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COMMERCIAL TRANSACTIONS 2

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MODULE 1

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UNIT 1

HISTORY AND SOURCES OF SALE OF GOODS LAW IN NIGERIA

CONTENTS

1.0 INTRODUCTION

The law governing sale of Goods in Nigeria is the Sale of Goods Act, 1893 (a statute of General application in force in Nigeria). The rules of Common Law, including the Law Merchant which are not inconsistent with the express provisions of the Sale of Goods act, 1893 are also applicable.

The study of sale of goods is only a specialised one in the sense that it is a contract involving sale of goods; otherwise it is essentially a part of the general law of contract. The Act has not therefore, done away with the general rules relating to contract; hence, offer and acceptance, consideration and other elements of a valid contract must be present in a contract of Sale of Goods.

2.0 OBJECTIVES.

The learners are expected to be able to understand the basic principles and laws governing a sale of goods contract as well as other related contract. In the context of this unit, learners are also expected to be able to know what sale of goods contracts are and the differences between sale and other transactions.

3.0 MAIN CONTENT

3.1. WHAT IS SALE OF GOODS

Sale of Goods is defined in section 1(1) of the Sale of Goods Act, 1893 as ñA contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the priceò.

This means that in addition to the ordinary elements of a contract, two other element, goods and money consideration, must also be present in a contract of sale of goods.

The above definition also envisages two situations namely.

a) A contract of sale, in which the property in the goods is transferred from the seller to the buyer.
b) An agreement to sell, in which the transfer of the property takes place ón futureô (at a future time), or a fulfillment of certain conditions.

A contract for the sale of goods yet to be manufactured is an agreement to sell because the property in the goods cannot pass until they are manufactured and ascertained.

That the definition of a contract of sale is recognized in terms of two transactions is indicated by section 1(3) of the Act which states that, ñWhere under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.

SELF ASSESSMENT EXERCISE (SAE) 1.

What is a contract of Sale of Goods?

3.2 SALE AND OTHER TRANSACTIONS.

Sale of Goods is distinguishable from other commercial transactions but similar to them in context. Some of these transactions are:

a) SALE AND EXCHANGE

The consideration required under section 1(1) of the Act must be money whereas an exchange involves a transfer of goods for other goods. A contract of exchange simply means the giving of goods to the person in exchange for the other persons goods-barter.

In other words, money, which is a prerequisite for a contract of sale is not involved in a contract of exchange. When there is an exchange the property in the goods passes.

b) SALE AND BAILMENT

A bailment is a transaction under which goods are delivered by one party (the bailor) to another (the bailee), on certain specified terms, which generally provide that the bailee is to have possession of the goods and subsequently redeliver then to the bailor in accordance with his instruction. The property in the goods is not intended to and does not pass on delivery, and in fact remains with the bailor, though it may sometimes be the intention of the parties that it should pass in due course, as in the case of ordinary hire purchase contract.

In sale, on the other hand, there is usually an indication that the property in the goods would pass to the other party in the transaction. In other words in a contract of sale for bailment there is no transfer of property in the goods from the bailor to the bailee, whereas in the case of sale, the property in the goods should be transferred from the seller to the buyer

.

(c) SALE AND HIRE PURCHASE

Generally, contracts of hire purchase resemble contract of sale very closely, and indeed in practically all cases of hire-purchase, the ultimate sale of the goods is the real object of the transaction.

The distinction between them is very clear and extremely important at this initial stage.

A contract of sale involves two parties, the buyer and the seller, whereas a hire purchase transaction invariably involves three parties to it, namely, the seller, of the goods who sells them to finance a company, which in turn leaves the goods on hire purchase terms to the hirer(who may not become the buyer).

Under a hire purchase transaction,(as it shall be seen later)the hirer,(who may or may not become the buyer) has possession of the goods and is entitled to their use, although he is not the owner.

(D) SALE AND GIFT

A gift is an immediate, voluntary and gratuitous transfer of any property from one person to another. In other words, it is a transfer of property without any consideration. It is, not binding.

Sometimes, problems arise with regard to transactions in which what is regarded as ñfreeò gift is offered as a condition of entering into some other transaction. In ESSO PETROLEUM LTD V COMMISSIONERS OF CUTOMES AND EXCISE (1976) 1 ALL E.R. 117, garages selling petrol advertised a ñfreeò gift of a coin (bearing a likeness of a footballer) to anyone buying four gallons. It was held by the House of Lords that, although the transaction was not a gift, in as much as the garage was contractually bound to supply the coin to anyone buying four gallons of petrol, it was not a sale of goods either. The transaction was characterized as one in which the garage promised to supply a coin in consideration of a customer buying the petrol. It was thus,

in substance, a collateral contract existing alongside the contract for the sale of the petrol.

SELF ASSESSMENT EXERCISE (SAE) TWO

Distinguish between Sale of Goods and

1) Exchange
2) Bailment
3) Hire Purchase
4) Gift.

4.0 CONCLUSION'

This unit has exposed learners to the historical antecedents of Sale of Goods in Nigeria vis-a-vis its importance in commercial transactions.

5.0 SUMMARY

Through this unit, learners have been able to know the following:

a) definition of Sale of Goods.
b) Distinction between sale of Goods and exchange, bailment, hire-purchase and gift.
c) The history and sources of Sale of Goods Laws in Nigeria.

6.0 TUTOR MARKED ASSIGNMENT

1) The law of commercial transaction in relation to Sale of Goods was alien to Nigeria until the advent of Sale of Goods Act of 1893. Do you agree?
2) Distinguish between sections 1(1) and 1(3) of the Sale of Goods Act of 1893.

7.0 REFERENCES/FURTHER READINGS

1. Sale of Goods Act, 1893.
2. Rawlings, Commercial Law, University of London, (2007)

3. Igweike, Nigerian Commercial Law, Sale of Goods, Malthouse Law Books, (second edition) 2001

4. Okany, Nigerian Commercial Law, 1992.

UNIT 2

CREATION OF THE CONTRACT OF SALE OF GOODS

CONTENTS

1.0 INTRODUCTION

The creation of a contract for the sale of goods is a matter governed by the general principles of contract as they exist either under common law or as modified by statutory provisions.

It follows therefore, that a proper grounding on the basic principles of contract is a condition precedent to the appreciation of the principles governing the creation of the contract of sale of goods.

2.0 OBJECTIVES

The basic objective of this unit is to discuss the basic ingredients required for the creation of a valid sale of goods contract.

3.0 MAIN CONTENTS

3.1 CAPACITY TO BUY AND SELL

As required, under the general law governing capacity to enter into a valid contract, both parties to a Sale of Goods contract must have the requisite capacity to enter into the contract. As demonstrated in the case of Labinjoh V Abake (1924) 4 N.L.R. 33, one has, under the general law of this country, to differentiate between the positions under customary law and the ñreceived lawò.

Generally, the categories of persons whose capacities are usually discussed are infants, married women, insane persons, drunkards and corporations.

It is however germaine to note the proviso to Section 2 of the Act, which states that where necessaries are sold and delivered to an infant, or a drunken person, or a lunatic, such a person must pay a reasonable price for the goods.

That same proviso defines necessaries as goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of the sale and delivery.

SELF ASSESSMENT EXERCISE (SAE)ONE

All persons with the power and money to sell and buy goods are eligible to enter into a contract of sale of goods. Discuss.

3.2 FORMATION OF THE CONTRACT

As required in an ordinary contract agreement, there must be an intention by the parties to a contract for the sale of goods to create a valid and binding contract which affects their legal relationship. Therefore, an agreement that is binding in honour only will not

be a contract of sale of goods like every other contract. A contract of sale of goods is made by the express or implied acceptance by one party of an express or implied offer made to him by the other party.

The contractual rules as to offer and acceptance, invitation to treat, correspondence of offer and acceptance, the time an acceptance takes effect, mode of communication of offer, and acceptance are applicable to contracts of sale of goods.

SELF ASSESSMENT EXERCISE (SAE) TWO

What are the basic requirements for the formation of a valid contract of sale of goods?

3.3 CONSIDERATION

The principles governing the doctrine of consideration also apply to contract of sale of goods, except that the consideration for the contract of sale of goods must have some money contents which is called the price.

It should be noted that, where goods are conveyed without consideration, it amounts to a gift. Such transfer of goods will however be enforceable if the agreement is under seal.

SELF ASSESSMENT EXERCISE (SAE) THREE

Consideration is required for a valid sale of goods contract. Do you agreed?

3.4 FORM OF CONTRACT

Generally, no special form is prescribed for contract of sale of goods. A contract of sale of goods may therefore be made in writing, with or without seal, or orally, or partly in writing and partly orally or it may be implied from the conduct of the parties.

Section 4 of the Act states that:

> *"A contract for the sale of any goods of the value of N20 or upwards will not be enforceable by action unless the buyer shall accept part of the goods so sold and actually received the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf"*

This provision which can only hamper transactions of sale of goods was repealed in England by the Lagos Reform (Enforcement of Contracts) Act, 1954. It is not contained in the Sale of Goods Laws of Edo, Delta, Lagos, Ogun, Ondo and Oyo States. Section 1 of the Law Reform (Contracts) Act, 1961 repealed section 4 of the Sale of Goods Act as far as Lagos State is concerned.

By this token, a contract of sale of goods of any value may be made orally in the western state and old Bendel State comprising Edo and Delta States.

A Corporation may contract in the same manner as a private person as regards formalities. But such corporations have to adhere to the formalities laid down in their articles of association for their contract.

SELF ASSESSMENT EXERCISE (SAE) FOUR

No special form is prescribed for contract of Sale of Goods ï Discuss?

3.5 VALIDITY

A contract of sale of goods will be invalid and void if it is illegal at common law or under any statutory provision. In other words, a contract for sale of goods which is ordinarily valid may be invalidated on ground of illegality.

4.0 CONCLUSION

The most important message in this unit is that in the creation of the contract of sale of goods, like other forms of contract, parties most have the capacity and intention to enter into a contract; their most be consideration coupled with a price. There is no particular pattern and it is generally governed by the Sale of Goods Act of 1893 which, being a statute of general application is applicable in Nigeria.

5.0 SUMMARY

This unit has highlighted the following:

a) the capacity of parties to a contract of sale of goods to buy and sell.

b) how the contract of sale of goods is formed.

c) the type of consideration required in a contract of sale of goods.

d) the form a contract of sale of goods usually takes.

e) the validity of the contract.

6.0 TUTOR MARKED ASSIGNMENTS

Discuss generally the principle of contracts required for a valid creation of a contract of sale of goods.

7.0 REFERENCES/FURTHER READINGS

1. Sale of Goods Act, 1893.

2. Rawlings, Commercial Law, University of London, (2007)

3. Igweike, Commercial Law- Sale of Goods (2001)

4. Okany, Nigerian Commercial Law, 1992.

UNIT 3

ELEMENTS OF A CONTRACT OF SALE OF GOODS

CONTENTS

1.0 INTRODUCTION

The validity or otherwise of any contractual arrangement is usually premised on the presence or otherwise of certain elements. In this unit, the elements or ingredients for

ascertaining whether there exists or not a contract of sale of goods shall be thoroughly discussed.

2.0 OBJECTIVES

The objectives of this unit include, but are not limited to, discussing the basic elements in a contract of sale of goods, basic features and differences in sale of goods contracts.

3.0 MAIN CONTENTS

3.1 THE PRICE

The basic element in a sale of goods contract is the price which must be in monetary consideration. This usually includes payment by credit card, but excludes contracts of barter. e.g. exchange of goods for good involving no payment. If the parties have not fixed a price, they may not have reached an agreement, in which case, there is no contract.

Section 8 of the Act defines what constitutes ñthe priceò in a contract of sale of follows:

1) ñThe price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined in the course of dealing between the parties.ò

2) ñWhere the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price dependent on the circumstances of each particular case.ò

Therefore, the price in a contract of sale may be fixed (a) by the parties, or (b) may be left to be fixed in a manner provided by the contract e.g. by a valuation or an arbitration, or (c) may be determined by the course of dealing between the parties.

If however, the price is not so fixed or determined, there is a presumption that the buyer will pay a reasonable price. In MATCO LTD V SANTER FE DEVELOPMENT CO.

LTD (1971)2 N.C.L.R.1, it was held that the burden was on the seller to prove that the price he demanded was reasonable.

On the other hand in MAY & BUTCHER V THE KING(1929) ALL E R. 679, the parties had agreed that the appellants should purchase tentage that should become available for disposal at a price to be agreed upon by the parties themselves. It was also understood that all disputes with reference to or arising out of the agreement would be submitted to arbitration. There was no subsequent agreement as to price. It was held by the House of Lords that, the agreement between the parties did not constitute an effective contract.

It is noteworthy that under section 9 of the Act

a) If the price is to be fixed by the valuation of a third party and he cannot or does not make such valuation, the contract is voided. But if the goods or any part thereof have been delivered to the buyer and he has appropriated them to his use, he must pay a reasonable price thereof. If not appropriated, there is no contract since the parties could still be restored to their status quo ante.
b) If the valuer is prevented form making the valuation by the fault of the seller or buyer, the non-defaulting party may maintain an action for damages against the party in default.

SLEF ASSESSMENT EXERCISE (SAE) ONE

In the case of price that is not yet fixed, the presumption is that there is no contract or is yet to be concluded. Discuss.

3.2 GOODS

Generally, Goods are defined by section 62(1) of the Act as to include:

> *"All chattels personal other than things in action and money, emblements, industrial growing crops and things attached to or*

forming part of the land such as agreed to be severed before sale or under the contract of sale".

This definition was adopted in section 7(2) of The Law Reform (contracts) Law, 1961, which applies only in Lagos state.

Therefore, the term *"Goods"* embraces widely varying objects such as clothes, shoes, aircraft, motor cars, machinery, ships, books, furniture and growing crops.

However, the term does not include ñchoses in actionò like bills of exchange and cheques.

Real property is completely outside the ambit of the Act. In other words, land or any interest therein is excluded from the definition of goods. Although money is excluded, coins brought as commodities *(e.g Roman or Biafran Coins)* which ordinarily lack the usual negotiable attributes of money would be regarded on goods.

The term *"emblements"* which was borrowed from ancient real property law, comprises crops and vegetables (such as coins and potatoes) produced by the labour of man and ordinarily bidding a present annual profit. In other words, the term covers crops which are planted and harvested annually. Such annual crops like yam, cassava, maize, etc are popularly called *"emblements"* are not part of land, but are regarded as chattels, even before they are separated from the land.

The term industrial growing crops,ò has not yet been judicially defined, but presumably it is under emblements and may include crops which may be harvested outside the annual period.

The second part of section 62(1) refers to ñthings attached to or forming part of the land which are agreed to be severed.

In this instance, the Act applies to ñthingsò forming part of land but not to the land itself. There is need to briefly discuss the position as regards minerals. The sale of minerals will be regarded as sale of goods, if the minerals have been defected from the land. The mere fact that the minerals have been quarried is not enough to make them ñgoodsò and the question is what state is the quarried minerals as the time of contract.

Thus, in MORGAN V RUSSEL AND SONS (1909) 1 K. B 357, the seller agreed to sell all the slag and cinders lying on a particular price of land. After the buyer had taken some of the slag, the third parties claimed that the slag belonged to them and effectively prevented the buyer from collecting further supplies. The buyer sued the seller for damages for non-delivery under the Sale of Goods Act. It was held that since the minerals were severed and then left as cinders and slag which are separate heaps resting on the ground, the contract of sale in respect of the mineral was a sale of an interest in the land and not of goods and therefore the Sale of Goods Act did not apply.

SELF ASSESMENT EXERCISE (SAE) TWO

Goods are chattels personal other than *"choses in action"* and money. Partly crops and things attached to or forming part of the land or to be severed from land before sale or under the contract of sale. Discuss.

There are different categories of goods and they are provided for by the virtue of Section 5 of the Act which states as follows:

1) 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 the seller after the making of the contract of sale, in the Act called ñfuture goodsò.
2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
3) Where by a contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Therefore, Goods may be categorized as :

(a) Existing Goods.

(b) Specific (or ascertained) goods.

(c) Goods sold by description.

(d) Future Goods.

3.2.1 EXISTING GOODS

These are goods that are owned and possessed by the seller at the time of contract. This can be meant to be that they are goods actually in existence when the contract is made. Such existing goods may either the specific or unascertained.

3.2.2 SPECIFIC (OR ASCERTAINED) GOODS

These are goods identified and agreed upon at the time the contract of sale was made. For example, ña 2009 Rhumba Motor Boat with Engine number 10465 and chassis number AB60421ò.

3.2.3 GOODS SOLD BY DESCRIPTION

These are goods sold by description, but which were not identified or agreed upon at the time of the contract but are included in a particular class of goods, for example ñ10ò ñ18 kilogrammes mahogany woodò

3.2.4 FUTURE GOODS

These are goods not yet in existence, and goods in existence but not yet acquired by the seller. That is to say, goods yet to be acquired or manufactured by the seller after the contract has been made. In HOWELL V COUPLAND (1876) 1 Q.B. 258, a sale of 200 tons of potatoes to be grown on a piece of land was held to be a sale of specific goods, despite the fact that they were not existing goods.

4.0 CONCLUSION

This unit has exposed learners to the rudiments of ñpriceò in sale of goods. The interwoven nature of various categories of goods such as the specific goods, future goods, existing goods and ascertained or unascertained goods is also fully discussed.

5.0 SUMMARY

Through this unit, learners should be able to understand the following;

1) definition and basis of Price.
2) the disparities between different types of goods.
3) the explanation of different categories of goods.

6.0 TUTOR MARKED ASSIGNMENT

1) Under the provision of the Sale of Goods Act, goods are chattel personals and they are distinguishing from real property or chattle real and these are chattels attached to or forming part of the land. Discuss.
2) Strictly explain the different categories of goods as provided for in the Sale of Goods Act with the aid of judicial authorities.

7.0 REFERENCES/FURTHER READING

1. Laws of the Federation, 1990 Hire Purchase Act, Cap 169.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, (2007)
4.. Okany, Nigerian Commercial Law, Africana ï Fep Publishers Limited, (1992).

UNIT 4

THE CONCEPT OF PROPERTY

CONTENTS

1.0 INTRODUCTION

Contract of sale of goods, as we have seen, reflects the transfer or agreement to transfer the property in goods from the seller to the buyer. The meaning and characteristic of ñpropertyò will be explained in this unit.

2.0 OBJECTIVES

The basic objective of this unit is to explain the possessory title and status of a seller.

3.0 MAIN CONTENTS

3.1 CONCEPT OF PROPERTY

In a contract of sale, the seller agrees to transfer his interest in the goods. The seller in most cases who was in possession would transfer a possessory title, and the fact of the possession would be strong evidence of ownership.

In times past there was misconception as to the terms ñpossessionò and ownershipò. They were used interchangeably.

The concept of transfer means to transfer ñdominionò i.e. the highest possible rights enjoyed by the owner of goods to the buyer. Here ñownershipò is used interchangeably with ñdomimonò and once there is transfer of ownership, that means that the seller has transferred property, in the goods to the buyer.

It should be noted, that under Section 1(1) of the Act, ñPropertyò means general property in the goods and not merely a special property. That is to say that there is a transfer of ñownershipò or ñdominionò and not just some possessory title. Once property can been transferred from the seller to the buyer, there is a valid contract.

3.2 TRANSFER OF PROPERTY TO THE BUYER

Part II of the Act, which covers Section 16-20 is titled ótransfer of Property between Seller and Buyerô, whilst the remaining provisions under Part II, are collectively titled ñTransfer of Titleò.

Under Section 61(1), the term ñPropertyò is defined as the ñGeneral Propertyò in goods as opposed to mere ñSpecial propertyò, ordinarily and legally, the term ñgeneral propertyò conveys the meaning of ñdominionò, ñtitleò or ñownershipò.

The reason for the differentiation in the wordings of the two headings of Part II is not clear. According to Craig, Sale of Goods, (1974) Pg. 17, that there was a deliberate effeort to differentiate between circumstances where there is a transfer of property between the seller and the buyer from a transfer between a third party who may style himself a ñsellerò and a buyer. The type of transfer that takes place between the questionable ñSellerò and the buyer is called ñTransfer of Titleò therefore, under the second heading ñTransfer of titleò deals with circumstances in which a buyer takes a good title even though the seller was not the owner and was not entitled to sell the goods in question. That is to say, the ñSellerò may take a transfer of title as against the true seller who can transfer property in the goods.

SELF ASSESSMENT EXERCISE (SAE)

Distinguish between ñGeneral Propertyò and ñSpecial Propertyò.

