

THE SALE OF GOODS ACT, 1930

FORMATION OF CONTRACT OF SALE

INTRODUCTION :

- It came into force on the 1st of July, 1930.
- It is applicable to whole of India.
- The Law relating to this statute was contained in the Chapter VII of the Indian Contract Act, 1872, priorly.
- Where the Sale of Goods Act is silent on any point, the general principles of the law of contract apply.

The term 'contract of sale' is defined in Section 4 (1) of the Sale of Goods Act, as under : "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price. "

DEFINITIONS

Buyer : "Buyer means a person who buys or agrees to buy goods." [Sec. 2(1)]

Seller : "Seller means person who sells or agrees to sell goods." [Sec. 2(13)]

Goods : "Goods" means every kind of movable property other than actionable claims and money; and includes stocks 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. [Sec. 2 (7)]. {everything movable is goods, except – Money, Actionable Claims and Immovable assets (also Services)}

Classification of Goods:

Existing Goods

Goods which are already in existence at the time of contract of sale

Contingent Goods

Acquisition of such goods depends upon a contingency which may or may not happen.

Example: A agrees to sell to B a certain car provided he is able to purchase it from its present owner.

Future Goods

Goods which are yet to be manufactured in future.

Example: A contracts to sell to B all the apples which will be produced in his garden next year

Specific/Ascertained Goods

Goods which are identified and agreed upon at the time of a contract

Example: A particular painting

General /Unascertained Goods

Goods which are not specifically identified but indicated by description at the time of the Contract

Example: Any 1 pen out of 50 pens

Price

“Price’ means the money consideration for a sale of goods.” [Sec. 2 (10)]. No sale can take place without a price.

Therefore,

- a. Exchange of goods for goods will not be considered as sale
- b. Gift of goods will not be considered as sale
- c. Exchange of goods for goods along with price will be considered as sale

Delivery:

“Delivery’ means voluntary transfer of possession from one person to another” [Sec. 2 (2)]. Therefore, in case of theft, there is no delivery, though there is a transfer of possession. Two types of delivery consists actual and constructive.

ESSENTIAL ELEMENTS OF A VALID CONTRACT OF SALE

Following are the essential elements of a valid contract of sale:

All the requirements of a valid contract must be fulfilled:

A contract of sale must fulfil all the requirements of a valid contract, e.g., free consent, consideration, competency of the parties, lawful object and consideration. If any of the essential elements of a valid contract is missing then the contract of sale will not be valid.

There must be two parties to the contract of sale:

There must be two parties, one seller and the other buyer. The reason for the same is that in a contract of sale, the ownership of the goods has to pass from one person to another.

There must be some goods as a subject-matter:

The ‘goods’ as defined in Section 2 (7) of the Sale of Goods Act.

The property in the goods must be transferred to the buyer:

The term ‘property’ in the goods means the ownership of the goods. In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. The term ‘property’ here means the general property, i.e., all ownership rights of the goods, and not merely a special property, i.e., limited rights such as right of a Pawnee.

There must be some price for the goods:

The goods must be sold for some price. The term ‘price’ is defined in Section 2 (10)

A contract of sale can be absolute or conditional [Section 4(2)].

- **DISTINGUISH BETWEEN**
1. SALE AND AGREEMENT TO SELL

SALE	AGREEMENT TO SELL
Transfer of property: the property in goods passes from the seller to the buyer immediately	Transfer of property: In agreement to sell, the ownership of the property will pass from the seller to the buyer at some future time or on fulfilment of some conditions.
Nature of contract: A sale is an executed contract	Nature of contract: An agreement to sell is an executory contract
1. Consequences of Breach by buyer : In a sale, if the buyer fails to pay for the goods, the seller can: 1. Sue him for recovery of price 2. Claim damages	Consequences of Breach by buyer : In an agreement to sell, the seller can only sue for damages for breach of contract
1. Consequences of Breach by seller : In a sale, if the seller defaults, i.e. commits a breach, the buyer can: 1. Claim delivery of the goods from third party 2. Sue for damages	Consequences of Breach by seller: In the case of an agreement to sell, if the seller commits a breach, the buyer can only claim damages.
Transfer of risk: In a sale, if the goods are destroyed, the loss falls on the buyer even though they are in the possession of the seller.	Transfer of risk: In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though they are in the possession of the buyer.
Subsequent destruction: A subsequent loss or destruction of the goods is the liability of the buyer.	Subsequent destruction: Such loss or destruction is the liability of the seller.

2. **SALE AND HIRE- PURCHASE**

SALE	HIRE-PURCHASE
Property in the goods is transferred to the buyer immediately at the time of Contract.	The property in goods passes to the hirer upon payment of the last instalment.
The position of the buyer is that of an Owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.

The seller takes the risk of any loss resulting from the insolvency of the buyer.	4. The owner takes no such risk, for if the hirer fails to pay an instalment the owner has right to take back the goods.
5. The buyer can resell the goods.	The hirer cannot resell the goods till the last instalment.
Tax is levied at the time of the contract.	6. Tax is not leviable until it eventually ripens into a sale.

