



Resolving definitional inconsistencies in unascertained, ascertained and specific goods under the Sale of Goods Act, 1962 (“Act 137”)

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Abstract

This article examines the statutory definitions of specific, unascertained, and ascertained goods under Ghana's Sale of Goods Act, 1962 (Act 137); the ambiguities in the definitions, and inconsistencies in their judicial interpretation. These terms are crucial in determining when property and risk transfers occur between buyers and sellers in sales transactions. The discussion highlights how courts have occasionally misapplied these definitions or missed opportunities to provide clarity; leading to legal uncertainty in the practical application of the terms. Several practical solutions are proposed, including; judicial intervention, legislative amendments, and creation of regulatory guidelines to resolve the ambiguities and to ensure consistency. The article concludes by emphasising the importance of resolving these ambiguities to ensure consistency, fairness, and efficiency in Ghana's commercial law framework.

Keywords: Specific goods, unascertained goods, ascertained goods

Introduction

As in many jurisdictions, the Sale of Goods Act, 1962 (“Act 137”) ^[1] is an important statute which regulates sale of goods transactions between sellers or traders and buyers or consumers in Ghana. The Act was enacted not long after Ghana's independence to deal with the commercial challenges of Ghanaians, including the need to protect consumers from unfair practices and substandard products, and the need to establish clear standards for quality and description. The provisions of the Act were substantially based on the English Sale of Goods Act of 1893 ^[2] which has since been amended several times to respond to the changing needs of commerce. The Act mainly sets out an extensive framework for the rights and obligations of traders and consumers in commercial transactions. Specifically, the Act provides for the nature and formation of the contract for sale of goods, the duties, fundamental obligations, implied conditions and undertakings of the parties; as to the existence, title, quality and quantity of the goods, delivery of the goods, transfer of property and risk, rights and remedies of the parties; cost, insurance, freight and free on board sales, and analogous international sales contracts. Hire purchase contracts used to be part of the Act but from 1974 to date, it has been placed under a distinct regime.

The Act identifies the various categories of goods that could be the subject of a sale of goods transaction ^[3], and distinguishes specific goods and unascertained goods ^[4]. At the time of making contracts, goods are either specific or unascertained. Ordinarily, after the contract, unascertained goods are expected to become ascertained (but never specific) through a process of ascertainment. However, there are definitional inconsistencies and ambiguities in the understanding and practical application of these terms. Such confusion has significant implications for the rights and liabilities of parties under a contract for the sale of goods, and creates uncertainty in the resolution of commercial disputes. The nature of the duties, obligations, and rights of parties under a sale of goods contract are substantially determined by the classification of the goods; at the time of the contract, as specific goods or unascertained goods. For

instance, the classification as a particular type of goods under section 5 of Act 137 determines the obligations of the seller under section 8, and the rights of the buyer under section 49 of Act 137. Also, the classification of goods as specific or unascertained determines when risk and property in the goods pass from the seller to the buyer. The understanding of the distinction between these terms is thus, significant for determining the liability of parties in relation to the transfer of property and risk in goods.

This article, therefore, seeks to explore and highlight the confusion and ambiguity in the application of these terms by unpacking the definitions of the terms under the Sale of Goods Act. The article also analyses cases in which the courts have applied these terms and discusses how judicial interpretations contribute to the confusion. The article makes recommendations for harmonising the definitions, and suggests practical measures for enhancing clarity and coherence in the application of these definitions to commercial transactions.

The article is organised into six sections, including this introduction. The second section defines the terms "unascertained", "ascertained", and "specific" goods under common law, and highlights the confusion and ambiguity that exists in distinguishing these two categories of goods. The third section explores and analyses the statutory definitions of the terms in the Act 137, and identifies inconsistencies or ambiguities within the statutory framework. The next section presents case law examples in which the definitions of the terms have been inconsistently interpreted by the courts. The section analyses the reasoning of the courts and outcomes of these cases, and discusses how judicial interpretations contribute to the confusion surrounding these definitions. The fifth section presents recommendations for harmonising the definitions, and suggests practical measures for enhancing clarity and coherence in the application of these definitions to commercial transactions. The final section summarises the key points discussed in the article regarding the definitional inconsistencies, and emphasises the importance of resolving

these inconsistencies for the clarity and efficiency of commercial transactions.