3.3. PROPERTY AND POSSESSIONS

ñPropertyò in goods means the ownership of or the title to the goods. Possession, on the other hand, is as a general rule, the physical control or custody of goods. Transfer of property in goods is not dependent on the transfer of possession of the goods.

It is possible to vest the possession of certain goods in one person, and ownership of such goods be vested in another person.

For example, the possession of a car which has been sent for repairs is in the automechanic whilst ownership will remains with the person who sent it for repairs.

SELF ASSESSMET EXERCISE (SAE)

Distinguish between ñPossessory Rights to Goodsò and Proprietary Rights to Goodsò

4.0 CONCLUSION

From the foregoing, it can be said that once it is one recognized that there is a sale or sale of goods, there is transfer of ownership. A contract of sale is one whereby the seller ñtransfers or agrees to transfer the property in goods to the buyerò. This involves transfer of ownership or dominion and not just possessory title but proprietory title.

5.0 SUMMARY

This unit has revealed the underlying facts of the concept of property in sale of goods and the interest of the seller after transfer of goods.

It also discusses fact that the ñPropertyò in goods means the ownership of or the title to the goods while ñPossessionò, means physical control in goods. It is possible, as illustrated earlier, for the possession of certain goods to vest in one person whilst the ownership vests in another.

6.0 TUTOR MARKED ASSIGNMENT

1) The sale of a chattel is the strongest act of dominion that is incidental to ownershipò. Discuss.
2) It is possible for possession to certain goods to vest in one person, whilst the property or ownership vest in another. Discuss.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation, 1990
2. Sale of Goods Act, 1893.
3. Rawlings (2007) Commercial Law, University of London Press
4. Okany, Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

UNIT 5

PASSING OF PROPERTY IN SPECIFIC GOODS

CONTENTS

1.0 INTRODUCTION

Section 62(1) of the Act refers to ñspecific goodsò as ñgoods identified and agreed upon at the time a contract of sale is madeò.

Ordinarily, property of ascertained goods ought to pass when a contract of sale is made. However, such passing is subject to the overriding provision laid down by Section 17(1) that ñthe property is transferred to the buyer at such time as the parties to the contract intend it to be transferredò. In a contract for sale of specific or ascertained goods, the property in the goods passes from the seller to the buyer at such time (if any) as the parties, expressly, or impliedly, stipulate in the contract of sale. In order to ascertain the intention of the parties, regard shall be made to the terms of the contract, the conduct of the parties and the circumstances of the case.

In practice, the parties do not usually express their intention as to the time property passes. Therefore, where the parties fail to stipulate the time at which the property is to pass, then resort must be made to certain ruler laid down by the Act for ascertaining the time at which the property passes.

2.0 OBJECTIVES

At the end of this unit, you should be able to; (i) explain the meaning of passing of property in specific (ascertained) goods. (ii) understand how the property in specific goods passes at the time a contract is made.

(iii) explain why the passing is subject to the overriding provision laid down by Section 17(1) of the Act.

(iv) explain the role of the terms of contract, the conduct, of the parties, and circumstances of the case, in ascertaining the intention of the parties.

3.0 MAIN CONTENTS

3.1 UNCONDITIONAL CONTRACT

Unless a different intention appears, there are rules for ascertaining the intention of the parties as to the time of which the property in the goods is to pass to the buyer.

The first of the rules came out in R. V. Ward Ltd (1967)1 G.B. 534. In that case, Diplock L. J. suggested as follows;

> *"In modern times very little is needed to give rise to the inference that the property in specific goods is to pass only in delivery or payment."*

The above dictum of his Lordship clearly shows clearly that the parties can expressly exclude the operation of Section 18, if they so wish.

Rule 1 of Section 18 gives rise to a number of questions with regard to the meaning of the term, ñunconditional contractò.

UNCONDITIONAL CONTRACT: This may mean a contract which does not contain a condition precedent or condition subsequent that may have the effect of suspending performance of the contract or passing of the property.

It may also mean a contract not containing any conditions in the sense of essential stipulations the breach of which gives the buyer the rights to treat the contract as

repudiated. In other words, an unconditional contract is one which is not subject to a condition precedent or subsequent Section 1(2) lays down that ñ a contract of sale may be ñabsoluteò or ñconditionalò which clearly means subject to a condition precedent, for otherwise there would be no point in the contract. It should be observed that Rules 2, 3, and 4 of Section 18 deal with contracts subject to a condition precedent. By Rule 1, contracts, deals with contracts not subject to such conditions.

In Ollett V Jordan, the meaning of ñunconditionally appropriatedò within Rule 51 was examined. It was held that, the property in goods did not pass to the buyer owing to the fact that there was no condition precedent.

It is submitted that, for a sale of goods contract to be enforceable, it must be without conditions. In England, these difficulties appear to have been taken care of by the provision of Section 4 of the Misrepresentation Act, 1967, which provides that, ñwhere the contract is for specific goods, the property passes to the buyer. In the light of this, it may not be necessary to give an unnatural construction to the words ñunconditional contractò in Section 18 Rule 1, in order to avoid depriving a buyer of his right to reject goods. It is noteworthy that this is a foreign authority and may only be helpful in the interpretation of the term ñunconditional contractò.

STUDENT ASSESSMENT EXERCISE (SAE)

The phrase ñunconditional contractò appears nebulous within the purview of Section 18 Rule. The general view is that it is a contract that does not contain a condition precedent or condition subsequent that have effect of suspending performance of the contract or the passing of property. Discuss.

3.2 SPECIFIC GOODS

The second major phrase under Rule 1 is that the goods must be specific for the property to pass. The question that arises under Rule 1 is as to the meaning of the

phrase ñspecific goodsò. Section 62 defines ñspecific goodsò as goods identified and agreed upon at the time a contract of sale is madeò.

As far as passing of goods is concerned, it is settled that future goods can never be specific, although future goods, if truly identified may be specific goods, and its destruction may frustrate the contract.

In Varlet V Whipp (1990) 1 Q. B. 513, even though the goods were specific, they were held to be ñfuture goodò as the seller was not the owner of them as at the time of the contract.

The courts have been strict in interpreting the word ñspecificò under Rule 1. For instance in, in Kyrsell V Timber Operators and Contractors Ltd (1972) 1 K. B. 298, the plaintiff sold to the defendants all the trees in Latvian forest of certain measurement, on a particular date for ú225,500 and the defendant were given 15 years within which to remove the timber. Soon afertwards, the Latvian Assembly passed a law confiscating the forest. The question that arose was whether the sale was that of specific goods within rule 1 as the pass property in them or not.

The Court of Appeal held that the property in the trees had not passed to the defendant as the tress of the specified dimensions were not sufficiently identified, because not all the tress in the forest were to pass but only those conforming to the stipulated measurements.

SELF ASSESSMENT EXERCISE (SAE)

Discuss the passing of property in specific goods and when it is determined.

3.3 DELIVERABLE STATE

By the provision of Section 18 Rule 1, the meaning of the phrase ñdeliverable stateò . is that the goods must be in a deliverable state in order to enable property to pass.

Section 62(4) provides an aid as to the meaning of this term. It states that;
"Goods are in a "deliverable state" within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them"

The above provision is not all that clear, for it does not give a comprehensive definition of the term ñdeliverable stateò. It also does not say that, if the buyer would not be bound to take delivery of the goods, then the goods are not in a deliverable state.

The buyer is not bound to take delivery if the goods are defective goods but it does not follow that all defective goods are not in a deliverable state within the meaning of the above provision. Where this type of situation arises, property would never pass in defective goods.

Generally, ñdefectiveò does not prevent goods from passing because if the buyer rejects the goods, the property reverts to the seller.

Section 62(4) is probably intended to cover the case where the goods could not be said to be in a deliverable state physically yet the buyer had agreed to take delivery. In other words, the expression ñdeliverable stateò cannot be said by reference to mean delivery as in Section 62(4) as a voluntary physical transfer of possessionò.

The possession of goods can always be transferred in law, if the parties intend to transfer it, no matter what the physical condition of goods may be. Thus, if this is what ñdeliverable stateò meant, goods would probably always be in a deliverable state.

There appears to be a difficulty in getting a clear definition of the term ñdeliverable stateò. It does not appear that there is any known local authority on this matter but there are foreign authorities. In Kursell V Timber Operator (supra), the court of Appeal decided that not only was the timber not specific but could also not be regarded as being

in a ñdeliverable stateò. The question now is what constitute goods to be in a ñdeliverable stateò. Again, in Underwood Ltd V Burgh Castle Brick and Cement Sundicate (1921) All ER 575, the plaintiffsô sellers agreed to sell a condensing machine to the defendants. The machine weighed 30tons and was bolted to and embedded in a cement floor. Under the term of contract, the plaintiffs were to dismantle the machine, a task which cost them ú100 and took about 2 weeks. While the engine was being bided on a railway truck, it was damaged. The plaintiffs would only be entitled to sue for the price if the property had already passed before the time of damage.

It was held inter alia that the machine was not in a deliverable state. For this reason property had not passed when the contract was made. Atkin, L. J., stated that in view of the risk and expenses involved in dismantling and moving the engine, the proper inference to be drawn was that property was not to pass until the engine was safely placed on the rail in London.

4.0 CONCLUSION

The effect of Rule 1 may be illustrated as follows; if Fola enters Tolaôs shop and buys a washing machine for N5,000 in terms that Tola will deliver it at Folaôs house the following day and receive payment and that night Tolaôs shop is burgled and the machine is stolen. Tola can sue Fola for the price of the machine because property in the machine passed to Fola when the contract was made and the risk also passed to him under Section 20 of Sale of Goods Act.

5.0 SUMMARY

In this unit, the learner, has been able understand the following;

1) passing of property in specific (ascertained) Goods.
2) meaning of Rule 1 of Section 18.
3) the issues regarding the meaning of;

a. unconditional Contract.
b. specific Goods.

c. deliverable State.

6.0 TUTOR MARKED ASSESSMENT (TMA)

1. Umar sold a car to Yinus which they were required to use for his graduation. The car was delivered to the Yinusô premises but was stolen before it could be tested. At what point does the property in the car pass.
2. Mr. Chukwu agrees to sell all of the planks in his sawmill the planks are to be taken away a month after the agreement and payment is to be made at that time. At what point does the property in the planks pass.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

UNIT 6

FACTORS NEGATING APPLICATION OF RULE 1 OF SECTION 18

CONTENTS

1.0 INTRODUCTION

The application of the rules in Section 18 depends upon the existence of the intention of the parties. This is usually discernible from evidence.

According to Rule 1, the fact that the time of delivery or the time for the payment of the price is postponed does not prevent the property from passing when the contract is made.

In an ordinary sale in a shop, property does not pass until the parties have agreed in the mode of payment. And in big departmental shops, where the buyer usually goes round the shop to collect items he wishes to buy, property does not pass until the price is paid. It should be noted that Rule 1 does not take the time of payment as crucial since it may be postponed.

Another factor that may point to a contrary intention is the existence of a specific agreement on the transfer of risk. Generally, risk in goods passes with the property, so that where the risk has passed, it will be that the property also passed. Conversely, where the risk remains with the seller, the property has not passed.

2.0 OBJECTIVES

The objective of this unit is to explain how Rules 2, 3, and 4 deal with conditional sale of specific goods in contradistinction to Rule 1 which deals with unconditional contracts of sale of goods.

3.0 MAIN CONTENTS

3.1 RULE 2

Rule 2 provides as follows;

> *"Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of*

> *putting them into a deliverable state, the property does not pass until such things be done, and the buyer has notice thereof."*

For the principle under Rule 2 to apply, reference must be drawn from the terms of the contract and the circumstances of the case.

It is only when it is for the seller to put the goods in a deliverable state that the Act draws that inference. For example, if Inyang sells a house to Bitrus and agrees to replace the roof with a new one, property will not pass until Bitrus has notice that this has been done.

It is presumable that the rule is also applicable where the buyer has to do something to the goods, although Rule 2, refers to the seller only.

The fact that goods have to be repaired or altered before delivery is more likely to lead a court to conclude that the property is not to pass until delivery. This rule is basically applied to ñgoods not in deliverable stateò.

3.2 RULE 3

Rule 3 provides as follows;

> *"Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof."*

The Rule is explicit in that it makes it clear that where the passing of the property is conditional upon the performance of some act with reference to the goods property does not pass until the buyer has notice of the fulfillment of that condition. Examples of this include weighing, testing e.t.c.

Thus, for instance, an agreement to sell an a fairly used Peugeot car at a price entire sack of cocoa at so much per ton does not pass the ownership of the car to the buyer until the seller has tested the car and the buyer has been informed.

Under Rule 3, goods do not acquire the character of being in a deliverable state until the seller has done all that he was supposed to do, including measuring or testing them.

If the seller of specific goods in a deliverable state is required to carry out some procedure to ascertain the price, such as weighing testing or measuring, property will not pass until that has been done and the buyer notified.

It therefore follows that if the contract demands that someone other than the seller is to undertake this task, Rule 3 will not apply if it is the buyer or the third party and not the seller who has to do something to the goods as in the case of Turley V Bates (1863)2 H and C. 200.

3.3 RULE 4

The above rule deals with different types of transactions altogether, although similar to a conditional sale and may become a sale in course of time.

The two arms of Rule 4 shall be discussed.

1. Signifying his approval or adopting the transaction; under this Rule property will pass to a buyer who takes property on sale or return, if he signifies his acceptance to the seller or does any act which shows that he adopts the transaction, or keeps the goods for longer time than the period agreed for their return, or for an unreasonable length of time.

Where the prospective buyer informs the seller that he wishes to buy, this is enough to allow the property to pass.

Similarly, where the buyer does an act in relation to the goods which is consistent only with having become owner of them, for example, pledges or resells the goods, this is an act adopting the transaction within the meaning of Rule 4.

The case of Kirkham V Attendborogh (1897)1 Q. B. 201 is an example of ñan act adopting the transactionò. There, the plaintiff, allowed W to have jewellery on sale or return and W pawned the jewellery with A, the defendant. The plaintiff brought an action to recover the jewellery from the defendant. It was held that, the action must fail as Wôs act of pawning the jewellery was ñan act of adopting, and therefore, the property in the jewellery passed to him, so that K could not recover it from A.

In this context, it should be noted that it is immaterial that the buyer obtained the goods by fraud.

2. Elements or Ingredients of Rule 4(B)

(a). Retention of goods where time is specified:- If a time has been fixed for the return of the goods, the buyer is deemed to have exercised his option to buy if he returns them after this time. Hence, the transaction may be completed without expression of acceptance.

(b). Retention of goods where no time is specified:- Retention of goods ñbeyond a reasonable timeò may arise where no time is specified in the arrangement between the parties. If the buyer retains the property without giving a time of their rejection, property will pass to him.

(c). Rejection of the goods Property will pass under Rule 4(B), if the buyer does not give notice of rejection within either the stipulated time or within a reasonable time, if time is stipulated. Though there is no duty on the buyer to return the goods in order to prevent the goods from passing.

The buyer may therefore be liable for detinue if he holds unto the goods after notice of rejection.

(d). Evidence of contrary intention:- the operation of Rule 4 of Section 18 is subject to there being no evidence of a contrary intention. It is clear that the court have allowed the seller some form of freedom. In Weiner V Gill (1906)2 KB 574, the plaintiff delivered jewellery to Y, on the terms of a memorandum which stated that ñon appropriation, on sale for cash only or return é goods will be on probation or on sale or return remain the property of Weiner é . until such goods are settled or chargedò Y thought X had a potential buyer and he handed the goods to X who pledged them with the defendant. It was held that, the plaintiff brought this action to recover them from him. That is to say, X (or even Yôs) act of pledging the goods which would have amounted to an act adopting the transaction was expressly excluded by the memorandum.

4.0 CONCLUSION

From the foregoing, factors negating the application of Rule 1of Section 18 are shown as enshrined in Rule 2 3, and 4. In Rule 2 it is clear that the fact that goods have to be repaired or altered before delivery is more likely to lead a court to conclude that property is not to pass until delivery. It can be therefore be inferred that the Rule is also applicable where the buyer has to do ñsomething to the goodsò.

Inference can also be drawn that Rule 2 or Rule 3 will not apply if it is the buyer or the third party who has to do something to the property and not the seller.

Also, under Rule 4, it should be observed that property (and risk) in goods taken on sale or return remains in the seller. If they are destroyed or stolen while in buyerôs possession, the seller cannot sue for the price, if the damage was not occasioned by the buyerôs default.

5.0 SUMMARY

This unit has revealed the main intents of Rules 2, 3 and 4, of Section 18 that they deal with conditional sale of specific goods and that the Rules input in them certain factors negating the application of Rule 1 of Section 18 which deals basically with unconditional sale of specific goods.

Rule 2 of Section 18 deals with goods not in deliverable state, whilst Rule 3 of Section 18 deals with what the seller of specific goods in a deliverable state is required to carry out. Rule 4 of Section 18 deals with where goods are ñdelivered to the buyer on approval or sale or returnò, in this instance, property passes when the buyer signifies acceptance or does an act adopting the transaction, or retains the goods beyond the time fixed by the agreement for a decision without giving notice of rejection, or if no time sis fixed, retains the goods beyond a reasonable time (rule 4(b).

6.0 TUTOR MARKED ASSIGNMENT

1a. Tunde expresses an interest to buy a particular car owned by Joke for N1 million provided it will be suitable for his nephew to use in Lagos traffic. Joke agrees that Tunde can take the car for 10 days in order to determine its suitability. After a week the car breaks down. Is Tunde liable for the price?

b. Would your answer be different if Tunde had used the car himself on a number of occasions and had travelled a long distance with it.

2. Explain the conditional sale of specific goods in Rule 2, 3 and 4 as conversely different from ñconditional contract in Rule 1 of Section 18).

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

MODULE 2

UNIT 1

PASSING OF PROPERTY IN UNASCERTAINED OR FUTURE GOODS

CONTENTS

1.0 INTRODUCTION

The essence of sale of goods is the transfer of ownership or title in a property from the buyer to the seller.

By the provision of Section 18 Rule 5, no matter what the parties may wish, property does not pass until the goods are ascertained.

Once the goods are ascertained, property passes when the parties intend, if no such intention can be determined where the following conditions apply:

1. Where there is a contract for the sale of unascertained goods or future goods by description.
2. Where goods of that description and in deliverable state are unconditionally appropriated to the contract.
3. Where there is an irrevocable identification of the goods that are the subject of the contract.
4. Where the assent of both parties.

2.0 OBJECTIVES

The purpose of this unit is for the learner to be able to understand the concept of passing of ñunascertainedò or ñfuture goodsò.

The Act does not in any way define the word ñunascertained goodsò, but the term will be looked at in three different areas and they are:

- Goods to be in manufactured or grown by the seller: these are necessarily future goods and are define in section 5 (1) of the Act as goods to be manufactured or acquired by the seller after making the contract of sale.

  In Howell v. Coupland (1876) 1 Q.B. 258, the court held that a sale of 200 tons of potatoes to be grown on a particular piece of land was a contract of sale of future goods.

- Purely generic goods: these are goods sold by description, but which are not identified or agreed upon at the time of the contract but are included in a particular class of goods. For example where the seller promises to deliver 100 Abuja Yam tubers, if the seller does not have enough yam tubers of the description under reference to appropriate to the contract, it must necessarily be a case of future goods.
- An unidentified portion of a specified whole: where the seller has enough quantity to appropriate to the contract, the goods may be categorised as an unidentified portion of a specified whole. For example, a party may assert ñ20 cartons out of 30 cartons of beer now in my storeò.

3.0 MAIN CONTENT

3.1 Property Cannot Pass Until Goods Are Ascertained

The fundamental rule in Section 16 of the Act is that

> ñwhere there is a contract for the sale of unascertained goods,
>
> no property in the goods is transferred to the buyer unless
>
> and until the goods are ascertained.ò

The word ñascertainedò was defined by Atkin, LJ in Re Wait (1927) 1 Ch 606, as ñgoods identified in accordance with the agreement after the time a contract of sale is madeò.

An analytical illustration of Section 16 of the Act came up in the case of Healey v. Howlett and Sons (1917) 1 KB 337, where the plaintiff, a fish exporter carrying on business in Ireland, dispatched 190 boxes of mackerel by rail and ship to his customers in England and instructed the railway officials to earmark twenty boxes for the defendant and the remaining boxes to two other consignees. The train was delayed before the defendantôs boxes were earmarked and by the time this was done the fish had deteriorated.

The court held that the defendant was not liable because the property in the fish had not passed to the defendant before the boxes were earmarked and they were therefore still at the sellers risk when they deteriorated.

See also in a Re Goldcorp Exchange Ltd (1994) 3 W.L.R.199.

