

CHALLENGES OF REGULATING DIGITAL GOODS UNDER TRADITIONAL SALES LAW: THE SRI LANKAN EXPERIENCE

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The growth of the digital economy has significantly changed the way commercial transactions are conducted, particularly through the sale of digital goods such as software, mobile applications, downloadable content, and online subscriptions. Despite these developments, many legal systems continue to rely on traditional sales laws that were originally designed to regulate transactions involving tangible goods. This paper examines the challenges of regulating digital goods under traditional sales law, with specific reference to the Sale of Goods Ordinance of Sri Lanka. The Ordinance enacted in 1896, is based on concepts such as physical goods, delivery, transfer of ownership. These concepts do not easily apply to digital goods, which are intangible, electronically delivered, and often provided through licensing arrangements rather than outright sale. As a result, uncertainty arises regarding whether digital goods fall within the legal definition of 'goods' under Sri Lankan law and how key sales law principles apply to digital transactions. This paper adopts a doctrinal legal research method to analyse the applicability of traditional sales law concepts, such as passing of property, delivery, risk, implied conditions, and remedies to digital goods. It highlights the legal difficulties faced by buyers and sellers when digital goods are defective, inaccessible, or do not meet contractual expectations. The paper briefly examines how other jurisdictions, particularly the United Kingdom and the European Union, have adapted their legal frameworks to address digital content and digital goods. The study argues that Sri Lanka's current sales law framework is inadequate to effectively regulate digital goods in the modern commercial environment. The absence of clear legal recognition of digital goods under the Sale of Goods Ordinance creates uncertainty for businesses, consumers, and courts. The paper concludes by emphasizing the need for legislative reform or clarification to address digital goods within Sri Lanka's commercial law framework.

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