

THE SELLER'S OBLIGATION TO DELIVER THE GOODS UNDER
A CONTRACT OF SALE OF GOODS

By

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Abstrak

Kontrak jualan mempunyai peranan yang sangat penting dalam urusan jualan dan hubungan undang-undang mereka adalah pelbagai dalam sistem undang-undang yang berbeza. Kewajipan untuk menyampaikan ialah satu tugas yang paling penting yang dikenakan oleh undang-undang kepada peniaga, dan komitmen yang sepadan oleh pembeli adalah dengan membayar harga kepada penjual. Sebelum peniaga menyerahkan barangan, pembeli tidak mempunyai kuasa untuk mengikut pemilik barangan tersebut. Banyak negara maju dan membangun yang berminat dalam bidang penjualan kontrak barangan dan sewajarnya, mereka telah dijelaskan tentang tindakan khas untuk mengawal selia kontrak pada tahap dalaman dan antarabangsa. Di Negara Iraq, penjualan kontrak barangan telah dikawalselia melalui perubahan dalam CISG sejak tahun 1991 dan tambahan lagi, undang-undang yang berkaitan di negara ini masih di tahap membangun. Objektif kajian ini adalah untuk mengkaji kepentingan elemen penyampaian dalam jualan kontrak barangan pada peringkat antarabangsa dan ia juga bertujuan untuk memeriksa kewajipan peniaga berikutan pelanggaran dalam kontrak jualan barangan. Untuk menjalankan kajian ini, pendekatan undang-undang doktrin diterima sebagai reka bentuk penyelidikan. Berikutan perkembangan ini, pengkaji telah merujuk kepada sumber data kedua, iaitu buku-buku ujian, artikel jurnal, laporan kerajaan dan peruntukan undang-undang dan peraturan yang berkaitan dengan negara-negara terpilih. Semua data yang dikumpul telah dianalisis secara deskriptif dan mendalam. Kajian ini mendapati bahawa undang-undang Iraq dalam penjualan kontrak barangan perlu mengamalkan prinsip-prinsip umum yang boleh diterima seperti yang dipersetujui di peringkat antarabangsa. Beberapa penambahbaikan terhadap undang-undang perlu dilaksanakan untuk menjadikannya lebih menyeluruh dan mampu mengelakkan pertikaian.

Kata-Kata Kunci: kontrak jualan, penjual, barang, penyampain.

Abstract

Sale contracts have a very important role in sale transactions, and their legal relations vary in different legal systems. The obligation to deliver is one of the most important obligations imposed by law on the seller, and the corresponding commitment by the buyer is to pay the price to the seller. Until sellers deliver the goods, buyers do not have authority pursuant to the owner. Many developed and developing countries are interested in the area of sale of goods contracts and accordingly, they have specified special acts to regulate the contracts at internal and international levels. In Iraq, sale of good contracts have been regulated through the ratification of the CISG since 1991; yet, the country's relevant law is still under developed. The objective of this study is to study the importance of the delivery element in a sale of goods contract at international level; it also intends to examine the seller's liability following a breach in a contract of sale of goods. To carry out the study, a doctrinal legal approach was adopted as the research design. On this account, the researcher has mainly referred to secondary data, namely test books, journal articles, government reports and the provisions of the relevant laws and legislations of selected countries. All the collected data were analyzed descriptively and critically. This study found that the Iraqi legislation on sale of goods contracts should apply the common acceptable principles as agreed internationally. Some improvements to the law need to be implemented in order to make it more comprehensive and capable of avoiding disputes.

Key words: sale contracts, seller, goods, delivery.

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List of Abbreviations

UNIDROIT	International Institute for the Unification of Private Law in Rome
SOGA 1979	.....	English Sale Of Goods Act 1979
SOGA 1957	.....	Malaysian Sale Of Goods Act 1957
ULIS 1964	.....	Uniform Law on International Sale of Goods 1964
ULF	.....	Uniform Law on the Formation of Contracts for the International Sale of Goods
UNCITRAL	.....	United Nations Commission on International Trade Law
CISG	.....	United Nations Convention on Contracts for the International Sale of Goods
NII	.....	National Investment Law 2006
ICC	.....	Iraqi Civil Code NO.40 of 1951
INCOTERMS	.....	International Commerce Terms
CLOUT	.....	Case Law on UNCITRAL Texts
CLJ	.....	Current Law Journal
CA	.....	Contract Act 1950
CIF	.....	Cost, Insurance and Freight
FOB	.....	Free on Board

CHAPTER ONE

INTRODUCTION

1.1 Introduction

This study will discuss the seller's obligation to deliver the goods in the sale of goods contracts according to the provisions of the Vienna Convention 1980 and Malaysian law. In this chapter, the researcher discussed the background of the study, by highlighting the importance of the seller's obligation in delivering the goods in a contract of sale of goods. The research then highlights the issues involved with the failure of seller to deliver the goods. It later mentions about the research objective, i.e. the aims to be achieved by having this study. Under this part also, research questions and significance of the study are laid down. Moreover, research methodology is presented whereby the approach used is the doctrinal research. At the end of this chapter, a summary of chapter is given.

1.2 Research Background

Businesses which buy or sell goods at international level often face unique legal, financial, cultural and geographical issues that are governed by the contract between the buyer and the seller. The sale contract particularly, has a very important role and its legal relations vary in different legal systems. A vast number of rules are earmarked to sale contracts and this diversity has led to the ratification of different Acts, which in the absence of uniform rules, will cause the contracting parties to have different problems in the area of international trade. The 'Sale of Goods'

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