3. SALE AND BAILMENT

SALE	BAILMENT
The property in goods is transferred from the seller to the buyer.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage, etc.
The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

FORMATION AND MODES OF A CONTRACT OF SALE

A contract of sale is made by an offer to buy or sell by one person, and the acceptance of such offer by another person. And it may be made in any one of the following modes [Section 5 (1)]:

- There may be immediate delivery of goods, but the price to be paid at some future date.
- There may be immediate payment of price, but the delivery to be made at some future date.
- There may be immediate payment of price and the immediate delivery of goods.
- The price and delivery of the goods may be postponed.
- The price and delivery of the goods may be agreed to be made in instalments.

It may be noted that no particular form is necessary for the making of a contract of sale.

It may be in any form, e.g., a contract of sale may be made

In writing, or By words of mouth, or Partly in writing and partly by words of mouth, or May be implied from the conduct of the parties. However, if any particular mode is prescribed by any law, then the contract of sale must be made in that particular mode [Section 5 (2)].

CONDITIONS AND WARRANTIES

In every contract of sale of goods there are certain stipulations made with reference to goods which are the subject-matter thereof. Such stipulations differ in character and importance. The clause divides stipulations into conditions and warranties.

Condition:

“A condition is a stipulation essential to the main purpose of the contract, the breach of which gives a right to treat the contract as repudiated.”

Warranty:

“A 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 a right to reject the goods and treat the contract as repudiated”.

CONDITION	WARRANTY
1. A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
2. In case of breach of condition, aggrieved party can: Rescind the contract, return the goods and claim refund. Claim damages	In case of breach of warranty, aggrieved party can only claim damages.
3. A breach of condition may be treated as a breach of warranty	A breach of warranty cannot be treated as a breach of condition.

CONDITIONS :

Express conditions: Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

Implied Conditions:

It is a condition, which the law implies into the contract of sale. The law presumes that the parties have incorporated it into their contract.

The implied conditions are read into every contract of sale unless they are expressly excluded by the parties.

In case of conflict between the express and implied conditions, the express term shall prevail and the implied terms shall not be considered.

Following are the implied conditions which are contained in the Sale of Goods Act :

Conditions as to title:

According to this condition, it is presumed that the seller has a valid title to the goods, i.e., he has the right to sell the goods. If later on, the buyer comes to know that the seller had no valid right to sell the goods, then he may reject the goods and claim the refund of the price, if already paid.

This implied condition may be analysed as under:

In case of sale, the implied condition is that the seller has the right to sell the goods, and

In case of an agreement to sell, the implied condition is that the seller will have the right to sell the goods at the time when the ownership is to pass from the seller to the buyer.

Condition as to description:

Sometimes, the goods are sold by description. In such cases, the implied condition is that the goods shall correspond with the description.

The term 'correspondence with description' means that the goods purchased by the buyer must be the same which were described by the seller.

If subsequently, it is discovered that the goods do not correspond with the description, the buyer may reject the goods and claim the refund of the price, if already paid.

Condition as to sample:

In case of sale of goods by showing the sample to the buyer, there are following three implied conditions,

- That the goods delivered shall correspond with the quality of the sample
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- That the goods shall be free from latent defects (i.e., the defects which are not discoverable on reasonable examination of sample)

Condition as to sample as well as description:

Sometimes, the seller shows sample of the goods to the buyer and also gives him their description.

In such cases, the implied condition is that the goods shall correspond with both, the sample as well as description.

Condition as to quality or fitness for buyer's purpose:

Ordinarily, there is no implied condition that the goods shall be fit for the particular purpose of the buyer. Buyer is not responsible To know the particular purpose of buyer. If buyer chooses the goods negligently.

However in following exceptions, there is an implied condition that the goods shall be fit for the buyer's specific purpose.

In following cases seller is responsible to the buyer:

- If the buyer makes his purpose clear to the seller.
- If the buyer buys the goods 'relying upon his skill and judgment'.

Condition as to merchantability:

The term 'merchantability' has not been defined in the Sale of Goods Act. However, it has been interpreted by the courts, and basically it means the two things, namely: If goods are purchased for **Self use Resale**. Then they should be reasonably fit for the purpose for which they are generally used.

Example:

Then they should be immediately re- saleable in the market under their description.

Condition as to wholesomeness:

This condition is a part of the condition as to merchantability. It is applicable in cases of eatables, i.e., foodstuffs and other goods which are used for human consumption. As per this condition, goods sold must be fit for human consumption.

