

The Need for Reforming the Sale of Goods Ordinance of Sri Lanka: A Comparative Analysis

R. N. K. Chandrawansa*


Attorney at Law

Abstract

This research is based on the Sale of Goods Ordinance, No. 11 of 1896 which governs the sale of goods in Sri Lanka. The Ordinance is modelled on the English Sale of Goods Ordinance of 1893. Although the English law pertaining to sale of goods has been amended to cater to the modern-day developments, the Sri Lankan Ordinance has remained the same even after a century and more. This research is carried out following the traditional black letter approach of socio-legal research. Relevant reforms to the Sri Lankan Ordinance have been identified considering the relevant case laws and current developments in the sale of goods in Sri Lanka and globally. The analysis proves that there are many deficiencies in the Sri Lankan Ordinance when compared with the law in the United Kingdom and highlights the necessity for amendments in accordance with the latest technological developments and on the requisites of the parties engaged in the sale of goods. This research proposes new reforms and illustrates how the proposed reforms will provide solutions for the perceived deficiencies. This study mainly focuses on the nature of the selling goods, geographical limits related to sale of goods and the methods that the parties use to sell the goods. Furthermore, the study

* Corresponding should be addressed to **Ms. N. K. Chandrawansa**, Attorney at Law

Email: nishadichandrawansa@gmail.com

 <https://orcid.org/0000-0001-8650-3327>

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focuses on the remedies introduced to the parties involved in the sale of goods.

Keywords: Sale of Goods Ordinance, Sri Lanka, UK

Introduction

The sale of goods in Sri Lanka is governed by the Sale of Goods Ordinance, No.11 of 1896 (Hereinafter referred to as SGO) and the law is based on the United Kingdom's Sale of Goods Act of 1893 drafted by Sir Mackenzie Chalmers (*A.G v Abram Saibo*, 1915). United Kingdom (Herein after referred to as UK) has done several amendments to their law by the Sale of Goods Act of 1979 (SGA) which consolidated the Act of 1893 and further, by subsequent legislation with time. Over the last centuries, there has been a vast growth and a development in the technology as well as in the field of commerce. However, Sri Lanka for the past 120 years Sri Lanka has been using the same SGO and the static nature of the Sri Lankan SGO has led to a number of crucial problems. As Roscoe Pound stated, a law is not static and must adapt to the needs of a society (*Roscoe Pound - Further Readings*, 2020).

The Sri Lankan SGO consists of 59 sections and section 2(1) defines a sale and agreement to sell. From section 2(1) to 59 it discusses the multiple areas. However, with the development of the modern world there are some instances where the sale of goods does not fall under the purview of SGO. Since Sri Lanka is a developing country, economic development should be at the level of highest concern. The development of laws to suit the situations and to ease the process is very important. This research suggests potential amendments in a descriptive manner comparing the Sri Lankan law with that of England.

The research discusses the nature of selling goods, where the definition of “goods” is a major concern (section 59), geographical limits related to sale of goods and finally the methods by which sales are concluded. Even though the remedies are there to protect the parties under the SGO, there are loopholes which need to be addressed by amendments to the SGO. Therefore, the research

discusses the remedies (sections 13, 14, 15 and 16) introduced to the parties by addressing the identified loopholes. In all the above situations, this research offers many statutes currently used in Sri Lanka such as Electronic Transactions Act, No. 19 of 2006, Consumer Affairs Authority Act, No. 9 of 2003 etc. for comparative purposes and at the same time, discusses and compares the laws related to sales of goods in the UK with those of Sri Lanka. Finally, the research in its conclusion offers suitable recommendations to the laws related to sales of goods in Sri Lanka and emphasizes that the Sri Lankan law related to sale of goods should be amended to reflect the latest needs in the commercial world.

The main research objective of this research is to assess whether Sri Lanka should also amend the laws related to sale of goods as in English legislatures based on the changing nature of commercial transactions.