Confusion in definition of unascertained, ascertained, and specific goods (Common Law)

English courts have mostly considered the definitions of specific, ascertained, and unascertained goods, and the implications of these classifications for commercial transactions; in cases in which rights or obligations of parties under a contract for the sale of goods are in issue. In most of these cases, the courts had to determine whether property in the goods had passed upon completion of the contract or whether a party had the right to reject the goods or whether a party could specifically enforce the contract. In all these determinations, ascertaining the classification of goods at the time of contract or at the relevant time of claim was pertinent. This reiterates how the rights and liabilities of parties under a contract may be adversely affected when the goods are inaccurately classified.

The definitions of specific goods, ascertained goods, and unascertained goods are very similar, and all three terms deal with the identification of goods, albeit at different stages in a sale of goods transaction. The relevant time or stage that is used as the standard of reference is the time the contract is made. In *Re Wait*^[5], Atkin L.J. defined specific goods as goods identified and agreed upon at the time a contract of sale is made, and ascertained goods as goods identified in accordance with the agreement after the time a contract of sale is made. The case involved a contract for the sale of five hundred tons of wheat, which was part of a larger consignment of a thousand tons of wheat. The buyer paid the price for the five hundred tons, but the wheat was not separated from the bulk and appropriated to the contract. The seller became bankrupt before the ship arrived. The trustee in bankruptcy retained the entire thousand tons, leaving the buyers their remedy in damages. The buyer sought specific performance of the contract. The issue to be determined was whether property in the five hundred tons of wheat had passed to the buyer. The determination depended on whether the contract was for the sale of specific goods, or whether the goods were ascertained at the relevant time of the claim. The court held that property in the goods did not pass to the buyer because the goods were unascertained. The court noted that the five hundred tons were not specific or ascertained goods. There never was such appropriation or identification of a particular five hundred tons as to effect an equitable assignment of a beneficial interest in the goods to the buyers.

Specific goods are therefore, goods identified and agreed on before or at the time a contract of sale is made^[6]. In such a case, the contract is in respect of only the identified and agreed-upon goods. The same goods are to be delivered by the seller to the buyer and not similar ones. For instance, under a contract for the sale of an identified vehicle with a particular registration number, only the delivery of that vehicle can discharge the obligation of the seller under the contract. If the goods are not so identified and agreed on, then the contract is for the sale of unascertained goods.

Unascertained goods are goods which are not identified and agreed upon at the time a contract of sale is made^[7]. When unascertained goods have subsequently been identified to the contract, (after the contract has been made) they become ascertained goods. Ascertained goods are thus initially unascertained at the time the contract is made but become

ascertained when they are appropriated to the contract. Unascertained goods become appropriated to a contract when they are identified, ear-marked and set aside specifically for fulfilling the contract. For instance, in *Re Wait*^[8], if the five hundred tons of wheat had been identified and separated from the bulk to be delivered to the buyers under the contract, the five hundred tons of wheat would have become ascertained.

All the three terms essentially deal with the identification of goods, and this may be a source of the confusion and ambiguity in their application to the determination of the rights of parties in a commercial transaction. In *Re Wait*^[9], the facts of which have been stated above, the crucial matter considered by the court was the question of identification. The buyers argued that the goods were clearly identified, as the contract for the sale of five hundred tons of wheat could only be satisfied with the thousand tons of wheat belonging to the seller on board the ship, and no other wheat. Sargant L.J., the dissenting judge, agreed with the arguments of the buyers when he reasoned that, the contract was for the purchase of a definite portion of a specific parcel of wheat, to be shipped within a definite period on a named vessel. The majority however, rejected this argument and insisted that the five tons of wheat had never been earmarked, identified or appropriated as wheat to be delivered to the buyer. To the majority, ascertaining the goods involves separating them from the bulk and specifically setting them aside for the fulfilment of contract.

The decision in *Re Wait* is in line with the decision in *Wait v. Baker*^[10]. The case involved a contract for the sale of a hundred quarters of wheat, which were part of a larger bulk stored in a warehouse. Before the seller could appropriate the hundred-quarters of wheat to the contract, fire gutted the warehouse and destroyed the whole bulk. The buyer refused to pay for the hundred quarters and the court had to determine whether property in the wheat had passed to the buyer at the time of the contract or whether it was still with the seller. This depended on whether the goods were considered specific goods at the time of the contract or were ascertained before they were destroyed by the fire. The court held that the goods were not specific goods at the time of the contract, and they had not been ascertained because they were not separated from the bulk and specifically identified. These cases seem to establish the principle that goods which are part of a larger bulk, are identified and ascertained by separating them from the bulk and specifically setting them aside for fulfilling the contract.

