

Introduction:

5.1 Sale of Good Act, 1930

The law relating to sale of goods is contained in the Sale of Goods Act 1930. The Indian Sale of Goods Act was passed in the year 1930. It came into force on 1st July 1930.

The present act is called "The Sale of Goods Act, 1930".

5.2 Contract of sale

Section 4 of the Sale of Goods Act, 1930 defines "a contract of sale as a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price".

5.3 Sale

It means the transfer of goods immediately from a seller to a buyer for a price.

5.4 Agreement to sell

It is a contract whereby the seller agrees with the buyer to transfer the title of ownership on a future date upon satisfying certain conditions.

5.5 Difference between a sale and an agreement to sell

Sale	Agreement to sell
i) Basis of execution It is an executed contract	It is an executory contract
ii) Transfer of ownership It is a transfer of ownership of goods in consideration for a price of the buyer	It is a contract whereby agrees to transfer the property in goods to the buyer for a price
iii) Conveyance of property It creates right in rem	It creates right in personam
iv) Transfer of goods The property in the goods passes to the buyer immediately	The property in the goods is to be passed to the buyer after the lapse of a certain time or after the fulfillment of certain conditions
v) Insolvency of seller If the seller becomes insolvent, the buyer can recover the goods from the official receiver	If the seller becomes insolvent, the buyer cannot claim the goods.

5.6 Essentials of a contract of sale

- * There must be two parties. That is a buyer and a seller. Here, buyer means a person who buys the goods and seller means a person who sells the goods.
- * The subject matter of the contract of sale must be movable property.
- * The price for the contract of sale must be money.
- * There must be transfer of property in the goods from the seller to the buyer.
- * An contract of sale may be absolute or conditional.

5.7 Difference between Sale & Hire Purchase

Sale	Hire Purchase
1) It is a transfer of ownership from seller to buyer	It is a contract of bailment plus option to purchase or return it
2) The buyer becomes the owner of the goods	The hire purchaser is only a bailee of the goods.

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| 3) The seller has no right to take back the goods | The hire vendor can take back the goods if any breach is committed in the hire purchase agreement |
| 4) The buyer has no option to agree and return the goods | The hire purchaser can terminate and return the goods. |
| 5) The buyer can transfer a good title to any person, who buy from him | The hire purchaser cannot transfer a good title. |
| 6) Sale is liable to sales tax | It is not liable for sales tax. |
| 7) It is a contract of sale | It is an agreement of hiring |
| 8) A contract of sale need not be in writing | The hire purchase agreement must be in writing |
| 9) All contracts of sale are governed by Sale of Goods Act, 1930 | The hire purchase agreements are governed by Hire purchase Act 1972 |
| 10) The buyer of the goods can transfer a good title to third party | The hirer cannot transfer a good title to third party |

5.8 Goods

Section 6 provides that goods form the subject matter of a contract of sale.

According to section 2(7) of the Act, "Goods" means every kind of movable property other than actionable claims and money which are agreed to be delivered before sale.

5.9 Goods includes:

- i) Every kind of movable property
- ii) Stock and shares
- iii) Growing crops and grass and things attached to the earth which are agreed to be cut before sale.

5.10 Types of goods

a) Existing goods

Existing goods are those goods which are either owned by the seller at the time of contract of sale.

It is divided into three types

- i) Specific goods
- ii) Ascertained goods
- iii) Unascertained goods

b) Future goods:

Goods not possessed at the time of making of the contract but are to be manufactured or produced or acquired after making of the contract are called future goods.

Example: A agrees to sell B all the cotton which is to be produced in his garden for the next year. The cotton in this agreement is considered to be future goods.

c) Contingent goods:

Contingent goods are the goods which are also not in existence at the time of contract of sale.

Example: A agrees to sell a land to B, if A wins the race concerning that land. Winning of the race is the contingency and A's title depends on that.

5.11 Document of title to goods:

A document of title to goods is one which enables its possessor to deal with the goods described in it as if he were the owner.

Conditions:-

* It must be used in the ordinary

course of business

- * The undertaking to deliver the goods to the possessor of the document must be unconditional.
- * The possessor of the document must be entitled to receive the goods unconditionally.

5.12 Price:-

Price means the money consideration for a sale of goods. Price is the money paid by the buyer for the purchase of goods. The price may be partly in money and partly in goods.

Modes of fixing the price (section 9):

- * Fixation of price by contract of sale
- * Fixation of price in a manner provided in the contract
- * Price by course of dealings
- * Reasonable price
- * Fixation of price by third party
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5.13 Duty of Buyer

A buyer who has not received and appropriated the goods, must pay a reasonable price.