3.2 Passing of Property is Dependent upon the Intention of the Parties

Property in unascertained goods can only pass when the goods become ascertained. It is worthy of note that whether the property in the goods will pass at the particular point in time depends on the intention of the parties as provided for in Section 17 of the Act.

Section 17 (2) states that:

> ñfor the purpose of ascertaining the intention of the parties,
>
> regard shall be had to the terms of the contract, the conduct of
>
> the parties and the circumstances of the caseò.

In the case of ***Mountbatten Investments (Pty) Ltd v Mohamed*** 1989

3 (1) SA 171 at 177J178C, the court held that ordinarily, the price fixed in respect of a contract of sale is payable in money. Where the consideration is partly in money and partly in goods on which a fixed value is placed by the parties the contract may, depending upon the intention of the parties, be treated as one of sale, the price being the aggregate sum.

The provision of section 17 dealing with ascertaining the intention of parties also deals with ascertained goods. It should be noted that it also deals with ascertained goods. Section 16 of the Act states that no property will pass in ascertained goods, until fully ascertained or specified.

However, section 18 sets out five rules for ascertaining the intention of the parties, where their intention cannot be made out under section 17 (2). In practice, it is important to lay a good

emphasis on the usefulness of the Rules set out as parties more often than not do not have a clear intention as to the exact time at which property will pass. A contrary intention expressed subsequently by the parties may be ineffective to defeat the passing of the property under the Rules. In Dennant v. Skinner and Collom (1948) 2 KB 164, the plaintiff sold a car to B, a swindler, at an auction, he being the highest bidder. He gave a false name and address and asked to be allowed to take the car away in return for his cheque. As a result of the misrepresentations, the plaintiff acceded to Bôs request, after obtaining his signature to a document which stated that the title of the vehicle will not pass until the cheque was honoured.

B sold the car which was subsequently resold to the defendant, Bôs cheque was dishonoured and the plaintiff sued to recover the car.

It was held that the property in the car passed on at the fall of the hammer under Rule 1 of Section 1, and that the intention of the parties as contained in the written statement was made too late after the contract had been concluded to prevent the property in the car from passing. That was to say the written statement did not divest B of property in the car, therefore, B passed a good title to the purchaser.

It noteworthy that Rule 5 appears to be an inference that would be made, unless the circumstances suggest otherwise.

3.3 How Goods Are Ascertained

The issue is whether ascertainment of goods may be said to be another way of saying that the goods have been unconditionally appropriated.

The most imperative and complex aspect of Rule 5 is the meaning of the term unconditionally appropriated. In spite of attempts by the courts no generic definition has been made of that phrase.

It is evident that a case of unconditional appropriation will not arise if the seller only meants to let the buyer have the goods on payment.

In Wait and James v. Midland Bank (1926) 31 Comm. Cas. 172, the plaintiff sold off their bulk leaving a balance of 850 quarters, property in the goods could not pass because the goods had not been separated.

Where an unidentified part of a bulk is sold, one cannot speak of unconditional appropriation until there is definite separation of the part sold from the remainder.

It may be stated that what will constitute unconditional appropriation will vary according to the goods under consideration and the general circumstances of the case. The following illustrations may be used as guide.

1. The issue of appropriation has arisen in a number of shipbuilding cases. In such cases, as in the case of all goods to be manufactured by the seller, the general presumption is that no property in the goods will pass until the article is completed. Moreover, the above preposition will prevail even where the price of the article is paid in installments.
2. Where goods are being grown by the seller, the property in the goods, if well designated, passes as soon as they come into existence.
3. Where an unidentified part of a specified bulk is sold the only thing required to appropriate the goods to the contract is simply to separate the part sold from the remainder, with the consent of the parties.

3.4 When Does Property Pass

Section 18 Rule 5(1) states that property in the goods passes to the buyer in a contract of unascertained or future goods only after the goods are conditionally appropriated and Rule 5

(1) provides that the assent required for the appropriation may either be express or implied assent of the other party to the contract.

In Aldridge v. Johnson (1857) 7 E and B 885, the buyer consented to the method of appropriation by providing the sacks.

On the other hand, if A sells to B 60 yams to be picked by B out of a large quantity at ₦10.00 each, property passes when B picks up any 60. Thus there is an implied assent given before appropriation.

3.5 Delivery to a Carrier

From the provisions of Section 18 Rule 5 (2), it can be deduced that by dispatching goods through post, as a carrier, the seller has unconditionally appropriated them to the contract. The sub rule does not lay down that in the circumstances, the buyers assent is deemed to have been given. The buyer of the goods must assent to the appropriation of the dispatch of the goods.

Thus in Badische Anilin and Soda Fabrik v. Basle Chemical Works (1898) A.C.200, the House of Lords held that the posting of the ordered goods vested the property in the buyer at the moment of posting, This, in effect, transfers the risk in the goods to the buyer while the goods is in the cause of post. It becomes clear from this case that the time when the property passed (when the goods are posted) depends on whose agent the carrier is.

Where the seller is required to ship the goods to the buyer, there is an assumption that the shipment is an unconditional appropriation with the consent of the buyer. Although, under Rule 5(2), delivery of goods to a carrier for transmission to the buyer is deemed to be an appropriation of the goods to the contract and not the passage of the risk in the goods, if it does, the goods will be at the buyerôs risk during the course of post.

4.0 CONCLUSION

The provision of Rule 5 relates with unascertained goods. Property does not pass until the goods are ascertained. Once the goods are ascertained then property passes with partiesô intention.

Although delivery of goods to a carrier for transmission to the buyer is deemed to be an appropriation of the goods to the contract in accordance with Rule 5(2).

5.0 SUMMARY

In this Unit, learners has been able to understand Section 16 of the Act which deals with unascertained goods that will not pass to the buyer except ascertained with clear intention of the parties.

Section 18 Rule 5 (1) has also been discussed. This section deals

with unascertained goods, property in the goods passes to the buyer.

6.0 Tutor Marked Assignment (TMA)

1. Evaluate the distinction between ascertained goods and unascertained or future goods, critically evaluate.
2. Wendy & Co. agrees to sell to Banky Ltd 500 tons of grain to be delivered on 25th August, Wendy &Co notifies Banky Ltd of the tons of grains that have been earmarked for him at the warehouse, but before they were taken the grains were stolen from the warehouse on 12th September. What are the implications of this.

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act, 1993
- Rawlings, Commercial Law, University Of London Press, 2007.
- M.C.Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited 1992.

- Hire Purchase Act, CAP 169
- Sofowora General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 2

TRANSFER OF PROPERTY BY NON OWNER

CONTENTS

1.0 INTRODUCTION

In some situations, a person who has either no property or whose rights are defective disposes of goods in circumstances that enable the buyer to acquire rights to the exclusion of the true owner.

Usually good title would not pass, unless the buyer gets a good title free from any encumbrance by buying from the owner or his authorized agent.

The rule of nemo dat quod non habeat means that no one can give what he or she does not have. The purpose of this rule is to protect the interest of the property owners.

It sometimes happens that the buyer discovers the seller was not the true owner and his possession of the goods may be disturbed by the true owner, in that case the buyer may be entitled to an action for damages against such a seller.

2.0 OBJECTIVE

In this unit learners are expected to be able to give an impressive and well reviewed concept of Transfer of Property to Non-Owner.ò The Act in Section 21 (1) states that where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.

But the owner can bring an action under the Torts (Interference with Goods) Act 1977, against anyone who has wrongful possession of the goods.

Such a situation could occur where a thief sells a stolen car to an innocent purchaser, or a person misguidedly sells to an innocent buyer a car that is the subject of a hire purchase contract and is therefore is the property of the finance company.

In effect, the main point of Section 21 is that a person who is not the owner of a property cannot transfer title.

3.0 MAIN BODY

3.1 NEMO DAT QUOD NON HABEAT

As a general rule, a person who buys goods from someone other than the owner of the goods will not obtain good title to them, and it makes no difference if he acted in good faith.

If a seller of goods has no property in the goods and does not sell with the prior consent or authority of the owner, then he cannot transfer a good title in the goods. This general rule is expressed in the latin maxim nemo dat quod non habeat (no one can give what he has not got). Section 21 of the Rule 1 of the Act also emphasizes this general rule.

In Hollins v. Fowler (1875) L.R.7 H.L 757, a Liverpool broker, Hollins, purchased cotton from another broker, Bayley, who had obtained it from Fowler, the owner, without title in circumstances of fraud Hollins purchased the cotton in good faith and sold and delivered it to a manufacturer. In this instance Fowler was held liable, when sued for conversion.

Note that the Section 21 (1) in the later part of it states that unless the owner of the goods is by his conduct precluded from denying the sellerôs authority to sell. Then the buyer in that case will have a good title.

An agreement to sell before the seller gets a good title, does not preclude the buyer after the seller has got a good title. In Anderson v. Ryan, a car dealer agreed to sell a car to which he had no title, but before the car was delivered he had obtained title. It was held that Section 21 did not apply because for the original agreement was not a sale but only an agreement to sell. It seems that, even if the seller had purported to sell the car before he had obtained title, his subsequent acquisition of the title would have gone to feed the contract.

3.2 GENERAL EXCEPTION

SALE UNDER AGENCY

The main exception under this head is the sale by an agent. is created by Section 21 Rule 1and it states that an innocent buyer would acquire a good title where the seller sells under the authority or consent of the owner. In this instance, it means that a sale by an agent without

actual authority will give the purchaser a good title if the sale is within the agentôs apparent or usual authority.

In essence, the principle of agency may permit a seller who is not the owner to transfer title to the buyer. The rule is further emphasized in Section 61 (2) that

> *ñthe rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent… shall continue to apply to contracts for the sale of goods".*

In Bishopsgate Motor Finance Corporation Ltd v. Transport Brakes Ltd (1949) 1 KB 322, Denning LJ explained that in the development of law, two principles have striven for mastery. The first is for the protection of property, no one can give a better title than he himself possesses. The second is for the protection of commercial transaction: the person who takes in good faith and for value without notice should get a good title.

Note that the first condition can be overridden by the second.

4.0 CONCLUSION

In conclusion, merely being in possession of goods or even document of titles does not in itself, amount to the person having a good title to sell. However, one of the main exceptions to this is where the person has authority to sell, either genuine or otherwise.

Section 21 (1) of the Act has done a great deal in protecting the owner of the goods from fraudsters, while section 61 (1) of the Act also protects the innocent buyer with good faith through the principle of Principal and Agent relationships.

This is done to protect commercial transaction.

5.0 SUMMARY

The general rule is that a buyer cannot acquire a better title than that of the seller. This rule can be overridden in particular situations where someone, who takes in good faith and for value without notice, will acquire good title and will, therefore, be able to resist the claims of the original owner.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. What general principles apply where a person acquires goods from a person who is not the owner.
2. Briefly explain the principles in Bishopgate Motors v. Transport Brakes Ltd, as enunciated by Denning LJ.

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act.
- Rawlings, (2007) Commercial Law University Of London Press
- Okany (1992) Nigerian Commercial Law, Africana .FEP Publishers Limited.
- Hire Purchase Act, CAP 169
- M.O.Sofowora, General Principles of Business and Coop Law, (1999) Soft Associates.

UNIT 3

TRANSFER OF THE CONTRACT INCLUDES EXEMPTION CLAUSES

CONTENTS

1.0 INTRODUCTION

The nemo dat rule mainly protects the interest of the property owners. In non-owners are allowed to sell properties that do not belong to them, the result is better imagined as we have seen in the previous unit of this module.

At the outset, it must be emphasized that the general rule is well enunciated in the Section 21 (1) of the Act where goods are sold by a person who is not their owner, and does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller in this circumstance.

The second aspect of the principle laid down by Denning LJ in Bishopgate Motor Finance Corp Ltd v. Transport Brakes Ltd (1949) 1 KB 322, is discussed in the last unit as the principle for the protection of commercial transactions, that is, the person who takes in good faith and for value without notice should get a good title. This is the principle that will be well discussed in this unit as the exemption to the nemo dat rule.

It is however pertinent to note that there is a whole lot of exemption to the rule in section 21 of the Act, but some of them will be discussed later in this unit.

2.0 OBJECTIVE

In this unit learners should be able to have a detailed understanding of the exemption to the general rule of nemo dat quod non habet.

It is relevant to note that the exemption to this rule is also well spelt out in the Act, and all the sections contained in it will be discussed for easy access.

The main objective of this unit is for the learner to know all the different types of the exemption to the rule and the outstanding judicial authorities in this regard.

3.0 MAIN BODY- SPECIAL EXEMPTION

3.1 ESTOPPEL

If the owner of goods represents that another is his agent or allows a person to represent himself as his agent, although no such agency exists in fact, he, the owner will be estopped from denying the existence of his agents authority to act, on his behalf, in relation to the goods. This exception is created by the later part of Section 21(1) of the Act which states that ñé unless the owner of the goods is by his conduct precluded from denying the sellers authority to sellò.

However, this principle is also well preserved by Section 61(2) of the Act which states that

> ñ the rule of the common law, including the law merchant, save in so far as they are inconsistent with the express provision of this act, and in particular the rules relating to the law of principal and

agenté shall continue to apply to contracts for the sale of goods.ò

Estoppel could be by representation or by negligence. This will be discussed briefly with judicial illustrations.

In Henderson & Co. v. Williams (1895) 1 QB 521, the true owner of the goods represented to the buyer that the person selling was acting as an agent with authority to sell or is the owner. The owner was held estopped from denying that authority to sell and the buyer acquired good title, because he had represented to the buyer in that regard.

On the other hand, it may be otherwise if it could be shown that the owner has breached the duty of reasonable care owed to the third party and that this induced the third party to buy the goods so that the negligence was the proximate cause of the buyerôs loss.

In Mercantile Credit Co Ltd v. Hamblin (1965) 2 QB 242, the owner of a car signed forms in blank, without reading them, in the belief that they would enable a car dealer, who appeared to be respectable, to raise money on the security of the car. In fact, the dealer fraudulently used the forms to sell the car to a finance company. The Court of Appeal held that a duty of care existed between the owner and the finance company, but that there was no breach of that duty because she knew the dealer and reasonably believed him to be respectable. It was therefore not negligent of her to sign the forms in blank, It was the fraud of the dealer that caused the loss and not the negligence of the owner

3.2 SALE BY A PERSON WITH VOIDABLE TITLE

By section 23, the buyer, who buys in good faith and without notice of any defect in the title of the seller, will acquire good title if the goods are bought from a seller whose title is voidable but at the time of the sale it has not been avoided.

In Kings Norton Metal Co Ltd v. Edridge, Merrette Co Ltd (1897)14 TLR 98, a manufacturer of metal received an order from Hallam & Co and in consequence sent goods. It turned out that Hallam & Co. did not exist. The rogue resold the goods. It was held that the intention had been to contract with the writer of the order, and although this had been induced by a fraudulent misrepresentation, that only made the contract voidable, but since it had not been avoided before the goods were resold to a third party, title passed to the latter.

The law of contract governing void and voidable contracts apply in the instant cases. If property has not passed from the seller to the rogue and then to the innocent buyer then section 23 will not apply here.

Cunday v. Lindsay, (1878) 3App Cas 459.

Lewis V. Averay.

3.3 SALE BY A SELLER IN POSSESSION

Where a person who sold goods retains possession of them and resells them, for instance, where A, the seller, sell goods to B and then resells the same goods to C. If property has passed to B, but the seller is still in possession of the goods or documents of title to the goods, and the seller sells them to C, who purchased in good faith and without notice of the sale to, this second transaction passes title to C. B will only have an action for breach of contract against the seller. Section 25 of the Act.

For the second buyer to acquire good title, the seller must deliver possession of the goods or documents of title. merely contracting a second sale is not sufficient to give title to the second buyer. In Michael Gearson (Leasing) Ltd v. Wilkinson (2001) QB 514, Machinery was sold to a finance company and leased back to the seller, who then sold it to a second finance company

and leased back. At all times, the machinery remained in possession of the seller. It was held that the sellerôs acknowledgement to the finance company that the machines were being held on its behalf amounted to a delivery.

3.4 SALE BY A BUYER IN POSSESION

Section 25 (2) of the Act states that:

> *"where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner."*

The goods or title to the documents of title must have been obtained under a sale or an agreement to sell that is bought or agreed to buy.

In Cahn v. Pocketts Channel Steam Packet Co. Ltd(1889) 1 QB 647, a seller of copper transmitted a bill of exchange for the price together with the bill of lading to the buyer, X . X did not signify acceptance, but endorsed the bill of lading to the plaintiffs in accordance with a contract for resale of the Copper already made. In other words, he did not accept the bill of exchange but transferred the bill of lading. It was held that, was someone who had agreed to buy the goods and since the plaintiffs had taken the transfer of the bill of lading in good faith

and without the knowledge of the original ownerôs rights, they obtained a good title on the copper under 25 (2) of the Sales of Goods Act.

3.5 SALE IN MARKET OVERT

The word market overt was been defined by Jervis, J in Lee v. Bayes (1856) 18 CB 599 as an open, public and legally constituted market. Note that an unauthorized market does not qualify as a market overt. To constitute a sale in a market overt, it must be shown that the sale took place within the premises of the market, during ordinary business day, provided it is a sale of goods of the kind normally sold in the market.

Not only must the sale be in a market overt and the whole transaction effected there, it is vital to show that the sale was open and public. In Reid v. Metropolitan Police Commissioner (1973)2 AER 97, the sale of stolen goods took place in a market overt in the morning when the sun had not risen and it was still only half light. The court held that the goods should have been sold in day time when all who passed could see the goods.

Where stolen goods are sold in market overt, the buyer acquires good title under section 22 (1) provided he buys in good faith and without notice of the sellerôs lack of title.

3.6 SALE BY COURT ORDER

The second arm of section 21(2) (b) of the sale of Goods Act protects all sales carried out under the order of a court of competent jurisdiction. The High Court has the power to order the sale of any goods which may be of perishable nature, or likely to deteriorate from keeping or which for any other just and sufficient reason it may be desirable to have sold at once.

Consequently, a court bailiff acting in compliance with such an order may exercise a valid power of sale.

4.0 CONCLUSION

It pertinent to note that there are many exemptions to the nemo dat quod non habeat rule but some, not all of them have been discussed in this unit others not discussed are sale by Mercantile Agent which is not protected under the Sale of Goods Act.

It is however worthy to note that once one of the exemptions to the general rule is applied and the good is passed, a good title will pass to the innocent buyer without notice of the original owner of the goods.

5.0 SUMMARY

In summary it is important to note that someone who has no title to goods cannot pass the goods to another as enunciated in the general rule of nemo dat quod non habeat. By this, a person cannot give what he does not have. The innocent purchasers of such goods are protected by the provisions of the Sale of Goods Act.

6.0 TUTOR MARKED ASSIGNMENT

1. In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title.ô (Denning LJ). Discuss.
2. Briefly explain some types of exemptions to the rule of nemo dat quod non habeat.

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law University Of London Press (2007).

- Okany Nigerian Commercial Law, Africana .FEP Publishers Limited (1992)
- Hire Purchase Act, CAP 169
- Sofowora General Principles of Business and Coop Law, Soft Associates, (1999).

UNIT 4

FUNDAMENTAL TERMS AND EXEMPTION CLAUSES

CONTENTS

1.0 INTRODUCTION

Many contracts contain exemption clauses whose purpose is to negate the terms which would normally be implied in favour of a buyer. It is a common commercial practice for a contract to contain certain express terms whereby the parties to the contract may limit or exclude liability for breach of contract or negligence arising while performing the contract.

Traditionally, the terms of a contract are conditions and warranties but recently the third terms of contract emerged. These are named the fundamental terms.

In a contract of sale of goods, the duties of the seller must be concurrent with that of the buyer that is duty to deliver and the duty to accept and pay for the goods. These duties must be complied with and the express terms set out in the contract and with the terms implied into the sale contract.

2.0 OBJECTIVE

The purpose of this unit is that after its study it is important for the learner to be able to distinguish the traditional terms of a contract and to be able to explain the new one which is the fundamental terms of a contract in this regard.

The learner should also be able to discuss the relationship of all these implied terms has with one another. There is also the liability of the manufacturer of the goods and the important duty of the seller as to delivery of the goods.

3.0 MAIN BODY

3.1 Conditions

A condition is an obligation under a contract which is of great importance. It is of vital importance and goes to the root of the contract as it is so essential to its very nature that non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all. Its breach entitles the innocent party to treat the contract as discharged, Section 11(3).

This notwithstanding, the buyer will lose the right to reject the goods after acceptance.

3.2 Warranties

A warranty is a less significant term, though it must be performed, it is not so vital that a failure to perform it goes to the substance of the contract. Its breach entitles the innocent party to damages for loss suffered, but does not excuse that party from performing their obligation under the contract. Section 62 of the Act deals with the definition of the term.

