

Lesson 3: Sale of Goods Act, 1930

1. Introduction

Sale of Goods Act, 1930 extends to the whole of India except the State of Jammu and Kashmir. It shall come into force on the 1st day of July, 1930.

2. Important Definitions [Section 2]

“Buyer” means a person who buys or agrees to buy goods. [Section 2(1)]

“Delivery” means voluntary transfer of possession from one person to another. [Section 2(2)]

Goods are said to be in a “deliverable state” when they are in such state that the buyer would under the contract be bound to take delivery of them. [Section 2(3)]

“Future goods” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. [Section 2(6)]

“Goods” means every kind of moveable property other than actionable claims and money and 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)]

“Mercantile agent” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods. [Section 2(9)]

“Price” means the money consideration for a sale of goods. [Section 2(10)]

“Property” means the general property in goods, and not merely a special property. [Section 2(11)]

“Quality of goods” includes their state or condition. [Section 2(12)]

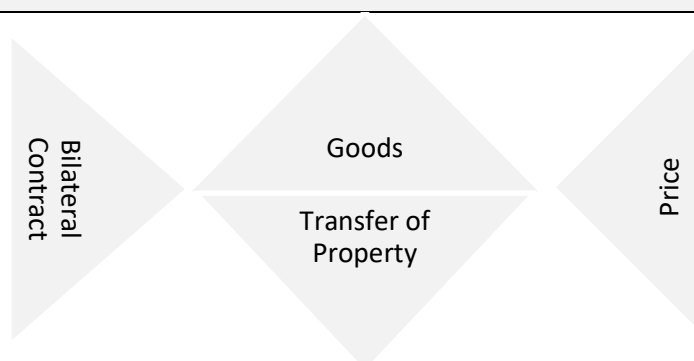
“Seller” means a person who sells or agrees to sell goods. [Section 2 (13)]

“Specific goods” means goods identified and agreed upon at the time a contract of sale is Made. [Section 2 (14)]

3. Contract of Sale of Goods [Section 4]

- 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 money consideration called the price.
- A contract of sale may be **absolute** or **conditional**.

Essentials of a contract of sale of goods:



DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

- In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.
- An agreement to sell is an executory contract; a sale is an executed contract.
- An agreement to sell is a contract pure and simple but a sale is contract plus conveyance.
- In an agreement to sell and the goods are destroyed by accident, the loss falls on the seller. In a sale, the loss falls on the buyer even though the goods are with the seller.

4. Formalities of the Contract [Section 5]

- A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer.
- The contract may provide for the immediate delivery of the goods or immediate payment of the price or both or for the delivery or payment by instalments or that the delivery or payment or both shall be postponed.
- A contract of sale may be made in writing /by word of mouth/ partly in writing and partly by word of mouth/ may be implied from the conduct of the parties.

5. Existing or Future Goods [Section 6]

- The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.
- There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

6. Goods perishing before making of contract [Section 7]

Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made perished or become so damaged as no longer to answer to their description in the contract.

7. Goods perishing before sale but after agreement to sell [Section 8]

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

8. Ascertainment of Price [Section 9]

- The price in a contract of sale:
 - may be fixed by the contract or
 - may be left to be fixed in manner thereby agreed or
 - may be determined by the course of dealing between the parties.
- Where the price is not determined in accordance with the foregoing provisions the buyer shall pay the seller a reasonable price.
- Reasonable price is a question of fact dependent on the circumstances of each particular case.

9. Agreement to sell at valuation [Section 10]

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.
- However, if the goods or any part thereof have been delivered to and appropriated by the buyer he shall pay a reasonable price there for.
- Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

10. Condition and warranty [Section 12]

- A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. At the same point of time, whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract.
- **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.
- **Warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

11. Circumstances when condition to be treated as warranty [Section 13]

- **Where a contract of sale is subject to any condition to be fulfilled by the seller:** The buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- **Where a contract of sale is not severable and the buyer has accepted the goods or part thereof:** The breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated unless there is a term of the contract express or implied to that effect.

12. Implied undertaking as to title [Section 14]

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, 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.
- an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

13. Sale by description and Sale by Sample [Section 15 & Section 17]

Sale by description [Section 15]:

- **Where there is a contract for the sale of goods by description:** There is an implied condition that the goods shall correspond with the description.
- **In a sale by description,** the buyer relies for his information on the description of the goods given by the seller.
For example: Where “Mr. P” buys “New Maruti Car” from “Mr. Q” and the car is not new, he can reject the car.
- **If the sale is by sample as well as by description:** It is not sufficient that the bulk of the goods correspond with the sample, if the goods do not also correspond with the description.

Sale by sample [Section 17]: A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect.

In the case of a contract for sale by sample there is an implied condition that:

The bulk shall correspond with the sample in quality.

The buyer shall have a reasonable opportunity of comparing the bulk with the sample.

The goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

14. Implied conditions as to quality or fitness [Section 16]

There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as follows:

- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.
- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
However, if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.
- Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose.

However, in the case of a contract for sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

15. Passing of Property / Transfer of Ownership [Section 18-20]

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. The property in the goods passes from the seller to the buyer for the following reasons:

- When there is a danger of the goods being damaged by the action of third parties it is generally the owner who can take action.
- The general rule is that risk follows the ownership whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise then subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.
- In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

16. Passing of Property in Specific Goods [Section 20, 21, 22 and Section 24]

In a sale of specific/ascertained goods, the property in them passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of parties and circumstances of the case. Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

- **Specific goods in a deliverable state:** Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. The fact that the time of delivery or the time of payment is postponed does not prevent the property from passing at once.(Section 20)

Note: Deliverable state means such a state that the buyer would be bound to take delivery of the goods.