Methodology

The overall approach to this research is based on the traditional black letter approach of the socio-legal research. The relevant statutory provisions and case laws are critically analyzed through a comparative analysis. Qualitative data were collected through a review of primary and secondary data sources. Primary data sources included national and foreign statutes, case law and secondary sources included books with critical analysis, law journals and conference papers etc. The scope of this research is limited to the nature of goods, the geographical limits, methods by which sales are concluded and remedies introduced to the parties.

Findings and Discussion

In this study, the writer has identified the problematic areas under the SGO and they are as follows:

1. The nature of the selling goods
2. Geographical limits related to the sale of goods
3. The methods that the parties use to sell goods

The SGO is limited to traditional types of goods and does not cater to novel goods such as software, mobile applications etc. The purview of the SGO is limited to transactions within one country and international trade is not addressed. Modern day transactions for sale of goods are revolutionary with the invent of e-commerce and such novel methods are not addressed. Due to these issues, the SGO should be amended, or a new Act should be introduced. Since there is a wide area to be discussed under the SGO, this research focuses only on the relevant sections.

Nature of Goods

This is an important area to be discussed and analysed because before the sale, the goods should be identified properly. That means the goods should be under the definition of the SGO for the concerned parties to apply the provisions. Section 59(1) of SGO states as follows:

“goods include all movables except money. The term includes growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”

In the modern world, the goods which are involved in transactions are different. Novel goods are available to be purchased using online platforms such as music videos, software, computer games etc. The problem is that these products do not fall under the definition of SGO. The Intellectual Property Act, No. 36 of 2003 offers an option to solve several problems related to those types of product. Section 5 of this Act mainly focuses on computer software, broadcasting, music videos and many other digital purchases. If an Intellectual property right is violated, the parties cannot take the remedies under SGO. However, using the Intellectual Property Act, No. 36 of 2003, the infringer can be sued easily for breaching the Intellectual property rights of parties.

St Albans City and District Council v International computers case (St Albans City and District Council v International computers, 1996) discussed the issue with regard to software. St. Albans City and District Council has bought a software to calculate tax money. The

calculations made by the software were wrong and the issue at hand was whether the software falls under the category of goods or not. The court stated that if the software was connected with a hardware that could be considered as goods and just software could be considered as a service and further stated that it could be included in the Intellectual property category. In the above-mentioned case, the court opined that the quality and the fitness implied by section 14 of the Sales of Goods Act in England or the section 9 of the Supply of Goods and Services Act of England.

In the case *Robinson v Graves* (*Robinson v Graves*, 1935) dispute arose over an agreement. An artist had promised to make a portrait. The question arose on the definition of goods. English Court of Appeal held that it was a contract for "work and materials" and could not be considered as a good but could be considered as a service.

There are some instances where the customers buy software for a limited period of time such as virus guards. In the case *Watford Electronics Ltd v Sunderson* (*Watford Electronics Ltd v Sunderson*, 2001) it was decided that such a situation was covered under 1982 Supply of Goods and Service Act section 6(1) and not under 1979 SOG Act. Thus, the English court declared that in such an instance the software was a service. Sri Lanka does not have a Supply of Goods and Service Act. Furthermore, the SGO in Sri Lanka does not give a proper categorization to goods and services.

There were many serious issues that arose in deciding whether body organs should be considered as goods or not. That is again an unclear and complicated area that has to be analysed from an ethical point of view. Sri Lanka has special Acts which prohibit and control selling of body organs and parts such as blood. In the *R v Australian Red Cross* (*R v Australian Red Cross*, 1991) the court held that blood could not be considered as goods and if it was considered as goods, there might be many moral and social issues. According to the section 59(1) of the SGO definition of goods, the "goods" include all movables except money. Based on that definition, body organs and parts when separated from body can

be considered as “goods”. However, some goods including body organs are excluded by case law.

There are non-regenerative items that can be bought for money which get wasted after usage. Electricity is one such example. *Singer v Baltimore gas and Electricity* case (*Singer v Baltimore gas and Electricity*, 1989) stated that electricity does not fall under the interpretation of goods and Sri Lanka too follows the same law. In Sri Lanka, Electricity Act, No. 20 of 2009 is applied to situations where electricity is concerned.