However, the difference between a condition and a warranty is one of degree and whether a statement is a condition or a warranty depends in each case on the construction of the contract.

3.2 Representation

When a statement is made by the seller of goods to the buyer, relating to the goods, the statement may be mere representation which helps to induce the buyer to enter into the contract or a term of the contract i.e a statement which constitutes part of the contract itself.

It is not easy to distinguish whether a statement is a mere representation or a part of the contract.

If a statement is held to be only a representation, then if the statement is false, no damages are obtainable by the buyer at common law unless he shows that the seller was fraudulent i.e that the seller knew his statement was false or made it recklessly not minding whether it was false or not.

3.3 Fundamental Terms and Exemption Clauses

The parties to a contract of sale are free to exclude or vary any terms implied by the Act, see section 55. Often, a seller seeks to protect himself by inserting in the contract exemption clauses excluding his liability from breach of conditions and warranties.

In LôEstrange v. Graucob (1934) 2 KB 394, the plaintiff who ran a café bought a cigarette slot machine from the defendant and signed a written contract which contained a clause in small

print stating that ôany express or implied condition, statement of warranty, statutory or otherwise not stated herein is hereby excludedô. She did not read the clause. The machine proved unsatisfactory, and was not of merchantable quality. It was held that the plaintiff had no remedy against the seller.

The courts have developed the concept of fundamental term and have insisted that the operation of an exemption or limiting clause will be subject to the doctrine of fundamental term. Under the doctrine no person is allowed to take shelter under the provisions of an exemption clause. An exemption will not avail a party who is in breach of such obligation.

In Karsales (Harrow) Ltd v. Wallis (1956) 1 W.L.R 936, H signed a hire purchase form for a Buick car which he found to be in excellent condition. The contract excluded any condition or warranty that the car was roadworthy or as to its age or fitness for any purpose. A week later, the car was left outside his house having been towed there because the engine was so defective that it could not move and parts were missing. It was held that, the dealer was not protected by the exemption clause, because he was in fundamental breach of the contract.

3.4 Liability of Manufacturer

The buyer or any consumer who is injured by defective goods may maintain an action in negligence against the manufacturer and it is immaterial that there is no privity of contract between the injured third party and the manufacturer.

In Osemobor v. Niger Biscuits Co Ltd, (1973) N.C.L.R 382, a consumerôs action succeeded against a manufacturer of biscuits in which decayed tooth was found. See also the case of Grant v. Australian Knitting Mills Ltd (1936) A.C.85.

4.0 CONCLUSION

It is important for the seller and the buyer to adhere to the conditions of the contract as specified in it. It is however worthy of note that a condition in a contract of sale is significant because if a there is a breach of contract of condition committed by the seller then the buyer has the right to reject the goods, whereas remedy for warranty is a claim in damages.

However the Manufacturer of a product could be liable despite the rule in privity of contract, its exceptions will be applied as was done in the case of Grant v. Australian Knitting Co. (supra)

5.0 SUMMARY

The concept of condition and warranty in a contract is important, so also are the fundamental terms and exemption clauses. A seller cannot, for the sake of a condition in a contract, breach the content of the contract, the buyer has a right to reject the goods. The only right available under the warranty is a claim in damages. It is pertinent to note that a seller cannot hide under exemption clauses to sell defective goods to the buyer where this occurs, the buyer has a right to reject the goods even if he has used it.

In the same vein, manufacturer of goods could also be held liable for defective products that caused harm or has cause harm to the buyer of such goods as in the case of Osemobor v. Niger Biscuit (Supra).

6.0 TUTOR MARKED ASSIGMENT (TMA)

1. Briefly explain the concept of conditions and warranty in a contract of sale with the aid of relevant sections of the terms.
2 Explain the liability of a manufacturer as enunciated in the case of Grant v. Australian Knitting Co Ltd (1936) A.C 85

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act, 1993
- Rawlings, (2007) Commercial Law University Of London Press
- Okany Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act.
- M.O. Sofowora General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 5

DUTIES OF THE SELLER

CONTENTS

1.0 INTRODUCTION

It might have been thought that in a sale of specific goods there would be an implied condition on the part of the seller that the goods were in existence at the time when the contract was made. It is the duty of the seller to deliver the goods, while the buyer has a duty to accept and

pay for the goods. It is important to note that performance of the contract under sale of goods entails three main things:

- Delivery by the seller
- Acceptance by the buyer
- Payment by the buyer

The duty of one party is the right of the other. Section 27 of the Sale of Goods Act provides for the rights and duties of both the seller and the buyer. It states that it is the duty of the seller to deliver the goods and that of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

2.0 OBJECTIVE

The purpose of this unit is to discussed explain the duties of the seller in a sale of goods transaction. The learner is expected at the end of this unit to be able to explain the duties of the seller of goods in a sale of goods transaction as provided in the Sale of Goods Act.

3.0 MAIN OBJECT

3.1 Duty to Deliver Goods at the Right Time

Delivery is the voluntary transfer of possession from one person to another. See Section 62(1). It does not necessarily mean transportation Transfer of possession may be actual or constructive or conceptualized as legal possession. It could also be attornment, this occurs where the goods are in possession of a third party, and delivery takes place when the third party acknowledges to the buyer that he holds on his behalf.

Stipulation as to time is of essence in the contract of sale of goods. It does depends on terms of the contract but in the case of Hartley v. Hymans (1920) All E.R 328, the court held that in

ordinary commercial contracts for the sale of goods, the rule is that time is prima facie of the essence in the contracts.

If the time for delivery is fixed by the contract, then failure to deliver at that time will be a breach of condition which justifies the buyer in refusing to take the goods or where the seller fails to collect the goods on the appointed day, the seller will be entitled to repudiate the contract.

Where no date is fixed in the contract, delivery by the seller must be within a reasonable time which will be determined by matters such as the nature of the goods.

Although time is of delivery, the buyer can waive this condition where he does, then it will be binding on him whether made with or without consideration. In Charles Richards Ltd v. Oppenheim (1950) 1 KB 616, the plaintiffs agreed to supply a Rolls Royce chassis to for the defendants, to be ready at the least on 20th March, 1948. It was not ready on that date and the defendant continued, to press for delivery, thereby impliedly waiving the condition as to the delivery date. By 29th June, the defendant had lost patience and wrote to the plaintiffs informing them that he would not accept delivery after 25th July. In fact the Chassis was not ready until 18th October, and the defendant refused to accept it. The court held that the defendant was entitled to reject to accept the chassis as he had given the plaintiffs reasonable notice that delivery must be made by a certain date.

3.2 Duty to Pass Good Title

This is a condition of the contract for which the buyer can terminate the contract and seek damages for any loss, or affirm the contract and recover damages for loss. The right of the buyer is to receive the best title to the goods, that is, title that cannot be defeated by another person.

Under common law, the general principle of contract was that of *caveat emptor*. It may appear that the seller is not deemed to be given any undertaking as to title but section 12 of the Sale of Goods Act protects the title of a buyer by imposing a duty on the seller with regard to good title of the goods sold.

In Rowland v. Divall (1923)2 KB 500, A sold a car to B for 334pounds. B used the car for two months during which time he also repainted it. B then sold it for 400pounds to C who used it for a further two months. The car turned out to have been stolen before it came into Aôs possession and was, therefore, taken away from C by the police. The effect of the nemo dat quod no habeat rule is that the buyer can acquire no better title than the seller, so neither A nor B had title to the car. C recovered the purchased price from B and B recovered the purchased price from A without any allowance for the use. See Akoshile v. Ogidan (1950) 19 N.L.R 87.

Note that the definition of a contract for sale in section 2(1) does support the idea that the passing of property is the key issue.

Finally, where the seller does not have title to the goods, the buyer may, nevertheless, acquire good title under one of the exceptions to the nemo dat quod non habeat rule See Barber v. NWS BankPlc (1996) 1 WLR 641.

3.3 Duty to Supply Goods of The Right and Satisfactory Quality

There is usually an implied term that the goods supplied under the contract are of satisfactory quality and correspond with the description. Goods are regarded as sold by description, where the buyer contracts to buy the goods in reliance on the description given by or on behalf of the seller.

In Varley v. Whipp (1900) 1QB 513, here, the plaintiff agreed to sell to the defendant a reaping machine described by him as only used to cut 50-60 acres. On taking delivery, the defendant found that it was a very old machine and returned it to the plaintiff. The plaintiff sued for the price of the machine but the defendant relied on section 13. The court held that the defendant is entitled to reject it, for he had bought the machine, relying on this description which the machine did not possess.

With reference to satisfactory quality, section 14(2B) will be helpful. It states that;

ñthe quality of goods includes their state and condition and the

following:

1. Fitness for all the purposes for which goods of the kind in question are commonly supplied
2. Appearance and finish
3. Freedom from minor defects
4. Safety and
5. Durability.

See the case of Clegg v. Olle Anderson T/A Nordic Marine (2003) EWCA Civ 320

4.0 CONCLUSION

The seller has a right to sell goods, and this is regarded as fundamental to the contract of sale. It is one of the duties of the seller to the buyer where he passes a good title to the buyer. However, where there is contract for the sale of goods by description, the goods must correspond with that description and goods supplied under contract of sale of goods must be of satisfactory quality.

5.0 SUMMARY

The comparison between the goods as described and the goods as delivered is made according to the assessment of a business person or a reasonable consumer and not that of a scientist. Moreso, where there is an implied condition that the seller must have a right to sell the goods, so where the seller is in breach of the term, then the buyer is entitled to the return of the entire purchase price, irrespective of the fact that the buyer may have used it.

6.0 TUTOR MARKED ASSIGNMENT

1. X takes possession of a car under a hire purchase. Under such a contract title remains with the hire purchase company until all the payments have been made and the hirer(X) has exercised an option under the contract. Before completing the payments and exercising the option under this contract, X sells the car to KM, a car dealer, who sells it B. Neither KM nor B is aware of the hire purchase contract. B uses the car for almost a year before discovering all of these facts Advise B.
2. Under a sale of goods contract time is of essence. Critically explain.

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law University Of London Press 2007.
- Okany Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169
- Sofowora General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 6

DUTIES OF THE BUYER

CONTENTS

1.0 INTRODUCTION

Once an agreement with respect to goods has occurred between two or more people for the purpose of business, they both have duties to fulfill as buyer and seller of such good.

It is however important to note that these duties are paramount to the success of the business transactions and will also enhance the growth of commercial transactions world over.

In this unit, the duty of the buyer is discussed as it is as paramount as the duties of the seller of the goods.

Payment for the goods is a major duty of the buyer as well as the duty to accept the goods as transacted after the seller fulfills its duty in the transaction.

2.0 OBJECTIVE

The main purpose of this unit is to distinguish between the duties of the buyer from that of the seller and give a detailed explanation of the duties of the buyer to the seller.

3.0 MAIN BODY

3.1 DUTY TO PAY THE PRICE

It is the primary duty of the buyer to pay for the price of the goods supplied to him. Payment for the goods and delivery of the goods are concurrent conditions and the buyer is not entitled to claim possession of the goods unless he is ready and willing to pay the price in accordance with the contract.

Section 28 of the Act states that:

> *"delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods in exchange for the price, and and the buyer must be ready and willing to pay in exchange for possession of the goods."*

It is important therefore that the principle of cash on delivery is implicit in a contract of sale, if the buyer pays by cheque or any negotiable instrument that is regarded as a conditional payment, because if the cheque is dishonoured, the seller may sue for the instrument or for the price of the goods.

In Bekederemo v. Colgate-Palmolive (Nig) 1976, a clause in the contract stipulated that ñall purchases of the companyôs goods by the distributor shall strictly be for cash payments: provided that the company will grant up to thirty days credit after delivery of goods by the company to the distributors within which the distributors shall effect payment in full for all goods received.ò

The seller supplied goods on nine occasions in 1972 for which the buyer could not pay cash on all occasions thereby leaving a substantial balance. Notwithstanding this, the buyer insisted

that he was entitled to further supplies of goods, and that the sellerôs failure to supply him amounted to breach of contract. The court held that the sellerôs duty to supply the goods and the buyerôs obligation to accept them and pay immediately or within thirty days (if credit was granted) were concurrent and correlative duties. The buyer therefore could not insist on deliveries when he was unable to pay for them.

3.2 DUTY TO ACCEPT THE GOODS

This is also one of the major duties of the buyer, the duty to accept the goods in accordance with the terms of the contract. In this instance, acceptance in essence involves taking possession of the goods by the buyer. And delivery of the goods by the seller is of the essence in the contract.

Note that if the buyer fails to take delivery in time, that will not justify the seller in selling the goods to another person, unless the delay is clearly unreasonable to justify the seller to conclude that the buyer has repudiated the contract.

3.3 ACCEPTANCE AND EXAMINATION

Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them, unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. See Section 34(1)

By virtue of Section 34(2), unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose ascertaining whether they are in conformity with the contract.

The conduct of the buyer could amount to an acceptance of the goods having regard to the provisions of section 35. In Hardy and Co. Ltd v. Hillerns and Fowler (1923) 2 KB 490, X contracted to sell to Y wheat to be shipped from South America. The ship carrying the wheat arrived at Hull on 18th March. On 21st March, Y resold and delivered part of the wheat to Z. On 23rd March, Y had its first opportunity to examine the goods and, on doing so found them not to conform to the contract. Consequently, he rejected them. In other words, before the expiration of a reasonable time for examination, Y rejected the wheat for non-conformity with the contract.

It was held that, the sale and delivery to Z was an act inconsistent with the ownership of X and Y had, therefore accepted the goods under section 35 of the Act and lost his right of rejection.

4.0 CONCLUSION

It is important to note that the duties of the buyer are paramount in the contract between the buyer and also the seller in the contract of sale of goods. The duty of the buyer is the acceptance of the goods and the payment of the said goods. In some instances, the conduct of the buyer may make him forfeit his right of rejection after examination of the goods.

5.0 SUMMARY

The duties of the buyer is important in the contract of sale especially in C.I.F and F.O.B contract. The most important amongst them is the duty to examine and accept the goods and also the duty to pay for the goods.

It is pertinent to note that the duties of the buyer are concurrent with those of the seller in any contract of sale.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Briefly, explain the principle of payment for goods as enunciated in the case of Bekederemo v. Colgate-Palmolive.
2. Outline and explain the duties of the buyer in a contract of sale of goods.

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law University Of London Press (2007)
- Okany Nigerian Commercial Law, Africana .FEP Publishers Limited (1992).
- Hire Purchase Act, CAP 169
- Sofowora General Principles of Business and Coop Law, Soft Associates (1999).

MODULE 3

UNIT 1

REMEDIES OF THE SELLER

CONTENTS

1.0 INTRODUCTION

The remedies available to the seller will be well enunciated in this unit. As a starting it is important that the remedies available to the seller are concurrent with the one available to the buyer.

Apart from personal action on the contract which is available to the seller where the buyer defaults in payment of the price of goods sold, the seller may also exercise some real rights to

the goods. Note that personal remedies will only be against the buyer and not third party in case the goods have been resold, as against real remedy which is against the goods sold.

2.0 OBJECTIVE

The main objective of the unit is for the learner at the end of the unit to be able to distinguish between a personal remedy and real remedy of the seller against the buyer. It is important to note that the remedy under the two heads are immense and will be discussed briefly for the purpose of this unit.

The personal remedy of the seller against the buyer is the right of payment and also right to damages. It is a personal right which a third party who benefits from the goods will not share as against the real remedy of the seller.

3.0 MAIN BODY

3.1 Personal Remedies

The seller of goods under a sale of goods contract has two remedies under this head available to him as against the ones available under the real remedies that will be discussed later. This is an action that directly affects the buyer for the seller to recover sums of money representing that he has lost, it is a right in *personam:*

They are two of them;

1. action for the price
2. action for damage

3.1.1 Action for the Price

An action for the price is an action in debt. The seller has the right to bring an action for the price. This action could come in two folds under section 49 0f the Act:

- If property has passed and the buyer has wrongfully failed to pay according to the terms of the contract. This is well enunciated under section 49(1) of the Act. In this instance, the seller can sue for the price of the goods.

In Colley v. Overseas Exporters Ltd (1921) 3 KB 302, X sold to Y a quantity of leather f.o.b Liverpool, the goods being unascertained at the date of sale. Y instructed X to send the goods to Liverpool for shipment on the vessel (K) and X did so. The K and other ships substituted could not take the leather for which reason the leather remained at the dock for two months. X then brought an action against Y for the price. It was held that, as the property in the goods had not passed to Y and that there was no agreement for the price payable on a certain date in respective of delivery.

- If the contract stipulates a date for payment without requiring delivery and the buyer wrongfully fails to pay, then the seller can bring an action for the price of the goods. See Section 49 (2) of the Sales of Goods Act.

Generally the action for price gives the seller certainty, they know precisely how much they will receive.

3.1.2 Action for Damages

Under 50 (1) of the Act, where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller will have an action for damages for non acceptance.

The action may be brought whether the property in the goods has passed or not to the buyer. Note that the measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the buyerôs breach of contract. See Section 50 (2). In Thompson Ltd v. Robinson (Gunmakers) Ltd (1955) Ch. 177. A contracted to buy a vanguard motor car from B, who were car dealers. A then refused to accept delivery. There was no shortage of Vanguard. It was held that B was entitled to damages for the loss of their bargain, i.e the profit they

would have made as they have sold it less than what they would have sold it. The seller was obliged to mitigate their loss by reselling the goods and could not claim for loss. If there is a market for the goods, the presumption is that damages will be the difference between the contract price and the market price at the time when the goods ought to have been accepted, or at the time of refusal to accept if time is not fixed for acceptance.

3.2 Real Remedies

The seller may exercise some real rights against the goods as against the personal remedies discussed above. These are real rights and are in relation to the goods. They are rights *in rem*.

3.2.1 Rights of the Unpaid Seller

An unpaid seller is a seller who has not been paid the whole of the price or when the bill of exchange or other negotiable instrument has been received as conditional payment and the condition for which it has been received has not been fulfilled by reason of the dishonour of the instrument it. See Section 38 (1). It does not matter that the time for payment has not arrived, note that if the buyer has tendered the price and the buyer has refused to accept, he cannot be an unpaid seller within the meaning of the Act. See Lyons and Co v. May and Baker Ltd (1923) 1KB 685.

3.2.2 Unpaid Sellers Lien

The unpaid sellerôs lien is the right to retain possession of the goods until payment, even if the title has passed to the buyer. A lien is a right to retain possession of goods until payment or tender of the whole price is made.

The lien is available where an unpaid seller is in possession and section 41 (1) of the Act provides that:

- where the goods have not been sold on credit

- where it has been sold on credit and the term of it has expired
- or where the buyer has become insolvent.

The lien may be exercised against part of the goods where the rest have been delivered unless delivery indicates an agreement to waive the lien.

A seller has not lost his lien if the following situations occur:

- where part of the price has been paid (s38 (1) (a))
- where the seller has obtained judgement for the price of the goods (s43(2))
- where the seller is in possession as agent or bailee of the buyer.

The seller will lose his right of lien in the following instances;

- where the buyer has paid or tendered the whole of the contract sum (s38(1) (a))
- where the buyer lawfully obtains possession of the goods. In this instance, the lien does not revive if the seller regains possession.
- by waiver of the lien (S43(1) (c))

3.2.3 Rights of Stoppage in Transit

The right is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price. The unpaid seller has the right to resume possession of goods which are left in his possession as long as they are still in the course of transit.

The following are the requirements for stoppage of goods in transit. The method of stoppage is outlined in s46 of the Act, they are stated below as where:

- the seller is unpaid
- the buyer is insolvent: that is the buyer is either ceased to pay their debts in the ordinary course of business or cannot pay their debts as they become due. (s61 (4))

- the goods are in transit

The right of stoppage will end and the right will be lost in the following circumstances;

1. If the buyer or his agents obtain delivery before the arrival of the goods at their destination (S45 (2). See also Reddall v. Union Castle Mail Steamship Co Ltd (1914) 84 LJKB 360.
2. If, after arrival at the destination, the carrier, bailee or custodian acknowledges to the buyer that the goods are held on their behalf and that person continues in possession for the buyer.(S45 (3))
3. If the carrier wrongfully refuses to deliver the goods (S45 (6))
4. If a document of title has been transferred to the buyer and there has been a further disposition e.g to a new buyer who acts in good faith.

The transit will not have ended if in the following circumstances:

a) there is part delivery, the remainder of the goods may be stopped in transit.
b) the buyer rejects goods and the carrier continues in possession of them (S45 (4)).

