

LEGAL ASPECTS OF BUSINESS

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THE SALES OF GOODS ACT, 1930

Meaning of Contract of Sale of Goods:-

A 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. There may be a contract of sale between one party owner and another

Sale:-

A contract of sale, means the property in the goods is transferred from the seller to the buyer the contract is called a Sale.

Agreement to sell:-

Agreement to sell refers the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled the contract is called an agreement to sell.

ESSENTIALS OF A CONTRACT OF SALE:-

1. **Two parties:** - There must be two distinct parties i.e., a buyer, a seller, to effect a contract of sales and they must be competent to contract.
2. **Goods:** - There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which form the subject matter of the contract of sale must be movable, Transfer of immovable property is not regulated by the sale of goods Act.,

3. **Price:** - The consideration for the contract of sale, called price, must be money, when goods are exchanged for goods, it is not a sale but barter.
4. **Transfer of general property:** - There must be a transfer of general property as distinguished from special property in goods from the seller to buyer.
5. **Essential elements of a valid contract:** - All the elements of a valid contract must be present in the contract of sale.

CONTRACT OF SALE HOW MADE:-

No particular form is necessary to constitute a contract of sale. If it is, like any other contract, made by the ordinary method of offer by one party and its acceptance by the other party.

It may be made in writing or by word of mouth or by both.

SALE AND AGREEMENT TO SELL – DISTINCTION:-

1. Transfer of property:-

- a. In a sale, the property in the goods passes from the seller to his buyer immediately so the seller is no more the owner of his goods sold.
- b. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions being fulfilled so that the seller continues to be owner.

2. Risk of Loss:-

- a. In a sale in the event of the goods being destroyed the loss falls on the buyer.
- b. In an agreement to sell, if the goods are destroyed, the loss falls on the seller.

3. Nature of Contract:

- a. A sale is an executed contract
- b. Whereas an agreement to sell is an executory contract

4. Consequences of breach:-

- a. In a sale, if there is a breach of contract by the buyer, the seller can sue for price.
- b. In an agreement to sell, the seller can sue only for damages and not for his payment of the price.

5. Right to resell:-

- a. In a sale, the seller can't resell the goods
- b. In an agreement to sell, without prior notice of the resell, he is not bound to do so.

6. Insolvency of Buyer:-

- a. In a sale, if the buyer becomes insolvent before he pays for the goods, must return them to the official Receiver or Assignee.
- b. In an agreement to seller, the seller is not bound to part with the goods until he is paid for.

7. Nature of Rights:-

- a. The buyer acquires a right against the whole work
- b. In agreement to seller, he secures right against a particular individual

8. Insolvency of seller:-

- a. In sale the buyer can recover identical goods from official receiver or assignee of the seller.

HIRE PURCHASE

A hire purchase agreement is a contract where by the owner of the goods lets them on hire to another person called hirer or hire purchaser on payment rent to be paid in installments and upon an agreement that when a certain number of such installments is paid, the property in the goods will pass to hirer.

SUBJECT-MATTER OF SALE

'Goods' form the subject of a contract of sale. They mean every kind of movable property other than actionable claims and money, and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Classification of Goods

- I. **Existing goods:** - Existing goods are owned and possessed by the seller at the time of sale. These goods may be specific ascertained or unascertained
- II. **Future goods:-** Future goods is which the seller does not possess at the time of contract and which will be acquired manufactured or produced by him at some future date

- III. Contingent goods:** - **Contingent** goods refer to the acquisition of which by the seller depends upon a contingency which may or may not happen.

PRICE- The price in a contract of sale must be expressed in money.

1. It may be fixed by the contract itself or
2. It may be left to be fixed in an agreed manner
3. It may be determined from the course of dealing between the parties

TRANSFER OF PROPERTY

Transfer of property in goods from the seller to the buyer is the main object of a contract of sale

There are 3 stages in the performance of a contract of sale of goods by a seller viz.,

Transfer of property in the goods -> ownership

1. Transfer of possession of the goods -> delivery

The property in goods passes from the seller to the buyer for the following reasons:-

1. Risk follows ownership
2. Action against third parties
3. Insolvency of the seller or the buyer
4. Suit for price.

Passing of property:-

The primary rules for ascertaining when the property in goods passes to the buyer are as follows

1. Goods must be ascertained
2. Intention of the parties

PERFORMANCE OF CONTRACT

Meaning:-

Performance of a contract of sale means as regards the seller delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

Rules as to delivery of goods:-

1. Mode of delivery
2. Delivery and payment concurrent conditions
3. Effect of part delivery
4. Buyer to apply for delivery
5. Place of delivery
6. Time of delivery
7. Goods in possession of a third party
8. Cost of delivery
9. Delivery of wrong quantity:-
 - a. Delivery of goods less than contracted for
 - b. Delivery of goods in excess of the quantity
 - c. Delivery of goods contracted fixed with other goods
10. Installment deliveries
11. Delivery to carrier or wharfinger