Immovable things such as land, crops before they get separated from the land are not considered as goods according to the interpretation given under the SGO. For an example, in the case *Morgan v Russell* (*Morgan v Russell*, 1909) heap of slag and cinders were attached to land and due to the attachment, they were immovable and they were not considered as goods.

This creates problems, because for different products different statutes should be used. Due to this, the courts have to refer many statutes for the same type of cases where only the type of the product is different. In the SOG Act 1979 of England section 14(2) discusses the issue of quality of goods instead of merchantable quality. England has introduced that because the “quality of the goods” covers a broad area than the term “merchantable quality”, but this aspect is not present in the section 14 of the Sri Lankan SGO (Wijerathna, 2016).

Geographical limits

Nowadays, the buyers and sellers choose the internet to conduct their transactions because that makes the business fast and easy. Usage of emails, websites, such as e -bay for transactions, has become a common practice. Credit cards and debit cards are commonly used in sale of goods, which is one of the latest trends in e-commerce. The Electronic Transactions Act, No. 19 of 2006 (based on the standards established by United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996) and Model Law on Electronic Signatures (2001)), Payment and settlement systems Act, No. 28 of

2005 and Payment Devices Frauds Act, No. 30 of 2006 are the new laws which have been introduced to this area. Section 5 of the SGO states that, “*the sale can be enforceable if the buyer has accepted the goods or part of it, paid the price or part of it or unless some note or memorandum in writing signed*” This section does not cover internet transactions. Atiyah states that, “*policy makers must be careful not to be carried away by the hyperbole and exaggeration which has, at times come to characterize the debate on the future development of electronic commerce*”(Atiyah et al., 2010).

When the buyer and the seller are from two different jurisdictions, problems arise due to non-compatibility of the laws with the main issue being the specific law which should be applied. The SGO is silent in such situations and due to that the parties face problems in solving their issues arising from sale of goods. In *Marchant Heyworth v Usoof* case (*Marchant Heyworth v Usoof*, 1955), the parties entered into a contract to sell 50 tons of rubber. The seller was in Sri Lanka and the buyer was in England. Seller could not send half of the stock. The buyer has taken compensation for that according to an arbitration order given by the English High Courts. However, the Sri Lankan Colombo District Court stated that the arbitration order could not be applied in Sri Lanka. Afterwards the Supreme Court has decided that arbitration could be impliedly applied in here and that there was no need of a written agreements for that purpose.

Especially, when there are two jurisdictions, where parties tend to engage in e-commerce such as electronic transactions using credit cards, the SGO does not govern such transactions. The Electronic Transaction Act, No. 19 of 2006 has been introduced to facilitate electronic transactions. The following areas covered under the Act:

1. Electronic records (Section 3)
2. Electronic signatures (Section 7)
3. Contracts (Section 11)
4. Liabilities of certification service providers (Section 16)

The SGO does not cover the frauds and errors attributed to credit card transactions. Section 9 of the SGO does not cover such issues. Payment and Settlement Systems Act, No. 28 of 2005 is there to

solve the problems regarding credit card payments, electronic cheques and most of the other e-commerce transactions. The Payment Devices Frauds Act, No. 30 of 2006 deals with the frauds related to electronic transactions. The 1974 Consumer Credit Act of Britain controls the credit card transactions and, at the same time, it is connected to 1979 SOG Act (*Jarrett v Barclays Bank*, 1997). Therefore, it is clear that Sri Lanka maintains a blend of different statutes. That practice causes problems with the parties who are engaged in selling goods, since there are many statutes related to the same transaction itself.

The Part 5 of the English Act states that if the buyer is not happy with the stock of goods, the buyer can return the goods within 6 months of the delivery and can claim the amount paid or can claim to repair the goods when there are any defects. If the seller does not act accordingly, the buyer has the right to conclude the contract. In the English law a “Cooling- off period” is accepted. However, this cooling off period is not addressed in the SGO or any other law related to that in Sri Lanka.

