 pumpkin	 jacket	 wheat
 apple	 raincoat	 branch
 acorn	 sweater	 moon
 corn	 pinecone	 nuts
 squash	 rake	 hayride
 harvest	 orange	 hay bale
 scarecrow	 yellow	 football
 sunflower	 brown	

Carriage of Goods

- ▶ Laws that address the transportation of goods by land, sea and air
- ▶ The movement of goods may take place under a variety of contracts
- ▶ The law covers the relationship between the parties; implied terms and common exceptions; and specific problems that may arise

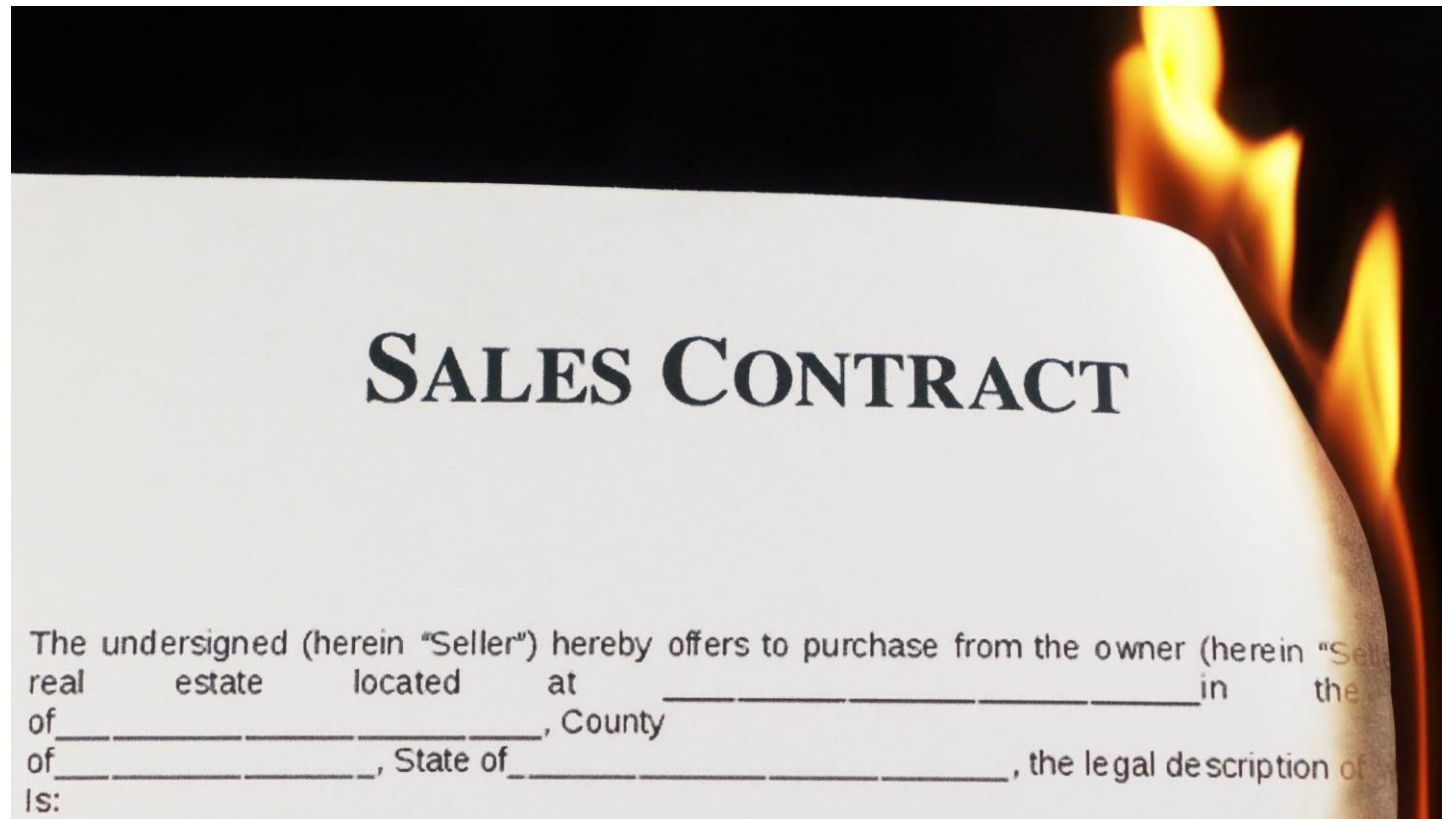
Consumer Contract

A contract where one party is a merchant and the other (consumer) is not

Negotiable Instrument

A document that represents a certain amount of money and has a number of specific characteristics. Such documents exist in order to facilitate commercial transactions

Let's Draft Contract for the Sale of Goods



Identity of the Parties/Date of the Agreement

The first topic a sales contract should address is the identity of the parties. Generally, in a commercial agreement, this would be the name of the legal entity of your small business (e.g., Widgets, LLC) and the respective name of the individual or legal entity of the company you are doing business with. When signing the form, the signature portion should include your name and title (e.g., John Smith, CEO of Widgets, LLC). The first paragraph of the sales contract (and the signature section at the end) should also clearly state the date that the agreement is made and executed (or signed)

Description of the Goods/Services

A sales contract should also address what is being bought or sold. A sales contract should provide a detailed description of the goods and/or services at issue, the quantity of goods/duration of service, and any industry standards that the goods/services should meet.

Payment

Price is often the most negotiated term in a sales contract and should be put in writing immediately after an agreement is reached. In addition to the price, a sales contract should state the time for payment, the method for payment, and any payment schedule (e.g., lump, installment, etc.) agreed upon.

Delivery

A sales contract should address the many different aspects of the delivery of the goods and/or services. This includes time for delivery, place for delivery, method of delivery, cost of delivery, and liability for damage or failed delivery. A sales contract may also include a *force majeure* clause to address nonperformance due to “acts of God, fire, flood, riot, etc.” that may be out of both parties’ control.

Miscellaneous Provisions

- ▶ **Warranties (Express and Implied)** - provisions assuring that the product will meet a certain level of quality and reliability (as well as any warranty disclaimers if so agreed upon).
- ▶ **Breach of Contract** - provisions that address what happens when one party breaches the contract, the time to cure any breach, when a party can terminate the contract, and any remedies a party can recover.
- ▶ **Severability** - provision that states that other remaining provisions will remain valid and enforceable if any provision is found invalid or unenforceable.
- ▶ **Legal** - provisions that address which state law is applicable (a.k.a. Choice of Law), where any lawsuits will be litigated (a.k.a. Choice of Venue), whether litigation will be in courts of law or arbitration (a.k.a. Arbitration Clause), and who will bear the costs of litigation (a.k.a. Attorney's Fees).

Questions?

