

# **Sale of Goods Act 1930**

## **Scope of the Act**

The sale of Goods Act deals with 'Sale of Goods Act,1930,'contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

## **Essential elements of Contract of sale**

### **1. Seller and buyer**

There must be a seller as well as a buyer.'Buyer' means a person who buys or agrees to buy goods[Section 29(10)].'Seller' means a person who sells or agrees to sell goods [Section 29(13)].

### **2. Goods**

There must be some goods.'Goods' means every kind of movable property other than actionable claims and money includes stock and shares,growing crops,grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale[Section 2(7)].

### **3. Transfer of property**

Property means the general property in goods,and not merely a special property[Section 2(11)].General property in goods means ownership of the goods. Special property in goods means possession of goods.Thus,there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods.The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

### **4. Price**

There must be a price.Price here means the money consideration for a sale of goods[Section 2(10)].When the consideration is only goods,it amounts to a 'barter' and not sale.When there is no consideration ,it amounts to gift and not sale.

### **5. Essential elements of a valid contract**

In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act, 1872 must also be present since a contract of sale is a special type of a contract.

## **Meaning and types of goods**

### **Meaning of goods[Section 2(7)]**

Goods means every kind of movable property other than actionable claims and money, and includes the following:

- - Stock and share
  - Growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

### **Types of Goods[Section 6]**

#### **1.Existing Goods**

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

##### **a) Specific Goods[Section 2(14)]:**

These are the goods which are identified and agreed upon at the time when a contract of sale is made-For example, specified TV, VCR, Car, Ring.

##### **b) Ascertained Goods:**

Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract. Thus, when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

##### **c) Unsanctioned Goods:**

These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g. goods in stock or lying in lots.

## **2. Future Goods[Section 2(6)]**

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. There can be an agreement to sell only. There can be no sale in respect of future goods because one cannot sell what he does not possess.

## **3. Contingent Goods [Section 6(2)]**

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

## **Price Of Goods**

### **Meaning[Section 2(10)]**

Price means the money consideration for a sale of goods.

### **Modes of determining Price [Section 9(1)]**

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

### **Consequences of not determining the Price in any of the Mode [Section 9(2)]**

Where the price is not determined in accordance with Section 9(1), the buyer must pay seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. It may be noted that a reasonable price need not be market price.

### **Consequence of not Fixing Price by third party[Section 10(1)]**

The agreement to sell goods becomes void if the following two conditions are fulfilled.

- If such agreement provided that the price is to be fixed by the valuation of a third party,
- If such third party cannot or does not make such valuation.

## **Duty of buyer**

A buyer who has received and appropriated the goods, must pay a reasonable price therefor.

## **Right of party not at fault to sue**

Where such a third party is prevented from making the valuation by fault of the seller or buyer, the party not at fault may maintain a suit for damages against the party in fault.

## **Conditions and Warranties**

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulations which may rank as condition and warranty e.g. a mere commendation of his goods by the seller doesn't become a stipulation and gives no right of action to the buyer against the seller as such representations are mere opinion on the part of the seller. But where the seller assumes to assert a fact of which the buyer is ignorant, it will amount to a stipulation forming an essential part of the contract of sale.

### **Meaning of Conditions [Section 12(2)]**

A condition is a stipulation which is essential to the main purpose of the contract. The breach of which gives the aggrieved party a right to terminate the contract.

### **Meaning of Warranty [Section 12(3)]**

A warranty is a stipulation which is collateral to the main purpose of the contract. The breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

### **Conditions to be treated as Warranty [Section 13]**

In the following three cases a breach of a condition is treated as a breach of a warranty:

Where the buyer waives a conditions; once the buyer waives a conditions,he cannot insist on its fulfillment e.g. accepting defective goods or beyond the stipulated time amount to waiving a conditions.Where the buyer elects to treat breach of the condition as a breach of warranty;e.g. where he claims damages instead of repudiating the contract.

Where the contract is not severable and the buyer has accepted the goods or part thereof,the breach of any condition by the seller can only be treated as breach of warranty.It can not be treated as a ground for rejecting the goods unless otherwise specified in the contract.Thus,where the buyer after purchasing the goods finds that some condition is not fulfilled,he cannot reject the goods.He has to retain the goods entitling him to claim damages.