Methods by which sales are concluded

There are enough ways to do transactions such as leasing, brokers, barter, hire purchase etc. (*Aldridge v Johnson*, 1857). New trends have been introduced to the commercial world to proceed with transactions. At certain instances, the seller has the full authority to keep the goods with him until he gets the full payment. Lien has been introduced by the *Aluminium Industries Vasen v Romalpa Aluminium Ltd* case (*Vasen v Romalpa Aluminium Ltd*, 1976) with the help of “Romalpa clause”. However, this was not accepted by *Borden (UK) Ltd v Scottish Timber Products Ltd* case (*Borden (UK) Ltd v Scottish Timber Products Ltd*, 1981). The new concept has been followed in *Clough Mill Ltd v Geoffrey Martin* (*Clough Mill Ltd v Geoffrey Martin*, 1984) and in *Henry Lennox (Industrial Engines) Ltd v Graham Puttick Ltd* (*Henry Lennox (Industrial Engines) Ltd v Graham Puttick Ltd*, 1984) case. In the Sri Lankan context, no amendments have been introduced to this area, but England has introduced amendments which also addresses this new concept. Moreover, sales by the use of cheques, credit cards, promissory notes do not lie with the section 2(1) of the SGO, but still the main process is the sale of goods. Most of the parties use these new

trends to complete their transactions and at the same time question arises because that does not lie under the SGO itself. The Bills of Exchange Act, No. 25 of 1927, the Payment and Settlement System Act, No. 28 of 2005, the Payment Devices Frauds Act, No. 30 of 2006 apply here.

The courts in *Helby v Mathews* (*Helby v Mathews*, 1895) held that lease does not lie under the SOG Act. Similarly, in *Belsize Motor Supply Company v Cox* (*Belsize Motor Supply Company v Cox*, 1914), *De Silva v Kuruppu* (*De Silva v Kuruppu*, 1941) and *Karunapala v State* (*Karunapala v State*, 1974), the court held that, hire purchase was not included in the sales of goods. Therefore, these cases have followed Consumer Credit Act, No. 29 of 1982 (Hereinafter referred to as CCA). In normal sales, the SGO sections 13 to 16 are applied for implied warranties and conditions, but for hired goods those sections cannot be applied. Section 3 of the CCA clearly provides the requirements relating to hire-purchase agreements. That clearly states about implied conditions and warranties under section 4, especially for hired goods. Section 6 provides for the passing of property in hire purchase etc. and all these are not covered under the SGO. The UK Consumer Credit Act of 1974, by virtue of section 8 gives the limit of credit as £ 25,000 and later amendments were made. The Sri Lankan CCA does not provide a credit limit which may be considered as an advantage.

The SGO of 1893, the Hire Purchase Act and Credit Sale Act, No. 06 of 1964 and the Consumer Credit Act of 1974 were combined to make the SOG Act of 1979 in England. In Sri Lanka, the laws related to sale of goods are dispersed among several statutes. Therefore, it is recommended that all related laws should be combined to form a single Act similar to England.

Section 14(3) of the English SOG Act of 1979 states that,

“where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker.”

This clearly depicts that the Acts have to be read with the SOG Act of England.

Sri Lankan SGO has no such advanced amendments and such transactions are covered by CCA of 1982. When it comes to hire purchase, if all the premiums have been paid, the transaction automatically turns to a normal sale under the SGO, which is not mentioned in the statute.

Remedies introduced to the parties

Remedies are to protect the parties under the SGO. However, the parties who are engaged in the process of sale of goods have a very limited knowledge about this area. The sections 13, 14, 15 and 16 come up with conditions and warranties which provide protection to buyers. The sections address implied undertaking as to title, sale by description, implied conditions as to quality or fitness and sale by sample. When the conditions and warranties are being breached, they can be enforced through the courts, but it is an arduous process. Therefore, the buyers do not tend to get that protection through court proceedings which lead to sellers enjoying undue advantages. Consumer Affairs Authority Act, No. 9 of 2003 (hereinafter referred to as CAAA) has been introduced to solve this issue and it covers the loopholes of the SGO. The CAAA can be applied to protect the consumers by the goods which are hazardous to life, to overcome unfair trade practices, for the consumers to have adequate access to goods and services at competitive prices, to seek redress against unfair trade practices and restrictive trade practices or from any other form of exploitation of consumers by trade (Section 7). Further, CAAA can be applied for false representations (Section 31) and when there is no due care and skill in sale of goods or services. (Section 32). Furthermore, it states that goods should be reasonably fit for the purpose as an implied warranty which is given under the sections 13, 14, 15 and 16 of the SGO. However, the SGO does not mention the provision of services. This can be considered as a weakness in the SGO.