3.2.4 Rescission and Re-sale

A contract of sale is not rescinded by the exercise of the rights of lien or stoppage. Here, the buyer may be able to require delivery on tendering payment of the price. Where property in the goods has passed to the buyer, it will not revert in the seller merely because they exercise the right of lien or stoppage. Note that the seller must terminate the contract before property in the goods will revert.

The property will revert in the seller if they exercise the right of resale. This is a right that arises if the seller defaults in which case the original sale contract is rescinded (S48 (4)).

This right may also arise in (S48 (3)) as follows;

- where there is an unpaid seller
- either the goods are perishable or the seller gives notices of the intention to resell
- the buyer does not pay or tender the price within a reasonable time.

Note that the unpaid seller may resell the goods and recover from the original buyer damages for any loss caused by this breach. In RV Ward Ltd v. Bignall (1967) 1 QB 534, the court held that reverting of property in the seller occurred as a result of rescission of the contract by the seller following the buyerôs breach. The seller elected to rescind by reselling the goods.

4.0 CONCLUSION

The seller can bring actions against the buyer for price where property has passed and the buyer has wrongfully failed to pay or for damages where the buyer wrongfully fails to accept and pay for the goods.

The seller also has a right against the goods: the unpaid sellerôs lien permits the seller to retain possession of the goods until payment, while the right of stoppage allows the unpaid seller to stop goods in transit where the buyer has become insolvent and also he may be able to exercise the right of resale.

5.0 SUMMARY

In summary, the seller has rights to the goods, that is right in rem and also right in personm, which is of paramount importance and they are remedies available to the seller.

The seller has a right to the price or right to damages in a situation where he has exercised his right of resale, he can only sue for damages in that regard.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Bunmi purchased an HP printer from George and it was agreed that collection was to be made by Bimbo. Bimbo never collected the printer and did not pay. Does George have a right for the price?
2. Briefly outline the remedies available to a seller under the rights in *rem.*

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law University Of London Press (2007).
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited (1992).
- Hire Purchase Act.

UNIT 2

REMEDIES OF THE BUYER

CONTENTS

7.0. References/Further Readings.

1.0 INTRODUCTION

In this unit, the remedies available to a buyer in the sale of goods contract shall be discussed. As had been said, the remedies of the seller and those of the buyer are concurrent to each other as they both have duties to perform in a contract of sale of goods. Both parties therefore, also have remedies that also go with them contract is breached.

The remedies available to the buyer are also numerous and they range from recovery of price to rejection of the goods as well as the damages to mention just a few of the remedies that will be discussed this unit.

2.0 OBJECTIVE

The aim of this unit is to discuss the remedies available to a buyer in a sale of goods contract. The learner is expected to be able to understand and explain the remedies available to buyer of goods in a sale of goods contract.

3.0 MAIN OBJECT

3.1 Recovery of the Price

If the buyer has paid the price, he may sue the seller to recover the amount paid if the goods are not delivered or the consideration for the payment has failed. (S54 of the Act).

3.2 Rejection of the Goods

The buyer can repudiate the contract if the seller is in breach and the breach goes to the root of the agreement. That is, the breach is a breach of condition and not warranty. Breach of contract may arise in the following ways:

- late tender of the goods

- breach of an implied condition
- right of rejection by virtue of an express or implied term or usage of trade.

The motive for rejection is irrelevant as in the case of Arcos Ltd v. E.A. Ronaasen & Sons (1933) AC 470.

The right of rejection will be lost or will not be available where:

- the buyer has accepted the goods (S11(4))
- the buyer is unable to return the goods; where the goods has passed into the possession of a sub-buyer and cannot be recovered.
- that there is a breach of a warranty
- there is short or over delivery and the shortfall or excess is not material (S30 (D)). Here there is no requirement for unreasonableness.

Where the buyer has right to reject for breach of condition, he or she can:

- reject the goods and claim damages for any loss
- treat the breach as a breach of warranty and claim damages.
- waive the breach.

If the buyer wrongly rejects goods, the seller can treat this as a repudiation of the contract and, if property has passed to the buyer, it will revert in the seller.

3.3 Acceptance

The buyer loses the right to reject the goods if all or part of the goods are accepted, unless the contract permits rejection after acceptance. (S35)

Where a breach justifies rejection, unless there is agreement to the contrary, the buyer may reject all of the goods or may take those that are not defective, or may take some of the defective goods and reject the rest (S35A (2)).

In J & H Ritchie Ltd v. Lloyd Ltd (2005) SLT 64, it was held here the buyers agrees to the repair of the that where goods and the repair was properly effected so that the goods conformed with the contract, the buyer lost the right to reject.

3.4 Damages

Any claim the buyer may have for damages a distinction must be made between a claim for failure to deliver and a claim relating to goods that have been delivered.

Failure to deliver may cause loss and the buyer could bring an action for damages (S51 (1)).

1. If there is an available market for the goods under S51(3) the presumption is that the measure of damages is the difference between the contract price and the market at the time the goods ought to have been delivered at the time of the refusal to deliver.
2. Where the goods are delivered and the buyer elects not to reject them (S11 (2)), where the breach does not give rise to the right of rejection, it is treated as a breach of warranty and the buyer may deduct damages from the price.

Note that the buyer will not be able to claim damages where the loss was not caused by the breach. In Lambert v. Lewis (1982) AC 225, the seller of a defective towing equipment was liable for the breach of S14(3), but not for the damages the buyer had to pay to a third party who was injured when the buyer continued to use the equipment in spite of knowing that was defective.

4.0 CONCLUSION

The buyer can reject goods for defective delivery, breach of an implied or express condition, or serious breach of an innominate term, unless they have accepted the goods or where there is a minor breach.

Rejection does not necessarily constitute rescission of the contract and it may be possible for the seller to cure a defective delivery.

5.0 SUMMARY

The buyer in a sale of goods contract may be able to withhold payment of the price where the seller fails to deliver, or may be able to bring an action in damages for non delivery. Wrongful rejection of the goods may be treated by the seller as a repudiation of the contract.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Mufu agrees to buy 500 planks from Taju for boat building, each plank measuring 15cm in width. When delivered, 125 of the planks were 14cm wide, 125 were 16cm and the rest were as ordered. All the planks were suitable for Mufuôs use, but Mufu has now found an alternative , cheaper supply of wood and wants to escape from his obligations under the contract with Taju. Advise Mufu.
2. Adamu contracts to buy 12 bottles of brandy and the seller delivers 8bottles of brandy and four bottles of whisky. What can Adamu do under the Sale of Goods Act.

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law University Of London Press (2007).
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited (1992).
- Hire Purchase Act.
- Sofowora, General Principles of Business and Coop Law, Soft Associates (1999).

UNIT 3

FACTORS AFFECTING LIABILITY UNDER CONTRACT OF SALE OF GOODS

CONTENTS

1.0 INTRODUCTION

There are numerous factors that may affect the smooth running of the concept of sale of goods. Some have already been discussed. Two important ones to be like the exemption clauses other to be discussed here are the doctrines of frustration and mistake. These two factors can terminate a contract without damages or right to sue for the price of the goods.

It is however important to note that an act of God or Kingôs enemiesô act can also bring the contract to an end with both the seller and the buyer losing. The concept of frustration and mistake will be discussed in this unit.

2.0 OBJECTIVE

The main objective of this unit is that learners should be able to understand the factors that may affect the contract of sale of goods through risk, frustration and mistake.

3.0 MAIN OBJECT

3.1 Risks and Frustration

If the goods sold are accidentally lost or damaged, then the loss or damage will fall on the party who bears the risk and the general rule of *res perit domino,* that is, the risk of accidental loss, falls on the owner. The general principle attributing the risk is laid down in section 20 as follows:

> ñunless otherwise agreed, goods remain at the sellerôs risk until the property therein is transferred to the buyer, but where the property is transferred to the buyer, the goods are at the buyerôs risk whether delivery has been made or not.ò

In section 16 of the Act, property in goods cannot pass until they are identified. The risk is not usually upon the buyer in the case of unascertained goods. In this respect, the opening word of Section 20 should be noted. It states that parties may agree that risk will pass before or after property. (See Sterns Ltd v. Vickers Ltd (1923) 1KB 78)

Frustration

The general principle of law of contract is that where a contract has been frustrated, the rights and obligations of the parties are terminated and remain in the position in which they were at the time when the frustrating event occurred.

Section 7 of the Act buttress this point by providing and states that ñwhere there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of

the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby frustrated.ò From this point it clear that section 7 discharges the parties of their obligations under the contract at the occurrence of a peril on the goods.

It is important to note that the perishing of specific goods is the only aspect of frustration provided for by the Act. Perishing of goods cannot frustrate a contract otherwise than under section 7. In Re Shipton Anderson and Co Ltd v. Harrison Bros. &Co Ltd (1915)3 KB 676, the court clearly thought there could be no frustration if property and risk had both passed.

3.2 Mistake

The discussion of this topic here will be limited to the Sale of Goods Act of 1893 where it relates to sale of specific goods which have perished. Section 6 of the Act is the section that makes provision for the doctrine of mistake and it states that

> *"where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void".*

In Couturie v. Hastie (1856) 5H.L.C. 673, the defendant was a *del credere* agent who sold, on behalf of the plaintiffs, a cargo of corn shipped from Salonika. Before the date of the sale, the cargo had been lawfully sold by the master of the ship. The purchaser repudiated the contract and the plaintiff sued the agent, whose liability depended on whether the purchaser would have been liable. It then held that, the defendant was not liable and that the contract was void for mistake.

4.0 CONCLUSION

The factors affecting the sale of goods contract, which range from risk to frustration and to mistake, are discussed in this unit. However passing of risk in sale of goods contract depends on circumstances of each case, where generally risk passes with property. In cases of Frustration, the general principle is that parties return to status quo. In the case of mistake, the contract is void ab initio.

5.0 SUMMARY

The passing of risk in goods must pass with the goods as a general principle of the law. There are however instances where the risk will pass before the goods. This is based on agreement between the parties. Frustration is a situation where the goods are either damaged or lost without the fault of any party. In this instance, parties return to status quo as if the contract never existed.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. The general principle of law of contract is that where a contract has been frustrated, the rights and obligations of the parties are terminated and remain in the position they were at the time when the frustrating event occurred. Critically examine this assertion with decided cases and relevant statutes of the law.
2. Sheron sold goods to Benson with the notion that the goods were still in existence, but at the time of the contract the goods was no longer in existence. Advise Benson.

7.0 REFERENCES/FURTHER READING

- Sales of Goods Act.
- Rawlings, Commercial Law, University Of London Press, (2007).
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited, (1992).
- Hire Purchase Act.

- Sofowora General Principles of Business and Coop Law, Soft Associates, (1999).

MODULE 4

UNIT 1

THE HIRE PURCHASE CONTRACT

CONTENTS

1.0 INTRODUCTION

A Hire Purchase transaction is a bailment of goods but with a provision for the option of sale or transfer of the property in the goods bailed from the bailor to the bailee. Whether a particular transaction is a hire purchase or not will, as shall be seen later in this unit, depend on the wording and meaning of the transaction and not merely on the appearance of the term Hire-Purchase on the document evidencing the agreement.

The contract of hire purchase is mostly governed by the Hire Purchase Act, Law of the Federation, 1990 and common law.

2.0 OBJECTIVE

The aim of this unit is to explain the nature of the contract of Hire Purchase, under the Hire Purchase Act and at common law. From this unit, Learners should be able to define the term and distinguish it from other legal transactions in commercial law.

MAIN BODY

3.1 Evolution of Hire Purchase

The concept of Hire Purchase is an important aspect of commercial transactions developed in the United Kingdom and can now be found in existence all over the world now. It is also called closed-end leasing. The first English Hire Purchase Act was in 1938, so it is a law of recent development. The origin of modern Hire Purchase agreement is the mid-Victorian custom in furniture trade under which persons who were unable to pay for the furniture at the

time they desired to purchase it or who were not sufficiently worthy of open credit were allowed to take them. In the case of household furniture, it was successful for it prevented the property passing until full payment was received.

In the true Hire Purchase Act did not come to being until the Factors Act, 1889, introduced the rule that a buyer in possession of the goods could pass a good title to a bonafide purchaser or pledgee.

In Nigeria as well, the contract of hire purchase is also of recent origin. Indeed, the first Act passed on this matter was in 1965, Its practice however dates back to scores of years ago when local traders sold on credit while dealers sold to people on local and informal.

It is important to note that there has been several judicial approvals to the practice of hire-purchase which increased the popularity of the practice.

3.2 Definitions of Hire Purchase

There have been several scholarly definitions of the phrase, hire purchase offered by authors and the statute books. There are judicial definitions which have suggested definitions of the term.

In Halsburyôs Laws of England Vol. 1st Edition, a contract of hire purchase has been defined as ña contract of hire with option to purchase under which

the owner of the chattel undertakes to sell it to, or that it shall become the property of the hirer conditionally on his making a certain number of payments. Until the making of the last payment, however, no property in the

chattel passes.ò

In Scammell v. Austin (1941) 1All E.R 14, it was defined as a complex transaction, not a contract of sale but a bailment. This is a judicial definition.

A statutory flavor is given to this definition in Section 1 of the English Hire-Purchase Act, 1965 as:

> ñan agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee.ò

From the foregoing, it is clear that it is an agreement concluded between a bailor, that is, the owner, and a bailee that is the hirer, in respect of some particular goods.

3.3 Hire Purchase Distinguish from Other Legal Transactions

The term hire purchase is always loosely employed by many people as synonymous with credit purchase or such similar transactions. Here the Hire Purchase transaction will be distinguished from other legal transactions.

- **Hire Purchase Distinguished From Hire**

Hire is a kind of contract that does not pass title of the goods at a future date. The definition of Hire Purchase as seen above is different from the concept of hire. Hire only enables a person to use the goods for his immediate use and does not want to own the property. The hirer will return the chattel to the owner after its use.

It is also a kind of bailment in which the hirer is given possession of an article during the period of the particular hiring agreement.

- **Hire Purchase Distinguished From Loan and Mortgage**

Loans and Mortgages is a kind of arrangement where one person who desire some finance borrows money from a person or a financial institution for his use in order to satisfy some needs.

- **Hire Purchase Distinguished From Sale on Credit Terms**

This is a situation where a person wants to make an outright purchase of goods but may find out that he does not have sufficient money to make full payment for them.

In this instance, the person may pay in instalment, while the goods pass to the buyer on credit. In this instance, the seller loses his sellerôs right of lien on the property and where the buyer resells the goods, the third party will be an innocent purchaser for value without notice and will have a good title.

In J. Allen and Co. v. Sanni Adewale and Bello Lateju (1929) 9 NLR 111, the Plaintiff sued the defendant and his surety to recover the balance of what was called the hire-purchase price on a car given to the first defendant. After reading the agreement, the court held that it was a contract of sale rather than a hire purchase contract.

3.4 Reason for the Adoption of the Hire Purchase System

There are mainly three reasons for the Hire Purchase system of commercial transactions

1) One of the most important reasons and the first is that it enables credit to someone, who is unable to pay cash for the goods he wants and who would be happy to pay some deposit and therefore pay the balance in instalments at a stipulated rate of interest.
2) The other reason for this system is that the dealer or the manufacturer of the goods cannot always provide credit and yet the goods must be bought to enable the dealer in business.

3) The third option for the adoption of the hire purchase system is the possible evasion of the Money Lenders Act 1939 Cap 124 LFN, 1958, which regulates the conduct of the business of money lending.

4.0 CONCLUSION

A Hire Purchase agreement is a contract whereby the owner of a chattel lets it out on hire for a periodic rent with the provision that on due compliance with the various terms of the agreement, and the compliance with the various terms of the agreement, and the completion of the agreed number of payment of rent, the hirer either becomes the owner of the goods automatically or shall have the option of purchasing the chattel by the payment of a small agreed sum.

5.0 SUMMARY

In summary the concept of Hire Purchase as we have seen in this unit is a straightforward concept of commercial transaction. It enables the buyer of the goods to repossess the goods after fulfilment of the condition of the transaction. It is clearly distinguishable from other form of legal transactions like Hire, Loan and Mortgages, just to mention a few of it.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1) Briefly explain the historical development of the concept of Hire Purchase and suggest your own definition of the term.
2) Distinguish between the contract of Hire Purchase and other Legal Transactions.

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act, 1993
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation
- M.O. Sofowora General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 2

THE HIRE PURCHASE AGREEMENT

CONTENTS

1.0 INTRODUCTION

A Hire Purchase agreement may either be oral or written under the common law rule. It is however pertinent to note that a detailed Hire Purchase agreement is usually in writing and indeed should be in writing.

The common law rule does not specify a prescribed pattern or form for hire-purchase agreements. Note that hire-purchase agreements are characterized by three main essentials which are:

- a clause by which the owner agrees to let, and the hirer agrees to hire the goods.
- a clause which empowers the hirer to determine the hiring and return the goods.
- a clause giving the hirer the right or option to purchase the goods for a nominal sum at the end of the hiring.

Aside the above mentioned essentials, other terms may be included in the agreement, like period of hire, hire-purchase price, number of instalments, insurance of goods and the right of the owner to retake.

2.0 OBJECTIVE

The main objective of this unit is to enable learners to be able to distinguish between a hire purchase agreement and a hire-purchase contract.

Also, the learner in this unit, is also expected to understand the main rule under the common law, the doctrine of offer and acceptance, the capacity of the contracting party and the rudimental of the obligations of all the party to the contract.

3.0 MAIN BODY

3.1 Offer and Acceptance

This is the first essential requirement of the hire-purchase agreement, which will give a party the right to enforce or sue for a breach of the agreement, in order to enforce a contract.

If the number of the parties in agreement is two then, the offer in respect of the hire-purchase in writing is constituted by the hirer signing the hire purchase agreement, while the owner signifies acceptance by executing the agreement already signed by the hirer. The acceptance must be communicated to the hirer in order for it to be valid.

An oral agreement between the hirer and the owner is also possible. If the hire-purchase agreement involves three parties, i.e the owner, the dealer and the hirer, then the offer is made by the hirer. Generally the dealer is not an agent of the owner, but for the purpose of receiving the offer, he may be construed as the agent of the owner for that particular moment.

Mere delivery of the goods is not sufficient as acceptance. It is important and compulsory to communicate such to the hirer.

3.2 Capacity of the Parties

The liability of infants under the general law of contract is the same under the hire-purchase agreements. Prima facie, infants are not liable under the hire-purchase agreement except those relating to necessaries and beneficial contract.

3.3 Obligation of the Owner

The first obligation of the owner under the common law is to deliver the goods which are the subject matter of the hire purchase agreement to the hirer.

It is therefore a fundamental duty and its breach will entitle the hirer to repudiate the contract. Delivery in this sense might not be physical transfer but voluntary transfer of possession from one person to another.

In addition to the above duty of the owner, there should be some conditions implied in the contract. The first is that the owner should possess a good title to the goods. If his title is impeached this will amount to a total failure of consideration as between the purported owner and the hirer.

Another implied condition is the fitness for the purpose for which the goods are hired.

In Stephen Anoka v. S.C.O.A Warri (1955/56) W.N.L.R 113, the plaintiff bought a lorry on hire-purchase from the defendant. The engine was defective and the plaintiff replaced it with another engine. When the plaintiff subsequently defaulted in the periodical instalments, the defendant seized and sold the lorry. The plaintiff sued for conversion and in addition for breach of warranty. The court held that in the absence of an express term in the agreement excluding any warranty of fitness or limiting the defendantôs liability, the defendant was under a duty to ensure that the lorry was reasonably fit for the purpose for which the defendant must have known the lorry to be used for.

Exemption clauses will not avail an owner, where there is a fundamental breach of the terms of the contract.

If the owner fails to make delivery of the goods the hirer can sue for specific performance.

3.4 Obligation of the Hirer

This is the fundamental obligation of the hirer a to accept delivery of the goods, the subject matter of the hire purchase. Such Hirer will be liable in damages if he fails to take delivery within a reasonable time after he had been requested to do so.

It is also the primary duty of the hirer to pay, punctually the various sums provided for in the agreement in accordance with the provisions of the agreement. The payment of instalments as

specified in the hire-purchase agreement is mandatory and must be strictly complied with. There are certain circumstances where the instalmental payment may be suspended or waived.

In Offodile and Sons Enterprises v. S.C.O.A (Nig.) Ltd (1969) CCHCJ 1333, there was a hire-purchase agreement between the parties in respect of a motor vehicle during the civil war, and understandably the rentals were not paid, but the hirer enjoyed the undisturbed use of the motor vehicle. After the civil war the owners sued for arrears of rentals. The court held that the owners were entitled to the rentals, and that the hirerôs strict liability to pay rentals during the war period was only waived or suspended during the civil unrest that should not be regarded as destroying the right to recover the rentals.