While *Re Wait* and *Wait v. Baker* established that goods which are part of a larger bulk must be separated and appropriated to be considered ascertained, *Howell v. Coupland*^[11] presents a contrasting view. In this case, the defendant contracted to sell to the plaintiff two hundred tons of potatoes grown on a specific parcel of land. Before the potatoes could be harvested, a disease destroyed most of the crops and the defendant could only deliver about eighty tons of potatoes. The plaintiff brought an action for breach of contract, seeking damages for non-delivery of the rest of the potatoes. The key legal issue was whether the defendant was liable for breach of contract for non-performance, due to the failure caused by the disease. The court in reaching the decision that the defendant was not liable, reasoned that, the contract was for the sale of a specific subject matter, the potatoes grown on a particular parcel of land. When the crop failed due to disease, performance of the contract became

impossible. The relevant aspect of the decision to this discussion is that, the court held that the contract for the sale of a specific quantity of potatoes grown on a particular parcel of land is a contract for the sale of specific goods. A twist that section 9 of the Sale of Goods Act may bring into this picture is the implied condition that specific goods are in existence at the time of the contract. This twist will be discussed further in the next section.

The potatoes in the *Howell v Coupland* case were classified as specific goods because they were identified by their source, the particular parcel of land they were to be grown on. This means the potatoes were tied to a specific source, and the contract involved only potatoes from that source and not just any potatoes. This reasoning is similar to the reasoning of the dissenting judge in *Re Wait*, who agreed with the arguments of the buyers and stated that, the contract was for the purchase of a definite portion of a specific parcel of wheat, to be shipped within a definite period on a named vessel. The strained artificial distinction which could be drawn between these two cases is that, in *Howell v. Coupland*, the potatoes were tied to a particular, identifiable parcel of land from the outset, creating a direct link between the goods and their source. In *Re Wait*, however, the wheat was part of a larger undivided bulk, and the contract did not specify a particular portion of the larger bulk from which the five hundred tons would be taken. But that distinction also raises the question whether the *Howell v. Coupland* contract specified a particular portion of the potatoes farm from which the 200 tons of potatoes were to be harvested?

While identification of goods before or at the time of the contract is important for the goods to be regarded as specific goods, identification could be done by description. The question which arises is whether in such instances under common law, the goods identified by description before or at the time of the contract are specific goods or unascertained goods. In *Varley v. Whipp*^[12], there was a contract for the sale of a second-hand reaping machine that the buyer had not seen. According to the seller, the machine had only been used to cut 50 to 60 acres of crop and was brand-new a year before. The buyer had not seen the machine but agreed to purchase it based on the description. Upon delivery of the machine, the buyer discovered that the machine was not what the seller had described. It was found to be an old machine. The buyer rejected the machine and failed to pay the price. The seller sued to recover the price. The court held that the contract was for the sale of a specific machine by description. The machine delivered did not match the description and thus, the seller had failed to deliver the particular goods identified in the contract. Failure to deliver goods as identified meant that property in the goods delivered did not pass to the buyer and the buyer was entitled to reject the goods.

In *Arcos Ltd. v. E.A. Ronaasen & Son*^[13], a similar decision was reached. In this case, the sellers agreed to sell to the buyers a quantity of staves of Russian redwood and whitewood, required by the buyers for making cement barrels. The agreement contained stipulations which allowed variation in the length and breadth of the staves, but the thickness was in all cases specified as half an inch. When the staves were delivered, majority were thicker than specified, although they were assessed to be fit for purpose. The buyer rejected the goods for not conforming with the contract specifications. The court had to determine whether

the buyer was entitled to reject the goods even though they were fit for the intended use. The court held that the buyers were not bound to accept the goods merely because they were fit for purpose. The buyers had the right to demand that the goods meet the exact description under the contract. These cases in insisting that the goods delivered per the contract description must be performed exactly as described seems to have elevated the goods to specific goods status, even though they were unascertained goods. The decision in *Arcos v. Ronaasen* even necessitated a statutory modification in Ghana which altered the principles established by that precedent through Section 8(2) of Act 137.