In *shell gas v Consumers affairs authority* case (*Shell gas v Consumers affairs authority*, 2007) gas leaked from a gas cylinders

which meant that the buyer could not use it. Even though the buyer could use the SGO to get the remedies, actions were taken under the section 13 of the CAAA.

The Food Act, No. 26 of 1980 and the Food Amendment Act, No. 20 of 1991 along with the other amendments, deal with issues related to food. Under the Food Act, selling and display of food, their quality and sanitation are addressed. The SGO does not address the above-mentioned issues related to food. It creates a problem on the SGO itself because food also can be considered as goods.

The protection given to the buyer under sections 13, 14, 15 and 16 is not clear because SGO itself states that these protections can be excluded. To overcome the difficulties faced by the buyer and to stop the seller from having undue advantages, solutions have been introduced by the section 7(1), 7(2) and 7(3) of the Unfair Contract Terms Act, No. 26 of 1997. The section 7(1) states that, a contract term which exclude or restrict the section 13 of SGO shall be of no effect. The section 7(2) of the Act states that a contract term which exclude or restrict section 14, 15 and 16 of the SGO as against a person dealing as consumer shall be of no effect. Moreover, the section 7(3) of the Unfair Contract Terms Act, No. 26 of 1997 says that the restrictions allowed under section 7(2) for non-consumers should be reasonable. These are examples of the usage of other Acts to fill the gaps of the SGO. England is more advanced on this because they have introduced SOG Act of 1979 combining Unfair Contract Terms Act of 1977 and sections 12, 13, 14 and 15 of the SGO of 1893.

Section 75 of the CAAA of Sri Lanka states that, consumer means any actual or potential user of any goods or services made available for a consideration by any trader or manufacturer. Therefore, it is evident that the services are also covered by this Act. In the Act, goods mean any food, drink, pharmaceutical, fuel and all other merchandise and there the service means service of any description which is made available to actual or potential users. The area covered by this Act is broader than the area which is covered by the SGO. Therefore, many gaps in the SGO is filled by

the CAAA in Sri Lanka. In England, the amendments have been carried out to the Sale of Goods Act to cover the services. English Sales and Supply of Goods to Consumer Regulations 2002 have also introduced certain remedies for these areas.

In *Jayasena Perera v Ratnadasa* (*Jayasena Perera v Ratnadasa*, 1981) Sharvananda J has applied the sections 18, 19, 20, 50 and 57 with the sections 12, 13 and 14 of the Motor Traffic Act. This shows that the SOG is applied with other Acts in the Sri Lankan courts.

Atiyah states that,

“Present law of Sale of Goods is somewhat patch work” (Atiyah et al., 2010).

In *Mercantile credit Ltd v Sirimawathie* (*Mercantile credit Ltd v Sirimawathie*, 1996) case the section 22 (d) of the SGO has been applied. It is clear that SGO is still in use despite the defects alluded to.

In view of minimizing the aforementioned issues, the new Act in England has taken into consideration the newer types of goods, geographical issues and novel modalities of selling goods, up to a certain extent. Furthermore, English courts have made clear connections with the other new Acts. Therefore, there is no necessity for the lawyers and judges to search for laws as in Sri Lanka.

There are some areas that have still not been covered by other Acts which creates further problems. Further, in some instances there are conflicts in the SGO itself. There is a conflict between the Section 34(1) and Section 35 in the Sri Lankan SGO. England has introduced solutions through 1967 Misrepresentation Act section 4(2) for such conflicts.