## **Express and Implied Conditions and Warranties**

In a contract of sale of goods,conditions and warranties may be express or implied.

### **1.Express Conditions and Warranties.**

These are expressly provided in the contract.For example,a buyer desires to buy a Sony TV Model No. 2020.Here,model no. is an express condition.In an advertisement for Khaitan fans,guatantee for 5 years is an express warranty.

### **2. Implied Conditions and Warranties**

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract.The various implied conditions and warranties have been shown below:

## **Implied Conditions**

### **1. Conditions as to title [ Section 14 (a)]**

There is an implied condition on the part of the seller that

In the case of a sale,he has a right to sell the goods,and In the case of an agreement to sell,he will have a right to sell the goods at the time when the property is to pass.

## **2. Condition in case of sale by description [Section 15]**

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

- i. Where the buyer has never seen the goods and buys them only on the basis of description given by the seller.
- ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.
- iii. Where the method of packing has been described.

## **3. Condition in case of sale by sample [Section 17]**

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions:

The goods must correspond with the sample in quality. The buyer must have a reasonable opportunity of comparing the bulk with the sample.

The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

## **4. Condition in case of sale by description and sample [Section 15]**

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

## **5. Condition as to quality or fitness [Section 16(1)]**

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

**Exception to this rule:**

There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

1.
  1. The particular for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
  2. The buyer must have relied upon the seller's skill or judgement.
  3. The seller's business must be to sell such goods.

## **6. Condition as to merchantable quality [Section 16(2)]**

Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

## **7. Condition as to wholesomeness**

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

## **8. Conditions implied by custom [Section 16(3)]**

Condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

## **Implied warranties**

### **a) Warranty as to quiet possession [Section 14(b)]**

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

### **b) Warranty of freedom from encumbrances [Section 14(c)]**

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge

or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

- - Warranty as to quality or fitness for a particular purpose annexed by usage of trade [Section 16(3)]
  - Warranty to disclose dangerous nature of goods

**In case of goods of dangerous nature the seller fails to do so, the buyer may make him liable for breach of implied warranty.**

## **Transfer of property in goods**

### **Meaning of Passing of Property/Transfer of Property**

Passing of property implies transfer of ownership and not the physical possession of goods. For example, where a principal sends goods to his agent, he merely transfers the physical possession and not the ownership of goods. Here, the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but is not the owner.

### **Significance of Transfer of Property**

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

#### **1. Who shall bear the risk?**

It is the owner who has to bear the risk and not the person who merely has the possession.

#### **2. Who can take action against third party?**

It is the owner who can take action and not the person who merely has the possession.

#### **3. Whether a seller can sue for price?**

The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

**4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of goods from seller?**

The Official Receiver or Assignee can take the possession of goods from seller only if the ownership of goods has been transferred to the buyer.

**5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer?**

The official receiver or assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

**Rules relating to Passing of Property/Transfer of Ownership from seller to buyer**

For the purposes of ascertaining the time at which the ownership is transferred from seller to the buyer, the goods have been classified into the following three categories:

**a) Specific or ascertained goods**

Specific goods mean goods identified and agreed upon at the time when a contract of sale is made. [Section 2(14)]

**b) Unascertained goods**

**c) Goods sent 'on approval' or 'on sale on return' basis.**

**Performance of the Contract**

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

Delivery (Sections 33-39) Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

1. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.

2. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the “means of obtaining possession” of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

### **Rules as to delivery**

The following rules apply regarding delivery of goods:

- (a) Delivery should have the effect of putting the buyer in possession.
- (b) The seller must deliver the goods according to the contract.
- (c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
- (d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.
- (e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.
- (f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.
- (g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.
- (h) If the goods are to be delivered at a place other than where they are, the risk of

deterioration in transit will, unless otherwise agreed, be borne by the buyer.  
(i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

### **Acceptance of Goods by the Buyer**

Acceptance of the goods by the buyer takes place when the buyer:

- (a) intimates to the seller that he has accepted the goods; or
- (b) retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or
- (c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells.