As discussed above, the identification of goods in a sale of goods transaction at the time of the contract or after the contract, have implications for the transfer of property and risk in the goods, the performance of the contract, and the rights and remedies of the parties under the contract. The time of identification determines if the goods are specific goods or ascertained goods. Specific goods are identified before or at the time of the contract, and ascertained goods are identified after the contract of sale is made. There may be some confusion with classifying goods which are in existence at the time of contract, but which are part of a larger bulk. It is clear that such goods are classified as unascertained at the time of the contract, but become ascertained when they are identified, separated from the bulk and appropriated to the contract.

Statutory definitions - Sale of Goods Act

As already established in the earlier sections, the distinction between specific, unascertained, and ascertained goods plays a key role in determining the rights and liabilities of parties to a contract sale of goods transaction. The Sale of Goods Act, 1962 (Act 137) has provided the statutory definitions of these terms, and has also provided for crucial related matters, including the point at which property and risk in goods pass from the seller to the buyer; and the corresponding rights and liabilities of parties. According to section 81 of Act 137, specific goods means goods identified and agreed on at the time a contract of sale is made while ascertained goods means goods identified and agreed on after a contract of sale is made. The phrase, "identified and agreed on", suggests that the goods must be clearly distinguished and set aside as the subject of the contract. The use of the word "identified" indicates that the goods are distinguishable and are not just part of a general class. It highlights the need for specificity as to the goods to which the contract relates. Also, the phrase "agreed on" indicates that there must be some consensus between the parties regarding the identified goods. The parties must be *ad idem* as to the exact goods that are being sold and bought, ensuring that both parties are fully aware of the subject matter of the contract. As stated in section 5 of Act 137, if the goods are so identified and agreed on before or at the time when the contract is made, then the contract is for the sale of specific goods. On the other hand, if the goods are not so identified and agreed on at the time when the contract is made, then the goods are unascertained.

While identification and agreeing on goods are both essential elements in determining whether goods are specific, ascertained or unascertained, the distinguishing factor is the time at which the goods are identified and agreed on. Specific goods must be identified and agreed on

before or at the time of the contract, in which case, there is clarity and agreement on what exactly is being sold before or at the time the contract is made. On the other hand, ascertained goods are clearly identified and agreed on after the contract is made. This implies that at the time the contract is made, the goods are unascertained and not explicitly identified and agreed on. In the case of ascertained goods, identification is by earmarking the goods, and separating them from a bulk or moving them from a general class, and appropriating them to the contract after the contract is made. This, like in the case of specific goods, is to ensure clarity with regards to the goods which will fulfil the contract. Despite the clarity, exactness and specificity of the identification and agreement on the goods before the contract, goods cannot be deemed specific goods if they relate to future goods (that is goods yet to be produced or manufactured). This is because Section 9 of the Sale of Goods Act has an implied condition that specific goods must be in existence at the time of the contract.

The essence of the distinction between specific and unascertained goods is seen in the varying nature of the obligations and rights of parties to a contract, as provided for by Act 137. The Act links several key rights and obligations of parties to whether goods are specific or unascertained. According to section 8 of Act 137, in a sale of specific goods, the fundamental obligation of the seller is to deliver those goods to the buyer. The seller's fundamental obligation under a contract for the sale of specific goods can only be discharged by delivery of the exact goods that have been identified and agreed on. Delivering goods that are similar, commercially viable or fit for purpose will not discharge the seller's obligation under the contract, if it is for specific goods. In a sale of unascertained goods, on the other hand, the fundamental obligation of the seller is to deliver to the buyer goods substantially corresponding to the description or sample by which they were sold. Here, the seller must deliver goods that match exactly or substantially conform to the description or/and sample that was relied on by the buyer at the time the contract was formed. The words "substantially corresponding", as used in the section, means minor, trivial, inconsequential, or insignificant deviations from the description or/and sample are allowed, if they do not affect the quality and purpose of the goods. The fundamental obligation imposed on the seller by the Act is to ensure that the goods delivered match what was promised to the buyer. This is a form of protection accorded to buyers by Act 137. According to section 49 of the Act, a buyer is entitled to reject the goods and to refuse to pay, or to recover the price, where the seller breaches a fundamental obligation.