3.5 Obligation of the Dealer

In practice generally, the hirer is allowed to face with the dealer in the transaction to enforce certain rights under an independent contract entered into between them despite the fact that the finance company is the owner of the goods. However the dealer is closer to the hirer as stated by the Supreme Court in Amusan and Thomas v. Bentworth Finance Co. Ltd (1966) N.M.L.R 276, that in law, the dealer (S.C.O.A) could be treated as agents of the finance company for the purpose of delivery of the vehicles but not for all purposes.

4.0 CONCLUSION

A hire-purchase agreement is an agreement that is precipitated on the general rule of contract of law of offer and acceptance on the part of the hirer and that of the owner. Sometimes with the dealer acting as the agent of the owner.

It pertinent to note that the obligation of the buyer and that of the owner are concurrent obligations and that must be done in line with each others obligation.

5.0 SUMMARY

In summary, the hire-purchase agreement is an agreement that is essential to the contract of hire-purchase and is precipitated on the premise of offer and acceptance and that mere delivery of the goods is not enough as the acceptance of the agreement and acceptance must be communicated to the hirer.

The obligation of the hirer should be concurrent with that of the owner, and where there is a dealer, its obligations should also be concurrent in that regard.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Is mere delivery of the goods to the hirer enough as means of acceptance of the hire-purchase agreement?
2. The payment of instalments as specified in the hire-purchase agreement is mandatory and must be complied with strictly but however such may be waived or suspended due to circumstances. Discuss?

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act.
- Okanny, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation.
- Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 3

OBLIGATIONS IMPLIED UNDER THE ACT

CONTENTS

1.0 INTRODUCTION

The first comprehensive legislation on Hire Purchase in Nigeria was the Hire Purchase Act, 1965 and was brought into operation in 1968. This Act has been reviewed severally with the present one as the Hire Purchase Act in the Laws of the Federation of Nigeria.

The main purpose of the Act is to regulate hire-purchase transactions, which have been operated in the past under the ordinary law of contract, and under which some owners have exploited the ignorance of the people to enforce oppressive agreements.

Before the advent of the Act, recovery of goods by the owner under a hire-purchase agreement could be effected with or without proceedings in court. Such act had serious pitfalls. One problem in this instance was that under common law, even after the owner had retaken possession of the goods from the hirer and invariably had sold it, it was common practice for the owner and the hirer to stipulate in the agreement that the termination did not relieve the hirer from the liability to make further payments to the owner under the notorious minimum payment clause.

2.0 OBJECTIVE

The main aim of this unit is to examine the gaps in the common law which the Act seeks to correct

3.0 MAIN BODY

3.1 The Hire-Purchase Act, 1965

The Act seeks to absolve the hirer of the liabilities under common law. With a view to strictly following the rules contained therein. It also appears to remove the harsh conditions of the common law rule and while providing more friendly ways under the Act along with the

obligations of the owner and that of the Hirer under the Act as against the ones under the Common law procedure.

Under the Act, Hire Purchase means the bailment of goods in pursuance of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee Hire-purchase agreement is where, by virtue of two or more agreements, none of them by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee. The agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last agreements was made.

The hire-purchase agreement, unlike the position under the common law, all hire-purchase agreements which are intended to operate or fall within the provisions of the Act must comply with certain provisions or procedural requirements as to form and content stipulated under the Act.

They are as follows:

- **Written Information on Cash Price of Goods**

Before any hire-purchase agreement is concluded, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by him in cash.

- **The Note or Memorandum**

Section 2 (2) (a) of the Act states that:

> *"there must be a note or memorandum of the agreement made and signed by the hirer and by or on behalf of all*

other parties to the agreement."

In this instance, what is required is that a note or memorandum must be in writing evidencing the agreement, and that it is not necessary for the hire-purchase agreement to be in writing. In commercial practice, hire-purchase is usually evidenced by a standard form agreement which is required to be signed by the hirer, and any other party. Initially, the agreement may be made orally, but within 14days it must be followed by a signed memorandum.

- **Signature**

The hirer must sign personally, The memorandum or note must be signed not only by the hirer but also by the other parties to the agreement while the other party may sign through their agents.

3.2 Obligations of the Owner

The implied terms have been described as warranty and condition. They bear the same meaning ascribed to them under the Sale of Goods Act. Distinction is however provided in the definition under Section 20(1) where ï warranty is defined as a non-essential term, the breach of which entitles the hirerto sue for damages only. Condition is not given a statutory definition ï but by implication, the difference lies in the breach ï the hirer is entitled to reject the goods and treat the contract as repudiated.

1. **Warranties**

- Quiet Enjoyment: the act provides that in every hire-purchase agreement there must be:

a) An implied warranty that the hirer shall have and enjoy quiet possession of the goods. The general rule is that the owner must ensure that he remains in

peaceful and undisturbed possession, note that interference from an interested third party would constitute a disturbance.

b) An implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party at the time when the property is to pass. A charge or encumbrance in favour of a third party on goods which are subject of a hire-purchase agreement would remain perfectly good at the time of the hire because the ownership only passes when the hirer elects to exercise the option to purchase.

2. Conditions

There are three implied conditions under the Act.

- Title: An implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass. This provision is aimed at assuring the buyer that the seller is an absolute owner of the goods. In addition, the right to sell arises at the time of the delivery of the hired goods and not when the agreement was signed. See Akoshile v. Ogidan (Supra).
- Merchantable Quality: In hire-purchase agreement there is an implied condition that the goods are of merchantable quality. However, no such condition will be implied where the hirer has examined the goods or a sample of them and the examination ought to have revealed the defects of which the owner could not reasonably have been aware at the time when the agreement was made.
- Fitness for Purpose: Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, an implied condition that the goods shall be reasonably fit for that purpose.

3.3 Exemption Clauses

The implied conditions and warranties set out under the Act, all set out above shall be implied notwithstanding any agreement to the contrary. The Act also provides that the owner may rely on any provision in the hire-purchase agreement to modify or exclude any condition implied expressly under the Act.

3.4 The Hirer's Obligation

This has been discussed extensively in previous units of the synopsis and so there is really no need to belabor ourselves with it.

The hirerôs right of termination is set out in section 8 of the Act. it provides that a hirer shall, at any time, before the final payment under a hire-purchase agreement, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorized to recover any sum payable under the agreement.

4.0 CONCLUSION

The Hire-Purchase Act has played a prominent role in the agreement of hire-purchase. It implies that warranties and conditions of the owner of the goods are sacrosanct to the agreement and either party has a right to terminate the agreement before it is concluded.

5.0 SUMMARY

The Hire-purchase Act, 1965 has really brought succor to both the owner and the hirer under the agreement of a hire purchase. It states that there must be price of the goods of the contract and among other things for that a hire ï purchase agreement to be valid then the hirer must sign the memorandum of contract.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1) Critically examine the role of the Hire-Purchase Act, 1965 in hire-purchase agreement.

2) How viable is the hirerôs right to terminate contract before the contract is concluded?

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act.
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation of Nigeria.
- Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 4

RECOVERY UNDER THE HIRE-PURCHASE ACT

CONTENTS

1.0 INTRODUCTION

It is important to note that recovery of goods under the hire-purchase agreement under the Act is only restricted to an action in court by the owner against the hirer. This is a welcome development as against the position under common law where the owner could even repossess without the due process being followed.

This development has been seriously criticised as it has given the hirer a blanket opportunity to default in the payment of the instalment and then abscond with the goods to an unknown address, whereby making the efforts of the owner in instituting an action fruitless.

Section 9(5) of the Act lays down conditions to be followed strictly by the owner before he can institute an action. It is pertinent to note that the hirer also can consent to the repossession of the goods by the owner. Once the hirer has not paid a relevant proportion of the hire then the owner can repossess without his consent or an order of the court to that effect.

2.0 OBJECTIVE

It is expected that at the end of this unit, learners should be able to understand and explain the rules governing the recovery of goods under the Act and at common law.

3.0 MAIN BODY

3.1 Restriction of Recovery by the Owner Otherwise than by Action

It is important to note that the most common remedy available is an action in court against the hirer, which the hirer could frustrate the effort of the owner in this regard by absconding with the goods to an unknown destination with the goods being used in a manner detrimental to the goods itself. Recovery of Goods under the Act will also be treated.

Under common law, as we have already discussed, the extremity of the right to repossession and the harshness of judicial interpretation leave the hirer with little or no claim where the owner exercises his right.

The Act has removed the power where the owner can repossess goods at his whim and caprices.

Section 9 (1) of the Act places a restriction on the right of the owner to recover the property otherwise than by action especially where the hirer has paid a relevant proportion of hire-purchase price. For the purpose of this Act what is relevant proportion has been defined as:

- In the case of goods other than motor vehicle its one half
- While in motor vehicle it is three fifths.

If the owner recovers the goods in contravention of the rule then the hire purchase agreement is determined and the hirer and his guarantor are relieved of any liability under the agreement.

It is important to also note that the above provision has no effect where the hirer has exercised his right to terminate the agreement or the bailment. In this instance, the owner can repossess the goods whether the relevant proportion has been paid or not. The position under section 9 of the Act has been established by the courts. In Adesanya v. Balogun & Ors (CCHCJ/11/73), the hirer paid N1,647.00 out of the total hire-purchase price of N1,843.00 and sued for damages for seizure of the goods by the owner, without any court order. The seizure was held wrongful, and the court released the hirer of all liability under the agreement. The court, further ruled that he could recover from the owner the sum N1,647.00 which he had already paid to the owner.

The Act is silent as to what happens where the hirer defaults before the payment of the relevant proportion of the hire-purchase price. It would appear that the common law rule will apply in such an instance.

The statutory restriction imposed on the owner under section 9(1) of the Act protects the goods from repossession not only where the relevant proportion has been paid but also where it has been tendered by or on behalf of the hirer or any guarantor.

3.2 Relaxation of Owner's Restricted Right of Repossession

The injustice of retaking the goods by the owner has been remedied by the restriction on the right of repossession by the owner other than by action after the relevant proportion has been paid or tendered.

This restriction received the acclamation of consumers but was widely condemned by owners of goods as radical, ill-timed and retrograde.

The hardship inflicted on the owner by this provision is where the hirer defaults in payment after paying the relevant three fifth of the hire-purchase price and then abscond with the goods to an unknown address, and the owner remedy is an action in court where there is default in payment. Since the whereabouts of the hirer may remain unknown, any action brought by the owner may prove expensive and dilatory. This action drastically reduces the hire-purchase agreement especially in relation to the motor vehicle.

The new section 9(5) of the Act has seemingly reduced the hardship on the owner in relation to the repossession of goods.

3.3 Owner's Obligation under the New Section 9(5)

The new section 9(5) appears to have at first glance relaxed the restricted right of repossession of goods after the payment of the relevant proportion. But the section has not done away with the right of action of the owner. It only lays down some conditions to be fulfilled.

The case of Tabansi (Agencies) Ltd v. Incar Nigeria Ltd (CCHJ/7/74), shows that the introduction of the new section under the amendment Act has not done away with the right of action but that the owner has to fulfill certain conditions before he can invoke section 9(5) of the act. The conditions are as follows:

- keep the removed goods in his possession and protect them from damages or depreciation.
- retain them (in any remises he should determine) pending the determination of the case.
- be liable to the hirer for any damage or loss which may be caused by the removal.

These duties placed on the owner under Section 9(5) must be adhered to strictly for an action under section 9 (1) to succeed. In Incar Nigeria Ltd v. Adeyemi (1976) CCHCJ/1127, the defendant bought a motor vehicle from the plaintiffs under a hire-purchase agreement of November 4, 1972. It is being agreed that the hire purchase price of N26,680.00 was to be paid in twelve instalments, commencing January 30, 1973. The plaintiffs removed the vehicle in August 24, 1974 from a garage where the vehicle was undergoing repairs, at which time a total of N18, 686.76 had been paid, an amount above the relevant proportion, but he was in arrears of May, June and July, 1974. The owner then sold the vehicle after they had sued for arrears and repossession of the vehicle. The defendant counterclaimed damages on the ground of unlawful repossession.

The court thereon held that the owner was liable on the counter claim for by selling the vehicle he violated the provisions of Section 9 (5) of the Act and the attendant consequence is provided for under section 9 (2) i.e. the sum of N18, 686 already paid was to be refunded to the hirer with cost of N250.

3.4 Hirer's Consent to Repossession

The hirer has a right to voluntarily consent to the repossession of the goods by the owner, if the owner request for them. Repossession of goods with the hirerôs consent appears to have been approved by the wordings of paragraph 5 of the statutory notice of section 2 (2) (c).

Here, consent should be obtained where the hirer has glaringly shown sufficient intention to abandon the goods on which the relevant proportion of the hire-purchase price has been paid, and which may suffer deterioration if not taken into custody. In this situation then the owner is said not to be in possession of the goods. He must therefore institute an action before he can be said to be in possession of the goods.

3.5. Powers of the Court in Action to Recover Goods

While the action is pending for the recovery of the hired goods in which the relevant proportion has been paid, the court entertaining the suit is vested with some statutory powers. This is stated before the hearing or even at the hearing, before the hearing in order to protect the goods from damages or depreciation, the court may order at the application of the owner, pending the hearing of the action and make such order for this purpose.

At the hearing, the court may make further order (s) which may include

- An order for the specific delivery of the goods to the owner (section 10 (4)(a)).

- An order for the specific delivery of all the goods to the owner and postpone the operation of the order.
- An order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the ownerôs title to the reminder of the goods.

However, there is the opportunity of postmen order. This is an opportunity giving to the hirer who has defaulted in making payments after he has paid the relevant proportion a second chance to make good the defaults. While the hirer is still in possession of the goods, the court may make a specific delivery order of the goods to the owner. See the provisions of Section 12 of the Act in relations to this.

4.0 CONCLUSION

In conclusion, it is important to note that the role of the Act specifically that of section 9 of the Act cannot be ignored as it has played a major role in reducing the hardship placed by common law rule on the hirer in the contract of hire-purchase. The courts have also played important roles in addressing the issues and the owners are also not left out of the protection under subsection 5 of section 9 of the Act.

5.0 SUMMARY

It is important to note that the Act has done a lot by protecting the right of the hirer as against the backdrop of the position under the common law where the ownerôs whims and caprices to recover possession without any cause of action are absolute. It is also pertinent to note that section 9 (5) has also gone ahead to protect the owner from mischievous hirers by protecting the goods from them.

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6.0 TUTOR MARKED ASSIGNMNET (TMA)

1) The hirer is protected under the Act after a relevant proportion of the hire-purchase price has been paid. Discuss this preposition under the Act with relevant authority and statutes.
2) Section 9 (5) of the Act protects the right of the owner but does not remove the right to action. Discuss.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 5

CONTROLS OF HIRE PURCHASE AGREEMENT

CONTENTS

6.0. Tutor Marked Assignments (TMA)

7.0. References/Further Readings.

1.0 INTRODUCTION

This is an area where the hirer must give possession of the goods in his possession once he has received notice to do so or else he will be guilty of adverse possession and conversion of the goods especially where he sells to a third party. No doubt, the owner will still exercise his right to repossess the goods even if the third party has bought without notice of the owner of the goods because the law under the hire-purchase is not the same as under the Sale of Goods Act.

2.0 OBJECTIVE

The purpose of this unit is to enable learners to understand the concept of adverse possession of goods and that of conversion of goods by the hirer where the owner is unable to exercise his right of repossession of the goods to its fullest.

3.0 MAIN BODY

0.1 Adverse Possession and Conversion

Where section 14(1) of the Act applies, a hirer in possession of goods under a hire purchase agreement is deemed to be in adverse possession if the owner, in any action to enforce a right to recover possession of the goods from the hirer, proves that after his right to possession accrued and before commencement of the action, he made request in writing for the possession of the goods.

The purpose of this section is that where the hirer has defaulted, and a written notice has been issued on him, then if he refuses to deliver them up, the owner will have a cause of action for adverse possession against him. Giiving of notice is mandatory, and if he refuses to deliver up the goods, his possession will be regarded as adverse, sufficient enough to ground the statutory cause of action in damages for adverse possession and could also be sued for conversion.

- **Recovery from Third Party**

Where the hirer has wrongfully made a disposal of the goods to a third party, who receives the good *bona fide* and without knowledge of the owners right, such third party does not take a good title. It should be noted that this is hire-purchase agreement and not sale of goods transaction, because the property in the hired goods does not pass to a person who purports to purchase same from the hirer. For this reason, the ownerôs right of repossession remains undisputed, and statutory conditions and warranties will be applied notwithstanding any agreement to the contrary.

- **Recovery of Possession after Death of the Hirer**

Generally, on the death of the hirer, his rights and liabilities under the hire-purchase agreement pass to his personal representatives by operation of law, while such right terminates under common law. In hire-purchase agreement, the personal representatives of the deceased are expressly placed in the same position as the hirer.

Such rule that the goods can be passed to the personal representatives or to his spouse can be neutralised by inserting a clause in the agreement that it should terminate on the demise of the hirer.

- **Recovery without Restriction**

Underlisted are the conditions where the owner can recover the goods without any restriction or even litigation.

- Where the hirer has rightfully exercised his right to terminate the agreement or bailment.
- Where less than the relevant proportion of the hire-purchase price has been paid or tendered.
- Where the hirer has voluntarily consented to return the hired goods to the owner.

3.1 Control of Hire-Purchase Agreement

This is one of the statutory interventions for the purpose of checking the mischief perpetrated by the owners or dealers of goods subject to hire-purchase agreement, especially with regard to advertisements which are half truths and misleading.

The scope of control is where the Act regulates advertisements of goods as being goods available for display by way of hire-purchase or credit sale, if the advertisement includes:

- An indication that a deposit is payable
- Words indicating that no deposit is payable
- An indication of the amount of any one or more of the instalments payable.

The general information required under the Act for advertisement shall include the following information:

- The amount of the deposit directly expressed
- The statement that no deposit is payable.
- The amount of each instalment directly expressed
- The total number of instalments payable
- The length of the period in which each instalment is payable
- The number, if any, of instalment payable before delivery of the goods
- A sum stated as the cash price of the goods.

The Act further stipulates that each part of the information in an advertisement must be displayed and stated clearly and in such a way as not to give undue prominence or emphasis to any part of it in comparison with any other part.

3.2 Sanctions

Any contravention of the provisions requiring the furnishing of certain information in the advertisement shall amount to an offence punishable by a fine.

Section 17 (3) of the Act provides that if the offence is committed by a body corporate with the consent, connivance or neglect of any of its directors, managers, secretary or any other officer, he as well as the body corporate, shall be guilty of that offence and punishable by a fine.

4.0 CONCLUSION

In adverse possession, the hirer might be liable for conversion of the goods and the owner of the goods has a right to repossess the goods from the third party whose the hirer has sold to, without notice of the owner because under hire purchase the hirer has no title in the goods as the goods has not passed to him. While the rule of advertisement of goods under hire purchase rule must be adhered to strictly, sanctions will be imposed in a situation where the rules laid down have been violated.

5.0 SUMMARY

The rule on adverse possession and conversion, state that where the hirer has refused to give possession despite the notice served on him by the owner before an action in court, and where he goes ahead to sell the goods then the bona fide purchaser without notice will not be protected as the rule in nemo dat quod non habet will avail.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1) How realistic is repossession under the Hire-Purchase Act.

2) Explain the importance of notice under the rule of adverse possession of goods by the hirer.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany, Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 6

THE MINIMUM PAYMENT CLAUSES UNDER THE ACT

CONTENTS

6.0. Tutor Marked Assignments (TMA)

7.0. References/Further Readings.

1.0 INTRODUCTION

The law stipulates the amount required as percentage for the initial payment of the hire-purchase agreement. The mode of calculating the amount payable by the hirer is also one of the areas of concern in this unit along with how much is payable by the hirer as a instalments payment for that purpose. The Act also regulates the amount required for payment. The effect of the minimum payment clause is the right of the hirer to be able to terminate the agreement. These and more are the issues for discussion here in this unit.

2.0 OBJECTIVE

The main objective of this unit is to enable learners to know about the minimum payment clause in a hire-purchase agreement.

3.0 MAIN BODY

3.1 The Minimum Payment Clause Under the Hire-Purchase Act

The minimum payment clause is usually for the protection of the hirer. It could assume all sorts of forms. There are also cases of stipulation for payments of a fixed percentage of the hire purchase price or an amount payable by way of agreed depreciation of the goods.

3.2 Mode of Assessment of Amount Payable by the Hirer

Section 8 (1) of the Act gives the hirer a right to terminate the agreement. However, the event of termination of the agreement, the hirer is liable to effect a fifty percent minimum payment. If the hirer has paid more than half of the hire purchase, he will not be expected to bear further financial burden by reason of his terminating the agreement, except such instalments which have accrued as arrears.