If Sri Lanka introduce changes to the definition of goods to cover a vast area, if the geographical limits are considered in the SGO and further new methods of selling goods are being introduced, Sri Lanka will be able to minimize many problems related to sale of

goods. A person can argue that there is no need for amendments because there are enough new Acts that have come up and without any issues people can use them. However, taking into consideration the complicated issues that arise in the modern business world, it is always easy and straightforward to use one Act which covers almost all these areas. Then these conflicts will not arise.

As Atiyah states, internationally people tend to minimize these problems by having special Conventions etc. International Convention on Sales of Goods (CISG) has been introduced, and as of 27 September 2019, 92 states have ratified, acceded to, approved, accepted, or succeeded to the Convention (*United Nations Treaty Collection*, 2020). Sri Lanka is not yet a signatory. However, if Sri Lanka follows CISG provisions, many problems would be solved.

Conclusions

In the modern era, with the technological advancement, the requirements pertaining to the sale of goods have evolved considerably. New trends such as digital techniques are at the forefront of transactions. Both buyer and seller have to adapt and deal with such changes. The laws pertaining to sale of goods should also evolve in tandem with the changing face of sales. However, the Sri Lankan laws have not experienced such drastic changes in comparison to other developed countries such as the UK. This stagnation has given rise to several issues for parties engaging in sales.

The future trends cannot be predicted and therefore reforms cannot be introduced to cater to potential new developments of the future. However, reforms should take place to adapt to the current advancements. This is applicable to all areas of law. It is always true that no one can make complete laws to fulfil the needs of all the parties. However, to fulfil justice, better reforms should be introduced with a clear vision. Then only the sale of goods transactions will be done without any complexities leading to economic development.

The existing law regarding sale of goods is more than 120 years old, and amendments incorporating the latest developments is an urgent and an essential requirement. These new developments include e-commerce etc. Moreover, the reforms should protect the rights of the sellers and buyers who are engaged in sale of goods. Most areas of the SGO, including Section 17, need amendments, with due consideration given to current needs and complexities, to mitigate the predicaments. This has clearly shown results in countries such as the UK where they have introduced timely reforms. However, they too continually experience issues, due to the ever-changing trends in technology which are introduced to business transactions.

In consideration of the Sri Lankan SGO, there are many issues with the application of laws ranging from simple issues such as the definition of “goods” to complex issues such as contradictions within the same section. Following are the recommendations of this study to implement the related laws.

E-commerce should be added to the sections of the SGO. With the new amendments, offer and acceptance in sale of good transactions can be carried out with emails and other modalities of digital communications. This will expedite the transaction process and at the same time ease the process. The expected result of such reforms is the development of the commercial world.

Two countries may be involved in one particular transaction, and there may be contradictions of the applied laws. However, if the laws are similar and developed enough to meet the requirements of the day-to-day world, there will not be problems as transactions will go smoothly with the new developments. As previously explained, *Merchant Heyworth v Usoof* case (*Merchant Heyworth v Usoof*, 1955) is an example for such situations. There are instances where the Sri Lankan courts have applied laws of other countries on similar matters. This clearly shows that Sri Lanka accepts the amendments and developments of the other countries to settle their matters related to sales of goods.

Even though there is an Electronic Transactions Act, No. 19 of 2006, e-commerce should be added to the sections of the SGO. Therefore, it will be easy for the lawyers and judges to handle the matters related e-commerce.

Credit card payment methods should be included in the SGO because in the modern world that is one of the mostly used methods to make payments. In the UK, Consumer Credit Act of 1974 is used as a solution to this problem. On the other hand, software programs and music videos also should be included in the category of goods to minimize the issues that arise due to defining “goods” under the SGO. Sections 13,14,15 and 16 cannot be applied to software as the SGO has not been amended to include such products. Therefore, to apply those sections, software should be included into the category of goods. There are other complicated situations such as blood and other body organs which are connected with ethical issues, which require careful consideration under the SGO.

In Sri Lanka it is evident that when there are issues with the sale of goods the Sri Lankan courts always tend to use other Acts than looking for a solution through the SGO itself. Therefore, the SGO should be amended properly in order to provide solutions to the current problems related to sale of goods.

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