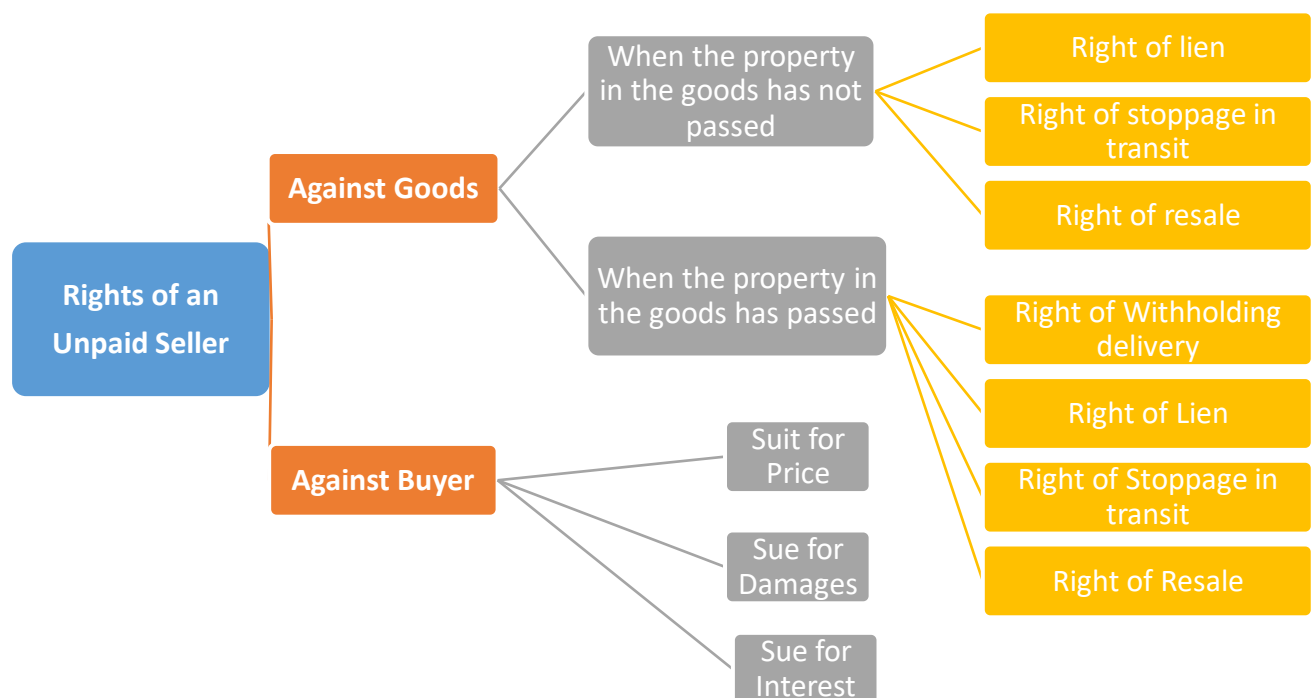
Rights of the buyer:-

1. Right to have delivery as per contract
2. Right to reject the goods
3. Right to repudiate
4. Right to notice of insurance
5. Right to examine
6. Rights against the seller for breach of contract:-
 - a. Suit for damages
 - b. Suit for price
 - c. Suit for specific performance
 - d. Suit for breach of warranty
 - e. Suit for contract before due date
 - f. Suit for interest

Duties of Buyer:-

1. Duty to accept the goods and pay for them in exchange for possession
2. Duty to apply for delivery
3. Duty to demand delivery at a reasonable hour
4. Duty to accept installment delivery and pay for it
5. Duty to take risk of deterioration in the course of transit.
6. Duty to intimate the seller where he rejects the goods
7. Duty to take delivery
8. Duty to pay price
9. Duty to pay damage for non-acceptance

RIGHTS OF AN UNPAID SELLER



Meaning

A seller of goods is deemed to be an unpaid seller

1. When the whole of the price has not been paid or tendered

2. When a bill of exchange or other negotiable instrument has been received as a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonored of the instrument or otherwise.

As against the goods

1. It is available to the unpaid seller when
 - a. The goods have been sold without any stipulation as to credit
 - b. The goods have been sold on credit, but the term of the credit has expired
 - c. The buyer becomes insolvent

2. Right of stoppage in transit

The seller may resume possession of the goods, as long as they are in the course of transit and may retain them until payment or tender of the price.

The right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

3. Right of re-sale

the unpaid seller can re-sell the goods

- i. Where the goods are of a perishable nature
- ii. Where he has exercised his right of lien or stoppage in transit and given notice to the buyer of his intention to re-sell the goods and the buyer has not within a reasonable time paid the price
- iii. Where the seller expressly reserves a right of resale in case the buyer should make default.