The assessment of the hired liability under section 8 (1) contemplates that any stipulation with regard to minimum payment clause in the hire-purchase agreement by the parties will be valid, if the amount specified therein is less than the amount payable.

- **Possible Liabilities on Hirer Following Termination**

Once the hirer exercises his right of termination of the hire-purchase agreement, then a statutory duty to take reasonable care of the goods is imposed on him. However, if the goods are either damaged or destroyed then the owner has a remedy in damages.

In a situation where the hirer has terminated the agreement but wrongfully retains the goods, he will be liable to action for damages in detinue. In such a situation, he shall be compelled to deliver the goods to the owner without being given the opportunity to pay for the value of the goods.

3.3 Effect of Minimum Payment Clause Stipulation Agreement Governed by the Act

The Act statutorily recognizes the hirerôs right to terminate the hire-purchase agreement. In the event of such termination, the collective effect of the provisions of section 8 (1) and section 3 (b) and (c) is that any sum stipulated by way of minimum payment clause will be rendered void.

- **Successive Hire-Purchase**

The hirer may sometimes, for some reason, elect to cancel the old agreement and substitute it with a new one for the payment of the balance of the hire-purchase price.

- **Credit Sale Agreement**

Section 20 (1) of the Act states that Credit ï Sale means the sale of goods in pursuance of an agreement under which the whole or part of the purchase price is payable by five or more instalments and credit sale shall be construed accordingly.

4.0 CONCLUSION

Once the minimum payment clause is inserted in the hire-purchase agreement, it will provide a fixed amount payable during the hire period. For this reason, the hirer has the right to terminate the hire-purchase agreement by himself while he still has hire amount to pay. In this situation, the balance is rendered void.

5.0 SUMMARY

In summary the minimum payment clause is that inserted for the purpose of ascertaining the actual amount to be paid during the hire period. It is important to also note further that the hirer can terminate the agreement and with the provisions of the Act, the balance to be paid once the minimum amount clause has been inserted will be terminated.

6.0 TUTOR MARKED ASSIGNMENT

1) What is the effect of the minimum payment clause?
2) Briefly explain the possible liabilities of the hirer following the termination of the agreement.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

MODULE 5

UNIT 1

CARRIAGE OF GOODS BY SEA

CONTENTS

1.0 INTRODUCTION

The law relating to contract of carriage is today becoming increasingly important in international trade. The most important aspect of the law of carriage is the carriage of goods by sea, and it is the main point of discussion in this unit. The role of the common

carrier, his duties and liabilities as well as the laws relating to the carriage of goods by sea, the Hague Rules as it relates to the carriage of goods by sea shall also be discussed

There are two types of carriers in the carriage of goods by sea. They are private and common carriers.

2.0 OBJECTIVES

The purpose of this unit is to discuss the nature of carriage of goods by sea in commercial transactions as it exist globally. At the end of this course unit, the learner should be able to define common carriers and explain their duties and liabilities in contracts of carriage of goods by sea.

3.0 MAIN BODY

3.1 Common Carrier

A common carrier is one who is engaged in the trade of carrying goods as a regular business, and also holds himself out as ready to carry for anybody who may wish to employ him. In Great Northern Railway Co. v. L.E.P. Transport and Depository Ltd (1922) 2 K.B 742, the court held that a common carrier is a person who undertakes to transport from place to place, for hire, the goods of such persons as he think fit to employ him.

A common carrier may also operate with respect to a particular class of goods so long as he undertakes to carry for everyone. In Ingate v. Christie (1950) 3.C and K 61, the defendant had the word lighterman posted up over the door of his office. It was

established in evidence that he carried for anyone who engaged his craft. It was held that he was a common carrier.

3.2 Duties and Liabilities of the Common Carriers

The provision of common law as it relates to liability of the common carrier was absolute in relation to the safety of goods entrusted to him. A common carrier is the insurer of the safety of the goods carried and therefore he is liable for any damage to or loss of them, whether occasioned by his negligence or not. For this reason, he needs to exercise proper care and skill in carrying out his duty.

such duties may be summarized as follows:

- the duty to accept and carry goods offered to him, in the absence of lawful excuse and to charge no more than a reasonable price. The duty to carry implies that the carrier must not necessarily deviate from his customary route, and if he does so, he may be liable for deviation and become responsible for all losses.
- duty that the goods are safe, for he is an insurer of the goods.
- to deliver the goods to the consignee at the place to which his is directed, otherwise he will be liable with misdelivery or conversion.

  It is important to note that there are exceptions to the common position they include:

  - Act of God: this as the first exception, is that the shipowner is not responsible for loss or damage resulting from an óAct of Godô.

Before an act will qualify as an Act of God, it must fulfill the following conditions stated in Nungent v. Smith (1876) 1C.P.D 423, Any accident as to which a common carrier can show that it is due to natural causes directly and exclusively independent of human action, and it could not have been prevented by any amount of foresight and pains and care reasonably to have been expected from him.

- Kings Enemies: these are acts done by states or peoples with which the sovereign may be at war, at any time during the carriage of the goods.
- Inherent Vices: goods susceptible to damage or tendencies to easy deterioration; a carrier is not responsible for a loss or damage which has resulted from an inherent defect of the thing carried. See Nungent v. Smith (Supra).

There are situations where the common carrier exceptions do not apply.

These are:

- Negligence: A carrier will be relieved from liability for damages to the goods arising from an act or omission on the part of the consignor.
- Deviation: Where the expected causes have occurred upon a departure from the proper prosecution of the voyage, as where in the course of a deviation, the ship is lost by an Act of Kingôs enemies, the shipowner is not excused unless he can show that the loss must have occurred even if there had been no deviation.

- Unseaworthiness: The shipowner remains responsible for loss and damage to the goods, if the ship was not in a seaworthy condition when the voyage was commenced and if the loss would not have arisen but for that unseaworthiness.

3.3 The Hague Rules on Carriage by Sea

It is an international regulation, aimed at reconciling the interests of shipowners, cargo owner and insurers alike. The basic aim of the Act is to relieve a shipowner from his common law absolute liability. He is therefore liable only for negligence and is granted certain immunities. The major provisions of the Act are as follows:

- There shall no longer be any implied warranty of seaworthiness, except the carrier is expected to exercise due diligence to make the ship seaworthy at the beginning of the voyage.
- The carrier must properly and carefully load, handle, care and discharge the goods carried.
- And he must issue an appropriate Bill of Lading after loading of the goods.
- Removal of the goods at the port of discharge into the custody of the person entitled to delivery is prima facie evidence that the goods have been delivered as described in the bill of lading.

There are certain rights and immunities enshrined in the rule but for the protection of the shipper and they are as follows:

a) The shipper shall not be responsible for loss or damages sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agent or his servant.

b) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these rules.

c) Goods of an inflammable, explosive or dangerous nature which the carrier, master or agent of the carrier has not consented to carry may at any time before discharge be landed at any place or destroyed.

4.0 CONCLUSION

The carriage of goods by sea is a sensitive commercial transaction that cannot be treated with impunity. Much care need be taken in this area of commercial law. It is important to note that carriage of goods by sea has been largely governed by common law. All the strict common law liability and the exceptions to them are not left out of the transaction. The importance of this area of law cannot be overemphasized, as it is the major carrier of goods world over.

5.0 SUMMARY

In summary the carriage of goods by sea is a vital aspect of commercial transaction. The common carrier as a public carrier of goods, from one point to another and also the

duties of the carrier to exercise due diligence and also the exceptions to the liabilities of the carrier are also important aspects of the law.

The role of the Hague Rule in the carriage of goods by sea cannot be overemphasized, the right and immunities imposed on the shipper and as well as carrier have been discussed.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Explain the duties and liabilities of a common carrier and the exceptions available to the strict rule.
2. Briefly explain the rights and immunities available to a shipper under the Hague Rules 1924.

7.0REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 2

CONTRACT OF AFFREIGHTMENT

CONTENT

1.0 INTRODUCTION

A contract to carry goods by sea or to provide a ship for that purpose, in consideration of a payment known as freight is called the contract of affreightment.

There are two kinds of contract of carriage of goods by sea. They are usually referred to as contract contained in charter party or contract evidenced by a bill of lading. This unit will be discussing the charter party as a type of contract of affreightment.

2.0 OBJECTIVE

The main purpose of this unit is to examine the charterparty as a kind of contract of affreightment and also to discuss the implied terms of a charterparty. From this unit, learners should be able to distinguish between a contract of affreightment and charterparty.

3.0 MAIN BODY

3.1 Charter-Party

A charter-party is contract between charterer and the ship-owner by which the charterer hires from the ship-owner the use of the ship either for a voyage or a fixed period of time in consideration of money called the freight.

Most charterparties contain well-established terms and are usually in standard form contracts agreed and set out by various conferences and known by such code names like Baltime, Gencon and Shelltime.

There are three types of Charterparties and there are certain implied terms under each of these heads as follows;:

1. The Voyage Charter-Party
2. The Time Charter-Party
3. The Demise Charter-Party

The Voyage Charter-Party: - here the ship is engaged to carry a full cargo on a simple voyage but however, the vessel is manned and navigated by the owner of the vessel.

The simplicity of this kind of charter ï party makes it adaptable to many sorts of transaction.

Time Charter –Party

Here the ship-owner agrees to make the ship available for an agreed period of time and carry goods according to the directions of the charterers, but the manning and navigation of the ship is with the ship-owner. Under the term charter-party, the charterer is entitled for a period of time to direct within agreed limits how the ship shall be used.

Charter-Party by Demise

It is also known as Bareboat Charter. It is demised charter-party where the charterer displaces the owner and for the period of the lease, takes possession and complete control of the ship. Here, the charterer mans and equips the vessel and assumes all responsibilities for its navigation and management. For all practical purposes, he acts as the owner.

3.3. Implied Terms

In every voyage charter party the following are the implied terms;

i. the ship is seaworthy: that the shipowner undertakes to put the ship fit for the voyage. The test of seaworthy is whether a prudent shipowner would have made good the defect before sending the ship to sea. If he had known of it.

In Ciampa v. British India Steam Navigation Co. (1915) 2 K.B. 774

lemons were loaded at Naples for London. At Marseilles, the ship was required by the French authorities to be fumigated, because she had come from Mombasa, a plague infected part. The fumigation damaged the lemon. It was held that, as the ship was bound to be fumigated at Marseilles, she was not reasonably fit at Naples for the carriage of the lemons and was therefore unseaworthy.

ii. That the ship shall be ready to commence the voyage without unnecessary deviation in the usual and customary manner. Deviation is defined as an intentional change in the geographical route of the voyage as contracted.

It is noteworthy that if the deviation is to save life then, it is allowed, but not deviation to save property.

iii. Another implied term in this manner is the shippers obligation not to ship dangerous goods and the word has been defined in section 2 of the Merchant Shipping Act, cap 224 LFN 1990, as goods to mean goods which by reason of their nature, quantity or mode of stowage, are liable either singly or collectively, to endanger the lives of persons on or near any ship, or to imperil any ship, and includes all explosives within the meaning of the Explosives Act.

In Brass v. Maitland (1856) 26 I.J.Q 846, a consignment of bleaching powder containing chloride of lime had been shipped in casks. During the voyage, the chloride of lime corroded the casks and damaged other cargo in the hold. The majority took the view that the shipper would be liable even though he was unaware of the dangerous nature of the goods.

4.0 CONCLUSION

It is important to note that contract of affreightment is a contract of carriage of goods by sea and mostly carriage through charter-party and bill of lading transaction.

It is also pertinent to note that the most important aspect of the charter-party agreement is the time charter-party because is the busiest of them all. And also shipowners are expected to adhere largely to the implied terms of the contract of affreightment.

5.0 SUMMARY

Charter-party is the major aspect of commercial transaction under the contract of affreightment alongside the contract by Bill of lading because most times they work hand in hand.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly explain Charterparty and its importance to the contract of affreightment.
2. Analyse the implied terms under a charterparty.

7.0 REFERENCES/FURTHER READING

1. Sale of Goods Act, 1893.

2. Rawlings, Commercial Law, University of London Press, 2007.

3. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

4. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

5. A Handbook on Carriage of Goods by Sea: Wale Olawoyin, Lecturer, University of Lagos.

UNIT 3

CONTRACT OF AFFREIGHTMENT 2

CONTENT

1.0 INTRODUCTION

Bill of lading is also a part and parcel of the contract of affreightment like the charterparty. But it is a contract that serves a dual purpose either as a contract between the shipowner and the third party or as merely an evidence of goods between the shipowner and the charterparty.

The bill of lading arguably falls into the category of contract referred to as contract of adhesion. A contract of affreightment is normally evidenced by a bill of lading when the goods to be shipped form only part of the cargo which the ship is to carry.

2.0 OBJECTIVE

The main objective of this unit is to distinguish between a bill of lading and a charterparty.

2.0 MAIN BODY

2.1 Bill of Lading

It is necessary to note the primary functions of the bill of lading in a contract of carriage of goods by sea and learner should be able to note that it is an important aspect of the carriage of goods by sea. A bill of lading is a document signed by the shipowner, or by the master or other agent of the shipowner, which states that certain goods have been shipped on a

particular ship and sets out the terms on which these goods have been delivered to and received by the shipowner.

It is usually in standard form, which in some cases governs the contract of carriage of goods by sea. It is divided into two parts: one is blank, on which the names of the partyôs freight and the particulars voyage will be reproduced, and one printed containing clauses inserted unilaterally in advance by the carrier.

It has been argued that the bill of lading falls into the category of contract referred to as contracts of adhesion, that is contracts on take it or leave it basis. This view is particularly prominent in the United States of America.

The bill of lading is issued to the shipper in sets of three. One is retained by the master or broker, while two copies are dispatched; one by express mail to the buyer or the consignee. It is a document of title, possession of which, in legal sense, is possession of the goods which it represents.

2.2 Functions of the Bill of Lading

A bill of lading in its classical legal terms has three main functions:

1. It is the contract of carriage of goods or at least evidences the contract of carriage.
2. It acts as a receipt for goods put on board the vessel.
3. It acts as a document of title.

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1) The Bill of Lading as a Contract

The bill of lading is merely evidence of the contract between the shipowner and the shipper and a contract between the shipowner and third parties, An assignee who acquires rights in a bill of lading by way of negotiation of the bill of lading is bound by the terms of the contract as contained in the bill of lading or other documents in which the terms of the contract may be contained.

In Crooks v. Allan (1879) 5 Q.B.D, 38, it was held that a bill of lading is not the contract but only an evidence of the contract.

But in The Ardennes, it was settled that a bill of lading is not, in itself, the contract between the shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms.

2)The Bill of Lading as a Receipt

This was originally the traditional or original role of the bill of lading. It served as receipt for the goods to which it related that the goods have been taken on board. In its original role, it itemized the goods shipped and gave further particulars of the goods such as the description, quality and shipping mark.

In Cox v. Bruce (1886) 18 QBD 147, it was held that it was no part of the masterôs duty to insert these quality marks.

A document which is not signed by or on behalf of the carrier is not a bill of lading in the legal sense.

Under the Hague Rules, Art III Rule 3, the shipper is entitled to demand the issue of a bill of lading incorporating a statement as to the apparent order and condition of the goods when received by the carrier. Such bill is prima facie evidence of receipt by the carrier of the goods and therein described, but conclusive evidence when the bill is transferred to a third party in good faith.

3) The Bill of Lading as a Document of Title

The third function of a bill of lading is that it serves as a document of title to the goods it represents, and its transfer is equal to the physical transfer of the goods.

The holder of a bill of lading in respect of goods that had been shipped may effect a transfer of ownership in respect of the goods by transferring the bill of lading to anybody who has given him value for the goods.

Types of Indorsement

Special Indorsement

Indorsement in blank

Restrictive indorsement

Conditional indorsement

3.3 Bills of Lading as a Negotiable Instrument

A bill of lading is an assignable document of title to the goods. If a bill is transferred or assigned by one person to another, either by a mere delivery (as in the case of a bearer of bill of lading) or by an indorsement of the bill of lading followed by its delivery (as in an order bill of lading), the bill of lading is said to have been

negotiated, and the party to whom the bill is transferred is referred to as the transferee of the bill of lading.

A bill of lading is not a negotiable instrument under the Bill of Exchange Act, because unlike a bill of exchange, the bona fide holder of a bill of lading and for value cannot acquire a better title than the transferor possesses. A negotiable instrument is therefore an exception to the general rule of law that nemo dat quod non habeat. International commercial contracts, the bill of lading is the pivot upon which other contractual relationships are dependent.

The important point, however, in the context of negotiability of the bill of lading is that the fact that a party is an indorsee of the documents does not by itself permit right of suit under the terms of the documents per se.

The extent of the negotiability of the bill of lading as it pertains to right enforcement in contract is contigent upon the particular enforcement regime in the particular country.

3.0 CONCLUSION

The bill of lading as part and parcel of contract of carriage of goods by sea, as has been discussed is a contract between the shipowner and thirdparty or an evidence of contract between the charterer and the shipowner. It could also serve as receipt evidencing that the goods are on board the ship or it could serve as a title of document that can be transferred. It could also serve as a negotiable instrument in some regard.

4.0 SUMMARY

In summary, the bill of lading is a major document of carriage of goods by sea. It is a document that evidences a contract between a charterer and a ship owner and also serves as a contract of carriage of goods between the ship owner and the third party who is placing goods on board the ship.

5.0 TUTOR MARKED ASSIGNMENT

1. What are the functions of a bill of lading?
2. Bill of lading is a negotiable instrument. Discuss.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.
6. A handbook on Carriage of Goods by Sea: Wale Olawoyin, Lecturer University of Lagos.

UNIT 4

COST, INSURANCE AND FREIGHT (C.I.F CONTRACT)

CONTENT

1.0 INTRODUCTION

A contract for the sale of goods often requires a shipment by sea of the goods by the seller to the buyer. there are various types of contract of sale of goods where the subject-matter of the contract is being exported. The contract of C.I.F contracts is derived from customs and usages of merchants rather than being a product of legislation.

This kind of contract is referred to as cost of the goods, insurance of the goods as well as the amount for the freight. All these are as C.I.F contract.

2.0 OBJECTIVE

The purpose of this unit is to enable the learner to be able to define, understand and explain the following phenomena; cost, Insurance and Freight (C.I.F Contract).

3.0 MAIN BODY

3.1 C.I.F Contract

A C.I.F Contract is one in which the seller undertakes to ship the goods at a price which will include the cost, insurance and freight. It is a kind of contract derived from customs and usages of merchants. A sale of timber at N10,000 dollars per ton C.I.F Lagos means that the amount includes the cost of the cotton, the transportation cost to Lagos and the cost of insurance premium.

The main feature of a C.I.F contract is that, unlike ordinary contracts, the delivery of the shipping documents (bill of lading, policy of insurance and invoice) transfers the property in and possession of the goods to the buyer.

The risk on the goods passes to the buyer once the goods have been put aboard the ship. Consequently, if they are lost or damaged, the loss will fall on the buyer, who will be able to take the benefit of the insurance policy.

The C.I.F contract, which is more commonly in use than any other contract used for purposes of contract of sale of goods by export trade, has been described by McNair, J in Gardano and Giampieri v. Greek Petroleum Namidakis and Co., as a contract in which the seller discharges his obligations as regards delivery by tendering a bill of lading covering the goods.

Under the C.I.F contract, it is immaterial whether the goods arrive safely at the port of destination. If they are lost in transit, the marine insurance policy whould cover the loss or damage.

3.2 Duties of the Seller

The following are the duties of the seller under the contract of C.I.F;

a) to ship goods of the contract description, at the port of shipment, within the time named in the contract.
b) to arrange shipment or contract for the carriage of the goods.
c) to effect a proper policy or policies of insurance on the goods, upon the terms, upon the terms current in the trade.

d) to obtain proper bills of lading for the goods.

e) to make out an invoice of the goods.

f) to obtain export license, when necessary

Under the contract of C.I.F, the buyer has a right to reject the documents and also a right to reject the goods.

It is important to note the time when the property in the goods will pass as shown in the case of Smith and Co. Ltd v. Bailey, Son and Co. (1891)2Q.B 403, where the court held that the general property remains in the seller until he transfers the bill of lading.

The resultant effect is that the buyer takes all the risks of transit, and on tender of shipping documents to him, he must pay the agreed price. It is irrelevant that the goods are already lost. Usually, the risk will already be covered by the insurance.

3.3 Duties of the Buyer

The following are the duties of the buyers a C.I.F contract

1. Acceptance of Document of Title

The most and one of the most important of the C.I.F contract is for the buyer to accept all shipping documents representing the goods sold. The Bill of lading is the most important that must be accepted.