WARRANTIES :**EXPRESS WARRANTIES IMPLIED WARRANTIES****Implied Warranties:**

- **It is a warranty, which the law implies into the contract of sale. The law presumes** that the parties have incorporated it into their contract.
- The implied warranties are read into every contract of sale unless they are expressly excluded by the parties.
- In case of conflict between the express and implied warranties, the express term shall prevail and the implied terms shall not be considered.
- Following are the implied warranties which are contained in the Sale of Goods Act :

Warranty as to quiet possession

Warranty as to free from encumbrance

Disclosure of dangerous nature of goods

Warranties implied by customs

THE DOCTRINE OF CAVEAT**EMPTOR (BUYER BEWARE) :**

- ‘Caveat Emptor’ is a Latin expression which means “let the buyer beware”.
- The Doctrine states generally that the seller is not responsible for bad goods.
- This Doctrine takes the side of the seller.
- As per the ruler, seller is not responsible in following cases:-

- i.To know the particular purpose of the buyer.
- ii.If buyer chooses the goods negligently
- iii.If the goods are defective and the defect is patent (i.e. defect which can be discovered by mere inspection)

- **Exceptions :** The exceptions to the doctrine of Caveat Emptor; which are mentioned below (i.e in the following seller is responsible) :
 1. Where the buyer specifies the particular purpose for which the goods are required to the seller.

2. Where the buyer relies on the seller's skill or judgment.
3. Where there is contract of sale by sample, the rule of caveat emptor will not apply if the goods do not correspond with sample
4. Where goods are bought by description, the goods shall correspond with the description.
5. If the goods are bought both by sample as well as by description this rule will not apply if goods do not correspond with both sample and description.
6. There is an implied condition that the goods shall be of merchantable quality
7. When the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.
8. When the goods are purchased under some brand name.

UNPAID SELLER

MEANING OF UNPAID SELLER:

A seller will be called 'unpaid' if the following conditions are fulfilled:

The whole or part of the price has not been paid or tendered and that the seller has immediate right of action for the price.

A bill of exchange or other negotiable instrument has been received but the same has been dishonoured.

RIGHTS OF UNPAID SELLER

A. Rights against the Goods:

1. **Where the ownership of the goods has transferred to the buyer: In this case, the unpaid seller has the following rights:**

Right of lien

The right of lien is the right to **retain possession** of the goods.

This right can be exercised only when the possession of goods is with the seller.

The unpaid seller of goods can retain his possession of goods until payment of the price in following cases:

- a. Where the goods are not sold on credit.
- b. Where the goods have been sold on credit, but the term of credit has expired
- c. Where the buyer becomes insolvent.

The unpaid seller can retain the goods only for the payment of the price of the goods: He cannot retain the goods for any other charges, e.g., maintenance, charges for storage of goods during the exercise of lien etc.

The right of lien is indivisible in nature.

Termination of Lien:

- a. By delivery of goods to the carrier
- b. By delivery of goods to the buyer

- c. By waiver of the lien
- d. By payment of price by the buyer

Right of stoppage in transit

The right of stoppage in transit is the right to **regain possession** of the goods.

This right can be exercised only when,

- i. Seller should have parted with the possession
- ii. Possession should be with a carrier, &
- iii. Buyer has not acquired the possession.

The right of stoppage in transit can be exercised only if the buyer has become insolvent.

The unpaid seller can stop the goods in transit only for the payment of the price of the goods.

Distinction between Right of Lien and Right of Stoppage in transit

Right of Lien	Right of stoppage in transit
1. The essence of a right of lien is to retain possession	1. The essence of stoppage in transit is to regain possession
2. Seller should be in possession of goods under lien	2. In stoppage in transit, seller should have parted with the possession possession should be with a carrier, & (iii) buyer has not acquired the possession.
3. Right of lien can be exercised even when the buyer is not insolvent.	3. Right of stoppage in transit can be exercised only when buyer becomes insolvent
4. Right of lien precedes right of stoppage in transit.	4. Right of stoppage in transit begins when the right of lien ends

Where the ownership of the goods has not been transferred to the buyer:

Right of Withholding Delivery

When the ownership of the goods sold is not transferred to the buyer, if the buyer fails to pay the price, the unpaid seller may refuse to deliver the goods to the buyer. Such right is known as right of withholding the delivery of the goods.

Any other right

Since ownership and possession of goods is with the seller, seller can use, gift, resell the goods, etc.

B. Rights against the Buyer

Suit for recovery of price

Where the buyer takes the ownership as well as possession of goods and the buyer fails to pay the price of the goods, the seller can file a suit against the buyer for recovery of the price.

Suit for damages for repudiation of the contract before the due date of delivery of goods :

Where the buyer repudiates (i.e., puts an end to) the contract before the due date of delivery of the goods, the seller has the following options:

- i. He may not immediately take any action against the buyer, and treat the contract as subsisting and wait till the date of delivery of goods.
- ii. He may immediately treat the contract as repudiated and bring a legal action against the buyer for the recovery of damages. Thus, the option of bringing the action lies with the seller. He may either wait till the date of delivery of goods arrives, or bring an immediate action for damages.

Suit for damages

Where the seller is ready and willing to deliver the goods to the buyer, but the buyer wrongfully neglects or refuses to accept the goods and pay for them, then the seller may bring a legal action against the buyer for the recovery of damages suffered due to non-acceptance of the goods.

Suit for interest

The court may award the interest from the date of tender of the goods or from the date when the price is payable. The rate of interest to be awarded is at the discretion of the court.