4. Right of withholding delivery

When the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

As against the buyer personally:-

1. Suit for price:-

Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for price of the goods.

2. **Damage for non-acceptance:** - where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non- acceptance.
3. **Repudiation of contract before due date:-** when the buyer in a contract of sale repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
4. **Suit for interest:** - The seller can recover interest on price from the date on which the payment become due, if there is a special agreement to the effect.
5. **Auction Sale:** - A sale by auction is a public sale where different in tending buyer's tries to outbid each other. The goods are ultimately sold to the highest bidder. The law on auction sales is contained in see by of the sale of goods act.

CONDITIONS AND WARRANTIES

Conditions

Sec.12 (2) of the Sale of Goods Act, 1930 defined as, "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated".

Characteristics of Conditions

1. A condition is a stipulation or term regarding goods forming part of the contract of sale and it is not a mere expression of opinion or commendatory statement (i.e., statement of praise).
2. A condition is a stipulation in a contract of sale essential to the main purpose of the contract. It goes to the very root of the contract and forms the very foundation of it.
3. The breach of a condition gives the aggrieved party the right to treat the contract as repudiated, and also entitles him to claim damages.
4. If a condition in a contract of sale is broken, no doubt, the aggrieved party can treat the contract as repudiated and reject the goods. But he has also an alternative option. That is, he can treat the breach of condition as a breach of warranty and can claim only damages without rejecting the goods.

Warranties

Sec.12 (13), of the Sale of Goods Act, 1930 defined as, “A warranty is a stipulations collateral to main purpose of the contract, the breach of which gives rise to only claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

Characteristics of Warranty

1. A warranty is a stipulation or term regarding goods forming part of the contract of sale, and is not a mere expression of opinion or statement of commendation or praise.
2. A warranty is a stipulation or term, which is not essential to the main purpose of the contract and is only collateral (i.e., incidental, subsidiary or minor) to the main purpose of the contract. In short, it is only of secondary importance.
3. The breach of a warranty gives the aggrieved party only the right to sue for damages, and not the right to repudiate the contract. It may be noted that the measure of damages for breach of warranty is the estimated loss directly or naturally resulting in the ordinary course of events from the breach.

Express and implied conditions and warranties

Express conditions and warranties are those which are agreed upon between the parties at the time of the contract.

Implied conditions

- Conditions as to title
- Sales by description the sample
- Condition as to quality or fitness
- Condition as to merchantability
- Sale by sample
- Condition implied by custom
- Condition as to wholesomeness

Implied warranties

- Warranty of quiet possession
- Warranty of freedom from encumbrances

- Warranty as to quality or fitness by usage of trade
- Warranty to disclosure dangerous nature of goods

Difference between Condition and Warranty

S. No.	Condition	Warranty
1	Relation to main purpose: it is an essential to the main purpose of the contract	It is subsidiary to the main purpose of the contract
2	Rights of aggrieved party: Breach of condition gives the aggrieved part a right to repudiate the contract and to get damages	Breach of warranty entitles the aggrieved party to claim damages only
3	Treating condition as warranty: Under certain circumstances as breach of condition may be treated as a breach of warranty	A warranty cannot become a condition
4	Legal effect of breach: Breach of condition will affect the legality of the contract	Breach of warranty will not affect the legality of contract
5	Discharge of breach: In case of breach of condition the aggrieved party is free to discharge of his promise.	In case of breach of warranty the aggrieved party is not free to discharge of his promise.

CAVEAT EMPTOR

It is originated from the Latin Word. It means “let the buyer beware”, i.e., a contract of sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly.

Exceptions

- Fitness for buyer’s purpose
- Sale under a patent or trade name
- Usage of trade
- Consent by fraud.

Web links

- <http://uputd.gov.in/site/writereaddata/siteContent/indian-contract-act-1872.pdf>
- <https://www.youtube.com/watch?v=GUbIINDIz0M>
- <http://www.consumereducation.in/PDFs/Sale%20and%20Goods%20Act1930.pdf>
- <https://www.jstor.org/stable/24868235?seq=1>
- [https://www.researchgate.net/publication/277887105 The seller's liability for material defects of the goods and the buyer's legal remedies in that case](https://www.researchgate.net/publication/277887105_The_seller's_liability_for_material_defects_of_the_goods_and_the_buyer's_legal_remedies_in_that_case)
- Conditions and Warranties:
<https://www.youtube.com/watch?v=T72Dg3VZa18&list=PL0vpsdL4-2727TLkWdPTe6rEMLsxiDwHf&index=26>
- <http://www.freebookcentre.net/Law/Law-Books.html>
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