

SALE

OF

GOODS ACT

LL.B. II Sem

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**A. Sale by sample—What it means—**Sale by sample has been defined in Section 17 (2) of the Act and contains the following implied conditions in contract of sale by sample—

- (a) that the bulk shall correspond with the sample in quality ;
- (b) that the buyer shall have reasonable opportunity of comparing the bulk with the sample ;
- (c) that the goods shall be free from any defect which render them "unmerchantable" and which would not be apparent on a reasonable examination of sample.

The purpose of sample is to give the details of the goods, intended to be purchased by visible means, which may be difficult or impossible to be expressed in words, owing to the imperfection of language. In a sale by sample it is necessary that the goods sold must be similar to the sample in quality.

#### *Illustration*

In *Godley v. Perry*, (1960) 1 All ER. 36, implied conditions in the case of sale by sample were beautifully summarised.

In this case a retailer purchased a number of plastic catapults from a wholesaler in a sale by sample. He sold one of them to a boy of six years. When the boy was playing with the toy it broke and injured the left eye of that boy. Injury was so serious that the effected eye was to be removed ultimately.

The retailer had to pay compensation to the boy. The retailer in his own turn, claimed compensation from the wholesaler C. While purchasing the toys, the retailer had examined the sample and could not find any defect. It was held that the goods were *unmerchantable* and therefore the retailer should be indemnified by the wholeseller, for the loss suffered.

Sale by sample does not of necessity take place whenever a sample is shown ; sale by sample take place when there is a term in the contract, express or implied, to that effect; the whole of the circumstance must be looked to.



**A. Sale of goods by description.**—There is an implied condition that the goods shall correspond to the description and if sale was also by sample, a condition that the bulk shall correspond of such description, whether it corresponds with the sample or not goods are said to be sold by "description" when the goods being unascertained at the time of contract, they are sought to be identified by suitable words describing their nature. Thus contract of sale a "Fiat motor car, 1954 model" is a contract for sale of a motor car by description. The buyer in such a case relies on the description given by the seller, on agreeing the terms of the contract, the law therefore requires the seller to deliver to the buyer in performance of the contract an article which answers the description given by the seller in the contract.

It is not necessary that the Article offered should be perfect; what is required is that it must be saleable in the market under that description where goods are sold by description ; which the buyer had no opportunity to inspect the goods must not only answer the description but must also be merchantable or saleable under that description (S. 15 read with S. 16, cl. 2) *National Traders v. Hindustan Soap Works* (AIR 1959 Mad. 112).

In another case it was held that where goods whether specific or unascertained, are sold under a trade description, without misrepresentation or a warranty, the fact that is unknown to both parties, the goods of that trade description lack a particular quality is not a ground to treat the contract as nullity [*Harrison & Jones Ltd. v. Bientir etc. Ltd.*, (1913) 1 All E. R. 993].

It may in some cases be difficult to distinguish a description from a warranty, but in all cases where the purchaser has not seen the goods and buys them relying on the description alone, whether the goods be specific or unascertained, there is "contract for the sale of goods by description."

If goods are brought by description from a seller who deals in goods of that description (whether he be a manufacturer or not), there

is an implied condition that the goods shall be of merchantable quality, provided that if the buyer has examined the goods' there shall be no implied condition as regards defects which such examination ought to have revealed.

**Difference between "Sale by sample" and "Sale by Description" :—**

<b>Sale by Sample</b>	<b>Sale by Description</b>
<p>1. In the sale by sample the sample of the goods to be sold or purchased is shown to the buyer who after examining the goods agrees to buy them in gross.</p>	<p>1. In the case of "sale by description" only description is made about the thing and only on the basis of that transaction takes place.</p>
<p>2. In the case "sale by sample" no reliance is given to the words of the seller. The purchaser himself inspects the goods to make him sure about the qualities of the goods.</p>	<p>2. In a sale by description reliance is given to the description made by the seller.</p>
<p>3. In the case of sale by sample the goods supplied should correspond to the sample.</p>	<p>3. In the case of sale by description it should correspond to the description.</p>