If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept the quantity be ordered and reject the rest. If the seller delivers with the goods ordered, goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

### **Instalment Deliveries**

When there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

### **Suits for Breach of Contract**

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

### **Anticipatory Breach**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

- (a) his right of performance on the due date in spite of his prior repudiation; or
- (b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

### **Measure of Damages**

The Act does not specifically provide for rules as regards the measure of damages except by stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

## **Unpaid seller and his rights**

Meaning of an Unpaid Seller [Sec 45(1)(2)]

The seller of goods is deemed to be an 'unpaid seller'-

When the whole of the price has not been paid or tendered  
When a bill of exchange or other negotiable instrument (such as cheque) has been received as conditional payment, and it has been dishonoured [Section 45(1)].  
The term 'seller' includes any person who is in the position of a seller (for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for the price) [Section 45(2)].

## **Rights of an Unpaid Seller [Section 46-52, 54-56, 60-61]**

The rights of an unpaid seller can broadly be classified under the following two categories:

Rights against the goods

Rights against the buyer personally

### **I Rights against the goods where the property in the goods has passed to the buyer**

#### **a) Right of Lien [Section 47, 48 and 49]**

Meaning of Right of Lien:

The right of lien means the right to retain the possession of the goods until the full price is received.

Three circumstances under which right of lien can be exercised [Section 47(1)]

1. Where the goods have been sold without any stipulation to credit;

2. Where the goods have been sold on credit, but the term of credit has expired;
3. Where the buyer becomes insolvent.

### **Other provisions regarding right of lien [Sections 47(2), 48, 49(2)]**

1. The seller may exercise his right of lien, even if he possesses the goods as agent or bailee for buyer [Section 47(2)]

2. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show agreement to waive the lien [Section 48].

3. The seller may exercise his right of lien even though he has obtained a decree for the price of the goods [Section 49(2)].

### **Circumstances under which right of lien in the following cases:**

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods [Section 49(1)(a)].

2. When the buyer or his agent lawfully obtains possession of the goods [Section 49(1)(b)]

3. When the seller waives his right of lien [Section 49(1)(c)].

4. When the buyer disposes of the goods by sale or in any other manner with the consent of the seller [Section 53(1)].

5. Where document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods and that person transfers the document by way of sale, to a person who takes the document in good faith and for consideration. [Proviso to Section 53(1)].

### **b) Right of Stoppage of Goods in Transit**

The right of stoppage of goods means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

Conditions under which right of stoppage in transit can be exercised [Section 50]

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are fulfilled:

1. The seller must have parted with the possession of goods, i.e. the goods must not be in the possession of seller.

- 2.The goods must be in the course of transit.
- 3.The buyer must have become insolvent.

### **c)Right of Resale[Section 46(1) and 54]**

An unpaid seller can resell the goods under the following three circumstance:

1.Where the goods are of a perishable nature.2.Where the seller expressly reserves a right of resale if the buyer commits a default in making payment.

3.Where the unpaid seller who has exercised his right of lien or stoppage in transit gives a notice to the buyer about his intention to resell and buyer does not pay or tender within a reasonable time.

## **II Rights against the goods where the property in the goods has not passed to the buyer**

### **Right of withholding delivery[Section 46(2)]**

Where the property in the goods has not been passed to the buyer, the unpaid seller, cannot exercise right of lien, but get a right of withholding the delivery of goods, similar to and co-extensive with lien and stoppage in transit where the property has passed to the buyer.

### **Rights of Unpaid Seller against the Buyer Personally**

The unpaid seller, in addition to his rights against the goods as discussed above, has the following three rights of action against the buyer personally:

1. Suit for price (Sec. 55). Where property in goods has passed to the buyer; or where the sale price is payable 'on a day certain', although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue the buyer for price, irrespective of the delivery of goods. Where the goods have not been delivered, the seller would file a suit for price normally when the goods have been manufactured to some special order and thus are unsaleable otherwise.
2. Suit for damages for non-acceptance (Sec. 56). Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in this case is a suit for damages rather than an action for the full price of the goods.
3. Suit for Interest[Section 61(2)]

In case of breach of the contract on the part of seller, the buyer may sue the seller for interest from the date on which the payment was made.