- **Specific goods to be put into a deliverable state:** Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.(Section 21)
- **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price:** Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.(Section 22)
- **When goods are delivered to the buyer “on approval” or “on sale of return” or other similar terms the property therein passes to the buyer:**
 - When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
 - If he does not signify his approval or acceptance but retains the goods without giving notice of rejection, in such a case:
 - a. **If a time has been fixed for the return of the goods:** On the expiration of such time; and
 - b. **If no time has been fixed:** On the expiration of a reasonable time. (Section 24)

17. Sale of unascertained goods and appropriation [Section 23]

- Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made.
- Where in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract.

18. Passing of Risk [Section 26]

- The general rule is that goods remain at the seller's risk until the ownership is transferred to the buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not. For example, 'P' buys goods of 'Q' and property has passed from 'Q' to 'P'; but the goods remain in 'Q's warehouse and the price is unpaid. Before delivery, 'Q's warehouse is burnt down for no fault of 'Q' and the goods are destroyed. 'P' must pay 'Q' the price of the goods as he was the owner.
- But the parties may agree that risk will pass at the time different from the time when ownership passed. For example, the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or vice versa.

19. Transfer of Title by Person not the Owner [Section 27 – 30]

- The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner gives no title to the buyer.
- The rule is expressed by the maxim; "**Nemo Dat Quod Non Habet**" i.e. no one can pass a better title than he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess.

Thus, even a bona fide buyer who buys stolen goods from a thief or from a transferee from such a thief can get no valid title to them. Since the thief has no title nor could he give one to any transferee. **For Example:** "P" finds a ring of "Q" and sells it to a third person who purchases it for value and in good faith. The true owner, i.e. "Q" can recover from that person for "P" having no title to the ring could pass none the better.

Exception to the General Rule: Under the exceptions the buyer gets a better title to the goods than the seller himself. i.e. these exceptions are given below:

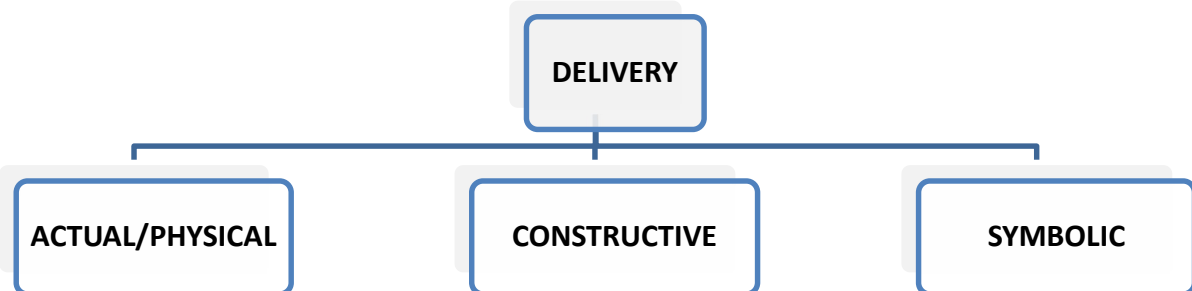
- **Sale by a mercantile agent:** A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or documents of title to the goods with the consent of the owner and who sells the goods in the ordinary course of his business.
- **Sale by a co-owner:** A buyer who buys in good faith from one of the several joint owners who is in sole possession of the goods with the permission of his co-owners will get good title to the goods.
- **Sale by a person in possession under a voidable contract:** A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.
- **Estoppel:** If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third-party's right to sell.
- **Sale by an unpaid seller:** Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.

20. Performance of the Contract of Sale

- 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 is 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 are concurrent conditions i.e. they both take place at the same time as in a cash sale over a shop counter.

21. Delivery (Sections 33-39)

Delivery is the voluntary transfer of possession from one person to another.



22. Rules as to delivery

The following rules apply regarding delivery of goods:

- Delivery should have the effect of putting the buyer in possession.
- The seller must deliver the goods according to the contract.
- The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
- 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.
- 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.
- 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.
- 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.
- 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.

23. 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. For example: pledges/resells.

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

- reject the whole; or
- accept the whole; or
- accept the quantity ordered and reject the rest.

24. Anticipatory Breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may both 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:

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

25. Unpaid Seller (Sections 45-54)

The seller of goods is deemed to be unpaid seller:

- When the whole of the price has not been paid or tendered; or
- When a conditional payment was made by a bill of exchange or other negotiable instrument and the instrument has been dishonoured.

Rights of an Unpaid Seller against the Goods

An unpaid seller's right against the goods are:

- The lien or right of retention.
- The right of stoppage in transit.
- The right of resale.
- The right to withhold delivery.

26. Rights of an unpaid seller against the buyer (Sections 55 and 56)

- An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.
- The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.
- The seller may sue the buyer for damages/ breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.
- An unpaid sellers rights against the buyer personally are:
 - suit for the price.
 - suit for damages.

27. Auction Sales (Section 64)

In the case of a sale by auction:

- Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
- Sale is complete when the auctioneer announces its completion by the fall of the hammer/ in other customary manner and until such announcement is made any bidder may retract his bid.
- A right to bid may be reserved expressly by or on behalf of the seller and where such right is expressly so reserved but not otherwise the seller or any one person on his behalf may subject to the provisions hereinafter contained bid at the auction.
- Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself/ to employ any person to bid at such sale/ for the auctioneer knowingly to take any bid from the seller/any such person and any sale contravening this rule may be treated as fraudulent by the buyer
- Sale may be notified to be subject to a reserved or upset price.
- If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.