5.14 Conditions and Warranties

Representations which become a part of a contract of sale are termed as stipulations which may consist of conditions and warranties.

Conditions is a representation made by the seller at the time of contract of sale and is the main basis of contract.

Definition:

Sec 12 (2) defines the term condition thus "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".

Case Law: Antony Thomas V. Ayappuni Mani
Example: A went to B a horse dealer and told him that he wanted a horse which could run at a speed of 40 km. Per hour. B pointed out at a particular horse and said this would serve your purpose. Subsequently, it was discovered that the horse runs only at a speed of 20 km per hour. In this case representation made by the seller is a condition as it is essential to the main purpose of the contract. A can reject the contract and can get back the price.

Types of conditions :-

* Express conditions

It is a condition which has been expressly agreed upon by both the parties at the time of the contract of sale.

* Implied conditions

It is a condition, which the law implies into the contract of sale.

Warranty:

A warranty is a representation collateral to the main purpose of the contract.

Example:- B, about to sell a car to A represents that the car would give 18 k.m. per litre of petrol. This stipulation that relates to the car does not refer to the basic purpose and yet it relates to a collateral purpose. This representation is a warranty.

5.15 Transfer of Ownership

Ownership of goods is transferred from the seller to the buyer. Transfer of ownership or property in goods is the main aim of a contract of sale.

Significance of transfer of property in goods :-

- * Risk follows the ownership
- * Action against third party
- * Seller's right to recover the price
- * Insolvency of the seller or the buyer

Legal rules :-

- * In the case of unascertained goods (sec 18)
- * In the case of ascertained goods (sec 19)
- * Goods to be weighed or measured (sec 22)
- * Goods sent on sale for cash or return

Transfer of Title by Non owners

- * Sale by Mercantile Agent (sec 27)
- * Sale by co-owner (sec 28)
- * Sale by seller in possession of goods got under a voidable contract (sec 29)
- * Sale by a seller in possession of goods after sale (sec 30)
- * Sale by buyer in possession of goods after sale

- * Sale under implied authority of the owner
- * Resale by an unpaid seller
- * Sale by pawnee
- * Sale by a finder of lost goods
- * Title by estoppel (sec 27)
- * Sale in market overt

5.16 Performance of a Contract of Sales

In performance, the seller has to deliver the goods to the buyer and the buyer has to accept the delivery and the price to the seller.

Delivery:-

It means voluntary transfer of possession of goods from one person to another. Delivery is a bilateral act. It requires two parties. Delivery may be made by doing anything which the parties agree shall be treated as delivery.

Elements:-

- i) A person has possession
- ii) He transfers that possession to another person
- iii) Constructive delivery.

Modes of Delivery

1. Actual delivery

Actual delivery takes place where the goods are handed over to the buyer by the seller. It is also known as physical delivery.

Example: A sold to B 100 bags of rice and delivered the same to him. In this case, there is actual delivery of rice from A to B.

2. Symbolic delivery

The term symbolic delivery may be defined as the delivery by doing some act which has the effect of putting the goods in possession of the buyer.

Example: Delivery of the key to the ware house or delivery of the bill of lading, delivery of documents of titles to goods etc.

3. Constructive delivery

It is also known as delivery by attainment. The person who is in actual possession of the goods acknowledges to the buyer to hold them thereafter on behalf of the buyer.

Example: Where the seller agrees to hold the goods as bailee for the buyer, there is constructive delivery.

Legal rules relating to Delivery

- ★ Payment and delivery (section 32)
- ★ Mode of delivery (section 33)
- ★ Effect of part delivery (section 34)

Case Law: 1 Union of India Vs W.P. Factories Ltd

Case Law: 2 Mitchell Reid Co. V Baldev Das

- ★ Buyer to apply for delivery (section 35)
- ★ Expenses on delivery (section 36 (2))
- ★ Place of delivery (section 36 (1))
- ★ Time of delivery (section 36 (2))
- ★ Goods in possession of a third party
(section 36 (d))
- ★ Delivery of wrong quantity (section 37)
- ★ Instalment delivery
- ★ Delivery to a carrier (section 39)
- ★ Delivery at a distant place (section 40)
- ★ Right to examine the goods (Section 41)
- ★ Acceptance by the buyer
- ★ Liability of buyer for refusing delivery

5.17 Rights of an Unpaid seller

The seller who has not received the full sale price of the goods sold is called as unpaid seller.