The essence in the distinction between specific and unascertained goods is also vital in the determination of when property and/or risk in the goods pass from the seller to the buyer. Generally, Act 137 subjects when the property in goods will pass to the agreement of the parties. Section 26 of Act 137 provides that the property in goods passes under a contract of sale when the parties intend it to pass. When it is not clear from the contract when the parties intend the property in goods to pass, the Act provides that the property in goods passes when the goods are delivered to the buyer. These rules are, however, subject to the provision of section 25 of Act 137 which states that, where the contract is for the sale of unascertained goods, the property in the goods is not transferred to the buyer unless

the goods are ascertained. This highlights the important consideration that the property in goods will only be transferred when the goods are clearly identified and appropriated to the contract. The Act also intends for risk to pass with the property in goods unless the parties agree otherwise.

With key rights and obligations of parties tied to the distinction among specific, unascertained, and ascertained goods, the practical application of these classifications to commercial transactions must be done with clarity to ensure that the legal and commercial interests of parties are protected. The clarity required with the practical application of these classifications may however, be difficult to achieve. This is because the statutory definitions of these terms, as discussed above, admit some overlaps and inconsistencies. For instance, both specific goods and unascertained goods respectively refer to goods that are identified and agreed on by the parties or not so identified and agreed upon at the time of the contract. A misinterpretation of the term, "identified and agreed upon", can easily create confusion, overlaps, and inconsistencies. This suggests that there may be cases where goods may fall in both categories due to the statutory definitions leaving gaps in clarity or meaning of terms. The overlaps and inconsistencies in the statutory definitions have led to cases where the courts have interpreted the definitions inconsistently as occurred in *Andreas Bschor GmbH & Co. Kg v. Birim Wood Complex Ltd and Birim Timbers Ltd*^[14]. Given the importance of the terms in determining key aspects of sale of goods transactions, the terms must be applied clearly and consistently to ensure effectiveness of commercial transactions. Practical ways by which this can be achieved is through statutory definitional clarity, regulatory guidelines, or through judicial intervention.

Judicial Intervention - Interpretation in Case Law

The courts, through their interpretation function, have the ability to address the ambiguities created by the statutory definitions of these terms. By providing clear and reasoned judgments, the courts can create precedents to guide the future application of these terms and ensure consistency and harmony. To better understand how the courts have navigated the inconsistencies in the definitions of specific, unascertained, and ascertained goods, this section discusses the cases of *Andreas Bschor GmbH & Co. Kg v. Birim Wood Complex Ltd and Birim Timbers Ltd*^[15] and *George Sarpong & Co v. Silver Star Ltd*^[16]. These cases highlight differing judicial attitudes. The Supreme Court in both cases confused those terms and the goods that fall under those categories. The Supreme Court in *Andreas Bschor* misapplied the statutory definitions and wrongly classified unascertained goods as specific goods, and in *George Sarpong & Co v. Silver Star Ltd*, the Court glossed over an opportunity to discuss and clarify the statutory definitions of these terms. Examining these cases show how judicial intervention, which in this case is misapplication and failure to interpret, respectively reinforce the ambiguities rather than resolve them.

In *Andreas Bschor v. Birim Wood*, the parties were in timber business in Ghana and entered into a transaction for the supply and installation of a saw-mill for the defendant. It was to be paid for with the supply of timber products to the plaintiff. The agreement was based on mutual trust rather than a formal contract. After the installation of the saw-mill

plant in 1991, there were some technical problems with the plant; some of which the plaintiff rectified and the others were repaired by the defendants themselves. Contrary to what was agreed, the defendants initially did not supply timber products to the plaintiff in payment for the saw-mill so the plaintiff demanded payment of the amount as stated in the proforma invoice it had sent to the defendants. The defendants then paid part of the amount but afterwards supplied some timber products to the plaintiff as further payment. The timber products supplied did not fully settle the claim of plaintiff but the defendants stopped further payments. The plaintiff sued for the balance. The defendants counterclaimed for damages in diminution.