2. Payment of Price

On tender of the documents, the buyer becomes obliged to pay the price within a reasonable time after the tender of the documents. He cannot insist on waiting for the

goods to be delivered before paying or refuse to pay merely because the goods are defective. Berger & Co Inc v. Duffus SA (1984) AC 382.

3. Payment of Import duty and Cost of Unloading

It is the duty of the buyer to pay all import duties and wharfage charges, if any. He is also expected to pay the cost of unloading, lighterage and landing at the port of destination, in accordance with the bill of lading.

3.4 Passing Property and Risk

Property in the goods under a C.I.F does not usually pass on shipment, although it might be an indication of the intention to pass property on shipment if the bill of lading is made out in the buyerôs name.

Usually, the fact that the buyer has gained possession of both the documents and the goods does not mean property has passed.

Where goods are lost, the normal rule that risk passes with property, does not apply to most C.I.F contracts, where the goods are lost after the buyer has accepted the documents, the buyer bears the loss. Where the buyer bears the loss, his remedy is against the carrier under the contract of carriage, or the insurer under the insurance policy.

3.5Breach of Contract by the Buyer

Mostly in C.I.F contract the buyer is the one always in breach of the contract and this comes in different heads;

1. Non-Payment of the Price, if the buyer fails to pay or neglects to pay after the property in the goods has passed, the seller has a right of action. This does not apply to C.I.F Contract because the price is payable expressly against delivery.
2. Non-Acceptance of Document of Title, if the buyer wrongfully fails to accept the documents and the property has passed to the buyer, the seller has a right of action and cannot maintain an action for the price. In a C.I.F contract, the damages will be the difference between the contract price and the value of the documents at the date of the buyers refusal.

3. There are certain rights enjoyed in relation to the goods. In a C.I.F Contract, the seller has the usual rights enjoyed by the unpaid seller e.g.
   a. The right of withholding delivery
   b. The right of stoppage in transit
   c. The right of resale.
4. Right of lien, the seller has a right of lien in the goods. It exists where the seller has taken the bill of lading to his own order.

Remedies for Breach in C.I.F Contracts

1. Action for Damages

If the seller wrongfully fails or refuses to ship the goods or tender the documents, the buyerôs remedy is an action for damages as provided for in section 51of the Sales of Goods Act.

2. Specific Performance

The court may order specific performance of the contract under section 52 of Sale of Goods Act. This order is a discretionary remedy and therefore would only be granted on equitable grounds. Where the court will be satisfied that monetary compensation would be wholly inadequate in the circumstances, then the court will refuse to grant specific performance.

3. Rejection of Goods

The buyer has a right to reject the goods. If the shipped goods are not in accordance with specifications under the contract, then the buyer may reject the document.

He also has a right of examination of the goods and goods are not deemed to be accepted by the buyer by mere delivery except they have been previously examined. The buyer may also lose his right of rejection as in Perkins v. Bell (1893) 1 Q.B.193, where the buyer bought some barley which were dispatched to him for a delivery at a railway station. The defendant without examining them dispatched them to a sub-buyer, who rejected them. The court held that the buyer had lost his right to reject the goods.

In the contract of C.I.F, the only place where the goods can be examined is the place of destination of the goods.

4.0 CONCLUSION

It is pertinent to note that contact of C.I.F is a contract of passing of goods and the risk pass immediately the goods are shipped. Either lost in transit or not the buyer has no right of suit under the **B**ill of Lading Act. The most significant aspect of this kind of contract is that the contract is insured against all risks.

5.0 SUMMARY

In a typical C.I.F contract, the goods that the seller sells to the buyer would have either been shipped by the seller or acquired while in transit. The seller transfers to the buyer the contract for the carriage of the goods and the policy of insurance covering the goods during transit.

Normally, risk passes on shipment of the goods, but property will only pass on delivery of the documents and payment by the buyer. The buyer is under separate obligation to accept conforming documents and also conforming goods.

6.0 TUTOR MARKED ASSIGNMENT

1. Bimco & Co, contracts to buy from Asia & Co 1,000 tons of Barley, which is on board MV Gurara. The ship sinks before delivery. Who bears the loss.

2. What are the remedies available to a buyer under C.I.F Contract.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 5

THE FREE ON BOARD (F.O.B) CONTRACT

CONTENTS

1.0 INTRODUCTION

Although generally employed in international commerce, it is also a transaction that is applicable to local transactions. The basic feature of this type of contract is that the seller must pay the cost of the goods and bear the responsibility of putting goods ófree on boardô(f.o.b) and until they pass the ship rail. After this delivery is complete and the risk of loss in the goods is there and then transferred to the buyer.

2.0 OBJECTIVE

The main objective of this unit is for learners to be able to define the term F.O.B, and to be able to distinguish between the contract of C.I.F and that of F.O.B. The learner should be able to know the duties of both the buyer and the seller.

3.0 MAIN BODY

3.1 F.O.B (FREE ON BOARD)

An f.o.b contract is one in which the seller undertakes to supply the goods and places them free on board the ship to be named by the buyer who in turns pays the freight and the cost of insurance.

Since f.o.b contracts are meant to serve different commercial interests in different periods or times, they have different variants. In Raymond Wilson and Co Ltd v. N Scratchard Ltd (1944) Lloyds Rep 373, it was decided that once the seller had an f.o.b

contract, it was deemed that he put the goods on board, bears the expenses and once delivery is made, the risk in the goods passes and it is the buyer who pays the cost of carriage. Payrene Co Ltd v. Scindia Steam Navigation Co. Ltd (1954) 2 QB 402.

3.2 Types of F.O.B Contracts

There are two types of f.o.b contract. They are

1. Strict or Classical

Under the strict f.o.b contracts, the arrangement for shipment, (and if he wishes for insurance) are made by the buyer direct. He is a party to the carriage of goods by sea and that of marine insurance, if he insures the goods in transit. It is the main responsibility of the buyer to name an effective ship, if the buyer fails to nominate an effective ship the seller cannot do so.

2. Contract providing for additional service

Here the parties have agreed that arrangements for the carriage by sea and insurance shall be made by the seller, but for and on behalf of the buyer and for his account. The buyer bears responsibility for any subsequent increase.

Delivery of goods is complete when the goods are put on board ship and the risk of accidental loss under Section 20 (1) of the Sales of Goods Act passes on to the buyer when the seller has placed the goods safely on board. See Carlos Federspiel

and Co. S.A v. Charles Twigg and Co. Ltd.(1957) 1 Lloydôs Rep 240.

3.3 Duties of the Seller

1. The seller is obliged to deliver the goods to the place of loading and load them on a vessel agreed by the parties or designate by the buyer and also at the time agreed for it. See All Russian Cooperative Society Ltd v. Bejamin Smith & Co. (1955) 14 Lloydsô Rep 351.
2. The seller is usually to pay the charges of loading the goods to the ship.
3. It is the duty of the seller to ensure that the goods are adequately packed, carefully loaded and that they are fit and proper and fit for their sea transit.
4. The seller must deliver to the buyer the documents stipulated in the contract. Hence, he must also provide the information necessary for the buyer to insure the goods, failing which the risk of loss will not pass to the buyer. Section 32(3) Sale of Goods Act.

3.4 Duties of the Buyer

1. It is the buyerô duty to nominate the ship on which the goods may be loaded by the seller and must give adequate notice to the seller. The ship must be effective ship and in capable condition, both physically and otherwise, of receiving the cargo. This duty is a condition precedent to the obligation of the seller to load the goods under the contract. See Modern Transport Co Ltd v. Ternstrom and Ross (1924) 19 Lloyds Rep 354.

2. The choice of loading port in an f.o.b contract is that of the buyer. In David T. Boyd and Co. v. Lousi Louca (1973) 1 Lloyds Rep 209, Kerr J. held that it was the obligation of the buyer to elect the port of shipment.

3. Except otherwise stated, the buyer is responsible for the cost, stewage, trimming, insurance, tallying and other incidental expenses under f.o.b contract.

4. The buyer must pay the price of the goods. Where payment is of letter of credit, unless otherwise agreed, the seller can require a conforming letter of credit before loading. See Glencore Grain Rotterdom BV v. Lebanese Organisation for International Commerce (1997) 1 Lloyds Rep 578.

3.5 Passing of Property

In an f.o.b contract there is strong presumption that the parties intend property to pass as soon as the goods cross the shipôs rail. Most f.o.b contract are concerned with unascertained goods in which property cannot pass until the goods have been ascertained by being unconditionally appropriated to the contract and the parties intend it to pass. The appropriation usually occurs when the goods pass over the shipôs rail for loading.

Risk of the goods will usually pass on shipment, even if property has not passed. See Inglis v. Stock (1885) 10 A.C 263,.

Risk may not pass if the seller fails to provide sufficient information to enable the buyer to insure the goods. See Section 32(3) Sale of Goods Act

3.6 Breach and Remedies

1. Where the seller fails to deliver, the buyer can bring an action under section 51 (1) Sale of Goods Act against the seller for damages for non-delivery.

2. The buyer can reject the goods if they do not conform to the provisions of the contract or he may instead of rejecting treat the matter as a breach of warranty and sue for damages.
3. The buyerôs right to reject the goods and the documents are separate remedies in that regard.
4. Where the seller withholds delivery when the property has passed to the buyer i.e by transfer of the bill of lading then an action will lie in tort for detinue or conversion.

   The following are the instances of breach of the buyer and the remedies available to the seller in that regard.

1. Where the buyer fail or refuses to accept the property, an action for damages will be available to the seller in that regard, but not a right to sue for the price of the goods.

2. The seller has three proprietary rights against the buyer in an f.o.b contract in relation to the goods.
   a. a lien on the goods while they are still in his possession.
   b. a right of stoppage *in transitu* after he has parted with possession, but before the buyer obtains possession of them.
   c. a right of resale under section 48 (3) and (4) of Sale of Goods Act

   .

4.0 CONCLUSION

The contract of f.o.b is a contract of international commercial transactions that risk in the goods passes once the goods crosses the ship rail and the seller bears the cost before then. Once it cross then the buyer bears the risk from then on. The only remedies available for the seller is an action for damages and the price of the goods, not the price of the goods where the buyer fails to accept the goods.

5.0 SUMMARY

In a classical f.o.b contract, the seller puts the goods on board a ship nominated by the buyer. The seller pays the cost of delivering the goods over the shipôs rail and takes a bill of lading. The buyer pays the cost of carriage and it is usually when the goods cross the rail that the risk of loss passes to the buyer, but the seller normally reserves the right of disposal until payment so property does not pass.

6.0 TUTOR MARKED ASSIGNMENT

1. Under an f.o.b contract, what is the effect of the property passing to the buyer.
2. Briefly explain the duties and remedies available to a buyer in an f.o.b contract.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 6

DOCUMENTARY LETTERS OF CREDIT

CONTENTS

1.0 INTRODUCTION

There are various ways of paying for goods in international commercial transactions especially in the contract of c.i.f and f.o.b. Although the traditional ways of payment is by cash or cheques, nowadays, the documentary letters of credit have superceded these methods.

Usually the bankers will open the letters of credit at the request of the buyer who would have given them a satisfactory security for the reimbursement of the amount paid by the bankers to the seller.

Letters of credit are employed in both c.i.f and f.o.b contracts and the principles of law governing letters of credit are the same for both types of contract.

2.0 OBJECTIVE

The main purpose of this unit is to discuss documentary letters of credit. Learners should be able to explain the main reason behind the issuance of letters of credit and to understand the safeguards afforded by a documentary credit, as a contractual promise by a bank.

3.0 MAIN OBJECT

3.1 Documentary Letters of Credit

The principle of documentary letter of credit is that the buyer of goods instructs a bank in his country (the issuing bank) to open a credit with a bank in the sellerôs country (the advising bank), in favour of the seller, specifying the documents which the seller has to deliver to the bank if he wishes to be paid for his goods. The instructions also specify the date of expiry of the credit.

If the documents tendered by the seller are correct (bill of lading, insurance policy and invoice) and tendered before the credit are expired, the advising bank becomes obliged to make the payment to the seller. See Glencore International AG v. Bank of China (1996) 1 Lloyds Rep 135.

3.2 Types of Letters of Credit

There are various types of letters of credit and it is important for parties to state the type that will govern there transactions.

The following are the main types of Letters of Credit:

a. The Revocable and Unconfirmed Letters of Credit

In this type of Letter of Credit neither the issuing nor the advising bank gives its commitment to the seller. However, the letter of credit may be revoked at any time.

b. The Irrevocable and unconfirmed Letter of Credit

The authority here is an irrevocable one and the issuing bank enters into an obligation to the seller to pay, and the obligation is also irrevocable. If the bank refuses to pay after the seller tenders correct documents, then he can sue the issuing bank at his headquarters or the sellerôs country, if the issuing bank has a branch there.

c. The Irrevocable and Confirmed Letters of Credit

This is a situation where the issuing bank adds its own confirmation of the credit to the seller. If he delivers the correct documents at the stipulated time, then he will be obliged without any problem.

A confirmed letter of credit which has been notified to the seller cannot be cancelled by the bank on the buyerôs instruction. See Urquahat Lindsay and Co. v. Eastern Bank (1922) 1 K.B 318.

d. The transferable Letter of credit

The parties to the contract of sale may agree that the credit shall be transferable, and the seller can use such credit to finance the supply transaction.

3.3 Opening of Letter of Credit

While the parties in the underlying sale contract must agree that payment is to be made by documentary letter of credit, it is important to emphasise that the documentary credit gives rise to separate contractual rights and obligations from those in the sale contract.

A letter of credit must be made available to the seller at the beginning of the shipment period. It must be made open at a reasonable time before shipment. Stach Ltd v. Baker Bosly Ltd (1958) 2 Q.B 130.

Although the furnishing of letters may be condition precedent for the obligation of delivery or shipment of goods, the terms of the contract may stipulate that the letter of credit will be opened upon the performance of a specified act by the seller. It is mandatory for the buyer to open the letter of credit on time and no excuse will exonerate him from his liability.

3.4 The Doctrine of Strict Compliance under Letter of Credit

The issuing bank which operates the documentary credit acts as agent for the buyer who is the principal. The bank which documents are presented must ensure that they comply with the terms of the credit. Banks must examine all documents stipulated in the credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the credit. If the banks exceed the instructions given to them by the buyer any

have acted without authority, he is not bound to ratify there act, in that event the loss will fall on the bank.

In Equitable Trust Co. of New York v. Dawson Partners, the court held that there is no room for documents which are almost the same or which will do just as well.

Once there is discrepancy in the document no matter how insignificant, then the bank must not pay. The courts have however allowed banks to pay for trivial discrepancy. In Glencore International AG v. Bank of China (Supra) the word ***branch*** was used instead of ***brand*** but the court held this was a mere a error and the word should be read as brand.

The court may refuse payment where there is compelling evidence of fraudulent presentation by the beneficiary or his agents.

4.0 CONCLUSION

In a contract where documentary letter of credit is used, there is room for more safeguards on the part of the buyer to the seller. The seller is more secured with his money in this regard. And also the type of letter of credit determines the extent of the

safeguard offered to the seller by the buyer through its agent the bank. And it is also important to open a letter of credit to give it the value it requires for payment

5.0 SUMMARY

A documentary letter of credit enables the seller and the buyer to obtain important safeguards regarding payment under a sale contract. Those safeguards originate in contractual promises by a bank or banks that the money due will be paid, subject to certain conditions being fulfilled.

The bank is not bound by the sale contract, so if defective goods are delivered, the fact that the buyer has

remedies against the seller does not mean a bank cannot enforce the payment obligation under the credit.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss the strict compliance rule.
2. Explain the different types of documentary letter of credit, and explain the steps involved in opening a letter of credit.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.

2. Sale of Goods Act, 1893.

3. Rawlings, Commercial Law, University of London Press, 2007.

4. Okany, Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.

UNIT 7

CARRIAGE BY LAND AND AIR

CONTENTS

1.0 INTRODUCTION

The carriage of goods by land and air is governed partly by the rule in common law and partly by other statutory provisions. Carriage of goods by air is governed by international conventions to that regard.

Carriage of goods by land is the transportation of goods from one destination to another by road. In the past it used to be by horse, but now it is mostly done through railway and vehicle for that purpose.

2.0 OBJECTIVE

The objective of this unit is for learners to be able to distinguish between contract of carriage by air and by land. Learners should be able to understand and explain the various laws governing these kinds of commercial transactions including the basic elements of liability in this transaction.

3.0 MAIN BODY

3.1 Carriage by Land

The transportation of goods from one point to another for commercial purposes and carriage of goods by road is carried on partly by private and partly by public organizations. There is an elaborate licensing system for goods vehicles, which applies to both private and public carrier of goods.

It should be well emphasized that most carriers by road are private carriers and their rights and duties are governed by the general principles of bailment. There is no common law obligation to accept all goods for carriage, nor does their liability extend beyond the normal liability of a bailee.

A carrier of goods by land does not warrant that his vehicle is roadworthy, although the standard of care required is high.

Exemption Clauses

A private carrier can and does frequently limit or exclude his liability by contract. Some road haulage associations limit liability to a fixed amount in case of loss or damage. In Mayfield Photographic Ltd v. Baxter Hoare Ltd ((1972) 1 Lloyds Repôs 410, the defendant carriers put the plaintiffs cameras on the same lorry as the goods of another customer and delivered the goods of the other customer first, thus deviating from the direct route. It was held that this deviation was justified and so they were not strictly liable.

The owner is the person who can sue the carrier for loss or damage as a general rule and the owner might have an action in tort.

3.2 Carriage by Air

There have been a lot of international conventions in relation to the carriage of goods by air. Consequently, a considerable degree of uniformity now exists internationally in the law relating to carriage of goods by air.

The following are the relevant conventions in relation to the carriage of goods by air:

1. Warsaw Convention

It is evident that innumerable problems and disputes would arise between countries if each one had its own different aviation rules. In 1929 the Warsaw Convention was drawn up and it has been ratified by many countries. The convention laid down uniform rules for the international carriage of passengers, luggage and goods. However the Carriage By Air Act, 1932 gave statutory effect in the United Kingdom to the Warsaw Convention of 1929.

The maximum liability in the event of death of or injury to a passenger under the Convention and the 1932 Act was 125,000 francs.

2. Carriage by Air 1961

This is an amendment to the Warsaw Convention 1929 which took place in Hague in 1955 and came into force in 1967 and was enacted in the carriage by Air Act, 1961.

3. Carriage by Air (Supplementary Provisions) Act 1962

This is also a further amendment to the Warsaw Convention after the 1961 Hague Convention. The Act came to clear the real carrier in this regard as mentioned in the 1929 and also the 1961 Act. It also addressed the limit of liability referred to above

and protects solely the carrier who is actually performing the carriage during which an accident or delay takes place.

There have been other amendments to the Warsaw Convention that came up in 1975. The main purpose of this amendment was to replace the gold francs and the liability of the carrier is expressed by special Drawing Rights of the International Monetary Fund.

3.3 Basic Elements of Liability

The Convention provides that the carrier of goods by air will be liable for destruction or loss of, or damage to or delay of cargo, if it occurs during during the carriage by air. The carrier can escape liability by proving that he and his agents took all positive measures to avoid the damage.

The carrier can limit his liability, and the liability is limited to 250francs per kilogram unless the consignor makes a special declaration and pays a supplement if required.

The consignor has a right of action against the first carrier as well as the carrier who actually performed the carriage during which destruction, loss, damages or delay took place unless the first carrier has expressly assumed liability for the whole carriage.

The first carrier, the performing carrier and the last carrier are jointly and severally liable respectively to the consignor and the consignee.

4.0 CONCLUSION

It is important to note the basic rules of liability of the carriage of goods by road and air in that respect. Carriage of goods by road is one of the oldest systems of carriage of goods in commercial transactions. This type of Carriage is mostly governed by common law. On the other hand, carriage of goods by air is mostly governed by the different international Conventions.

5.0 SUMMARY

The Carriage of Goods by Road and Air, is one of the mostly used after sea carriage in international commercial carriage of goods. It is important that these areas of commercial transactions are governed by both common law and different international conventions. The Warsaw Conventions and the so many amendments already discussed are points of reference.

6.0 TUTOR MARKED ASSIGNMENT

1. Briefly explain the concept of Carriage of Goods by Road and the laws governing it.
2. State the purpose of the Warsaw Convention 1929 on the Carriage of Goods by Air.

7.0REFERENCES/FURTHER READING

1. Sales of Goods Act, Laws of the Federation of Nigeria.
2. Okany, Nigerian Commercial Law, Africana. FEP Publishers Ltd, 1992.
3. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.