Definition:-

Section 45 defines an unpaid seller as follows: "The seller of goods is deemed to be an unpaid seller with the meaning of this Act."

Rights:-

The Unpaid Seller has two rights

a) Rights ~~right~~ against the goods

As per section 46, the unpaid seller has three distinct rights even though property in the goods is transferred to the buyer.

i) Right of lien:-

Lien is a right to retain the possession of the goods until the payment of the price in full.

ii) Right to stop the goods in transit

An unpaid seller can stop the goods in transit and resume possession

If the buyer has in the meanwhile become insolvent. The goods can be stopped only during the time of the transit and not after the transit is over.

iii) Right of Resale (section 54)

The unpaid seller has the right to resell the goods to a new buyer. This right is called as right of resale.

b) Rights against the buyer

An unpaid seller has the following rights against the buyer personally.

i) Suit for price (section 55)

Where the property in goods has passed to be buyer and the goods have been delivered to him, the only remedy for the seller is to sue for the price.

ii) Suit for damages (section 56)

Where the buyer wrongfully neglects or refuses to accept the goods and

pay the price, the seller can sue the buyer for damages for non acceptance

iii) Right to terminate the contract:

If the buyer repudiates the contract of sale before the date of delivery, the unpaid seller can terminate the contract of sale and sue for damages.

iv) Suit for interest:

As a general rule, the buyer is not liable to pay any interest for the price money which is due. The unpaid seller can sue the buyer for reasonable rate of interest on the unpaid amount from the time it was due.

5.18 Rights of the buyer:

i) Right to have delivery

The buyer has the right to demand delivery of goods as per the contract.

ii) Right to reject the goods

If the goods are not delivered as per the contract, then the buyer has the right to

return the goods to the seller

iii) Right to repudiate the contract

The buyer of the goods is not bound to accept delivery of the goods in instalments. Hence he can repudiate the contract unless otherwise agreed.

iv) Right to examine the goods

The buyer has the right to examine the goods before he accepts them, which are delivered by the seller, for the purpose of ascertaining whether the goods are in conformity with the contract.

v) Right to sue for breach of contract

The buyer has the right to sue for damages when the seller refuses to deliver goods or when the goods are not delivered as per the contract. He may sue the seller for damages for non-delivery of the goods.

5.19. Duties of the buyer

i) To take delivery of the goods

It is the first and foremost duty of the buyer to accept the goods which are delivered by the seller and to pay for

them as per the contract

i) To apply for delivery of goods

It is the duty of the buyer to apply for delivery of goods unless there is any express contract.

ii) Duty to demand delivery of goods at a reasonable time.

It is the duty of the buyer to demand delivery of goods at a reasonable hour.

iii) Duty to accept instalment delivery and pay for it

It is the duty of the buyer to accept delivery of goods by instalments only when both buyer and seller agree to supply goods by instalments.

iv) Duty to intimate the seller

When the buyer of the goods refuses to accept the goods, then it is his duty to inform the seller about the refusal.

v) Duty to pay damages for non-acceptance

When the buyer wrongfully neglects or refuses to accept the goods then the buyer has to compensate the seller for the price of the goods.

5.20 Rights of Seller

- i) Sue for the price:

If the buyer fails to pay the price of the goods, the seller can sue for the price even though the goods are in his possession.

- ii) Suit for damages for non-acceptance

Where the buyer wrongfully refuses to accept and pay for the goods, the seller has the right to sue for damages for non-acceptance.

- iii) Right to resale

When the seller has not received payment for the goods sold, he has the right to retain the goods until the payment of the price.

- iv) Right to stop the goods

To stop the goods in transit and resume possession of the goods, until payment of the price (sec 49 (2) and 50).

- v) Right to deliver goods:

As per section 35 of the Act, the seller has the right to deliver goods to the buyer only when the buyer applies for delivery.

5.21 Duties of seller

i) Duty to prepare invoice

It is the duty of the buyer to prepare invoice or bill for the goods purchased.

ii) Duty to deliver goods

It is the duty of the seller to deliver the goods in accordance with the term of the contract (sec 31)

iii) Duty to borne expenses

It is the duty of the seller to bear all expenses of and incidental to making a delivery, unless otherwise agreed.

iv) To deliver right quantity

The buyer has the right to deliver the right quantity as per the contract.

v) Duty to inform the buyer

It is the duty of the seller to inform the buyer in time, when the goods are sent by a sea route, so that the buyers may get the goods insured.