After a full trial, the High Court held that the plaintiff did not deliver all the machinery listed in the proforma invoice. The court further held that plaintiff breached an implied condition of the contract of sale by supplying a plant that was not of the quality and fitness for a saw-mill. The High Court judge therefore awarded damages to the defendants on their counterclaim to be deducted from the amount due plaintiff as stated in the proforma invoice. Being aggrieved, plaintiff appealed against the judgment. The Court of Appeal allowed the appeal and dismissed defendant's counterclaim in its entirety. The defendants further appealed against the judgment of the Court of Appeal to the Supreme Court. The Supreme Court finally determined the matter by relying on the implied condition of fitness for purpose in section 13 of Act 137. However, in reaching the final determination, the Supreme Court held that the contract was for the sale of specific goods by stating through Pwamang, JSC that:

"Specific goods as defined in Section 81, the interpretation section, of Act 137, is "goods identified and agreed upon at the time a contract of sale is made," In this case there is consensus by the parties that the Pro Forma invoice, Exhibit "A" constitutes the basis of the contract of sale of the saw-mill machinery and contains the list of goods to be supplied. It therefore means the contract is one for the sale of specific goods so Section 8(1) is applicable in this case..."

It is this holding which is particularly relevant for the current discussion on the court's misapplication of the statutory definitions of specific and ascertained goods. The Supreme Court deviated from the intended meaning of the terms under Act 137, and wrongly classified unascertained goods as specific goods. The Supreme Court reasoned that the proforma invoice sent to the defendants by the plaintiff to demand payment formed the basis of the contract, and since the proforma invoice contained a list of the goods to be supplied, the contract is for the sale of specific goods. This interpretation appears to diverge from what the statutory definitions intend on a number of prongs. First, the goods were sold by description and involved goods that had not been appropriated to the contract – that is a clear indication of the unascertained goods nature of the items to be supplied or delivered. Second, Act 137 defines specific goods as goods identified and agreed on at the time the contract is made while unascertained goods are goods which are not so identified and agreed upon. The key determining factor in the statutory definitions for classifying goods is not only the acts of identifying and agreeing on the goods, but the time at which the identification and agreement are done is also crucial. The Supreme Court

missed these determining factors. At the time of the contract, the saw-mill and the other equipment were not specifically identified and agreed on. The initial agreement did not relate to any particular saw-mill or accompanying equipment. As such, at the time the contract was made, the goods were unascertained. In the context of that case, the goods did not become ascertained when they were described, stated, indicated or identified on the proforma invoice submitted to the defendants by the plaintiff. They could also not be or become specific goods through the proforma invoice description. They became ascertained goods when they were identified and agreed upon and appropriated to the contract during the supply or delivery processes after the contract had been made.

Although the misapplication of the statutory definitions did not affect the outcome of the case, it sets a problematic precedent for future cases involving similar transactions. Such a precedent further complicates the practical applications of the terms, which may have significant implications for the rights of parties in commercial transactions.

On the other hand, in *George Sarpong & Co v. Silver Star Ltd*, the Supreme Court glossed over an opportunity to discuss and clarify the statutory definitions of specific, unascertained, and ascertained goods. The Supreme Court rather confused the import of those terms and the obligations they create when it said per Ansa JSC that "the fundamental obligations of the seller in this case as stated in section 8 of the Sale of Goods Act 1962 is to *deliver those goods, the specific goods of the 'E-Class' Mercedes Benz* which substantially correspond to the description or sample by which those goods were sold to the buyer." (Emphasis added). With the greatest respect, that statement is a clear confused mixture of obligations! If it is specific goods, seller should deliver those goods. Exact correspondence. The Act makes no room for substantial correspondence if it is specific goods. And that obligation cannot even be waived by the parties under section 8(3) of the Act. For unascertained goods, substantial correspondence is the minimum threshold or the seller's fundamental obligation – the seller should deliver goods which substantially correspond to the description or sample by which the goods were sold. Under section 8(3), that obligation cannot also be waived by the parties to a sale of goods agreement. Although exact correspondence is expected and envisaged for unascertained goods under Sections 11 and 12 of the Act, the fundamental obligation of the seller of unascertained goods under section 8(2) of the Act is substantial correspondence. It is thus extremely baffling for the Supreme Court to say "...deliver those goods, the specific goods of the 'E-Class' Mercedes Benz which substantially correspond..."

In the case under reference, the plaintiff (appellant), elected to buy a brand new C180 Mercedes Benz Salon car from the defendant (respondent) in February 2007. The car was bought under a 2-year unlimited warranty. Five months into acquiring the C-180 Benz, the head gasket cracked. It was agreed between the appellant's officers and the respondent's officers that the appellant surrender the C-180 Benz for another brand new E-Class Benz after paying Euros 15,000€ to the defendant (respondent) subject to a 2-year unlimited warranty. In May, 2008, the car suddenly stopped in the middle of the road on a rainy day at East Legon. The car was towed to the defendant's workshop where it remained

for 3 months before it was repaired by the defendant. On December 1, 2008, two months after the defendant repaired the car, it broke down again while it was being driven by the plaintiff's Director. The plaintiff was informed that the engine of the car was damaged beyond repairs. Subsequently, the plaintiff commenced an action in the High court (Commercial Division) in Accra, against the defendant claiming a brand new Mercedes Benz car (E Class) as replacement for the damaged car, or in the alternative a refund of the purchase price of the vehicle. After the trial, the learned trial judge held that appellant was entitled to a delivery to it of a brand new Mercedes Benz car (E-class) as replacement for the damaged car. Dissatisfied with the judgment of the High Court, the respondent appealed to the Court of Appeal. The Court of Appeal affirmed the judgment of the trial court in part, but reversed the order that appellant was entitled to a brand new E-Class Mercedes Benz Saloon car as a replacement for the damaged car, and ordered that the appellant was rather entitled to a replacement only of the damaged engine with a new engine under 2-year warranty. Aggrieved with the decision of the Court of Appeal, the plaintiff further appealed to the Supreme Court.

In arriving at the final decision which was based on the implied condition under section 13 of Act 137 and which focused mainly on latent defects, the Supreme Court held that the fundamental obligation of the seller, which is the delivery of the vehicle, has been complied with. Even though the fundamental obligation of the seller in a sale of goods transaction is based on the type of goods involved, the Court made this decision without discussing and clarifying the statutory definitions of the various types of goods. The Court merely noted that "[I]t must be observed that the delivery of goods having been complied with, this is not an issue in this case and that point will not be commented upon in this delivery." (Emphasis added). But before making the above statement, the brief comment the Court made on that matter was clearly wrong and confusing, as has been highlighted above in the earlier preceding paragraphs of this paper.

The Court in this case missed the opportunity to provide the much-needed clarity that could have resolved the ambiguities in the statutory definitions of specific, unascertained, and ascertained goods, and the Court rather confused the terms further. The clarification of these terms is needed to ensure that the terms are applied uniformly and effectively to enhance certainty and fairness in commercial transactions.

Recommendations

Resolving the ambiguities in the definitions of specific, unascertained, and ascertained goods under Act 137 is essential for ensuring legal clarity and consistency in commercial transactions. The most practical ways to address these ambiguities are through judicial clarification and legislative amendment. Consistent judicial interpretations and applications of these terms can effectively resolve these ambiguities. The courts should seize opportunities to clarify the definitions of specific, unascertained, and ascertained goods in future rulings. The courts should interpret the definitions with clear reasoning in cases where the ambiguities arise, setting good precedents for future cases. This will ensure a consistent application of the definitions.

Also, the legislature could review and amend the Act to refine and clarify the definitions of the terms. This could involve adding more precise language that explicitly addresses situations involving bulk sales, sale by description or unascertained goods at the time of contract. There could also be the introduction of regulatory guidelines to offer detailed explanations of how specific, unascertained, and ascertained goods should be identified in different types of transactions. Such guidelines will set the tone for how the terms should be applied in practical situations.

Conclusion

In summary, the paper has explored, examined, and discussed the statutory definitions of specific, unascertained, and ascertained goods under the Sale of Goods Act, 1962 (Act 137) and highlighted the ambiguities in the definitions. The paper also pointed out the problems created by the ambiguities in the practical application of the terms and how these terms have been interpreted by the courts. The analysis of key cases demonstrated that the courts have at times misapplied these definitions or missed opportunities to clarify them; leading to uncertainty. This uncertainty poses risks for both buyers and sellers as it increases the potential for disputes and unpredictability in commercial dealings, particularly with regards to the rights of parties and when property and risk transfer should occur between parties. The paper recommends judicial clarification, legislative reform, and the creation of regulatory guidelines as the most practical ways of resolving the ambiguities. Each of these measures can contribute to a clearer and more consistent application of the law. Addressing these inconsistencies is crucial for ensuring legal certainty, fairness, and efficiency in the sale of goods. By clarifying these ambiguities, the law can help minimise disputes and foster greater confidence in commercial transactions. Ultimately, resolving these ambiguities is essential for strengthening Ghana's legal framework and supporting the growth and stability of its commercial sector.

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