

FORMATION OF CONTRACT OF SALE

•Till 1930, the law relating to sale and purchase of goods were regulated by the Indian contract act ,1872. In 1930, sections 76 to 123 of the Indian contract act, 1872 were repealed and separate act called ‘The Indian sale of goods act, 1930 was passed. It came into force on 1stJuly 1930 with effect from 22nd September 1963.

MEANING OF CONTRACT OF SALE

•According to section 4(1), of the Sale of goods act, 1930 ‘Contract of sale of goods is a contract whereby the seller transfer or agrees to transfer the property in goods to the buyer for a price’.

A contract of Sale of goods include both (i) sale and (ii) an agreement to sell

Sale: Ownership in the goods is transferred by the seller to the buyer immediately at the time of contract

Whereas Agreement to sell: The transfer of ownership in goods is to take place, at a future time or subject to fulfillment of some condition.

ESSENTIALS OF A CONTRACT OF SALE

- Two parties i.e. Buyer and Seller
- Goods
- Transfer of the property in goods
- All Essential elements of a valid contract must be fulfilled
- Price
- Include both sale and agreement to sale

DIFFERENCE BETWEEN SALE AND AGREEMENT TO SALE

Sale

- Ownership passes to the buyer immediately.
- It is an executed contract.
- Risk of loss falls on the buyer.
- Seller cannot resell the goods.
- Only the existing and specific goods can be the subject matter of sale.
- In case of breach of a contract, seller can sue for the price of the goods even though the goods is in his possession.
- The seller is only entitled to the rate able dividend for the price due if the buyer becomes insolvent.

Agreement to sell

- Ownership remains with the seller.
- It is an executory contract.
- Risk of loss falls on the seller even though the goods are in possession of the buyer.
- Seller can sell goods if the buyer commits a breach of his contract.

- It can be in case of future and unascertained goods.
- In case of breach of a contract by seller buyer can sue him for damages.
- The seller may refuse to sell the goods to the buyer w/o payments if the buyer becomes insolvent.

GOODS

•Defintion-Sec2 [7] The subject matter of a contract of a sale must be goods. The term ‘goods’ means ‘every kind of movable 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 served before sale or under the contract of sale’.

Classification of goods [Sec 6]

1. **Existing goods:** Existing goods are those goods that are owned by or possessed by the seller at the time of making the contract and the seller has the right to sell the goods. Further classified into three types-
 - Specific goods : Goods identified and agreed upon at the time a contract of sale is made.
 - Ascertained goods :Existing goods that have been both specified and identified by both the parties at the time of sale.
 - Unascertained goods: These are the goods which are not identified and agreed upon at the time when sale is made.
2. **Future goods :**The goods which are neither in existence nor in possession of the seller at the time of contract of sale, but will be manufactured, produced or acquired by him after making the contract.

3. Contingent goods : are the goods the acquisition of which depends upon happening and non-happening of the contingency.

Effects of Destruction of Goods

1. In case of specific goods perishing before making the contract [Section 7]-The contract of sale is void if the following three conditions are satisfied:

- There must be a contract of sale for specific goods.
- The goods must have become perished or so damaged as no longer to answer their description in the contract before making of the contract.
- The seller must not be aware about the destruction of goods.

Example-X sold to Y all 100 bags of sugar coming by a particular ship. State the legal position:

- 1.If unknown to X, all bags had been stolen before he contract was made.
- 2.If unknown to X, all bags had become syrup as a result of heavy rainfall.
- 3.If unknown to X, 20 bags had been stolen at the time of making the contract.

Solution:

Case 1-The contract is void because the goods have perished before making of the contract.

Case 2-The contract is void because the goods became so damaged as no longer to answer to their description.

Case 3-The contract has become void and Y cannot be compelled to accept 80 bags because the contract was indivisible.

2. In case of an ‘Agreement to sell’ [Section 8]-An agreement to sell becomes void if the following four conditions are satisfied:

- There must be an agreement to sell specific goods.
- The goods must have become perished or so damaged as no longer to answer their description in the agreement.
- There must not be any fault of seller or buyer.
- The risk must not have passed to the buyer, i.e. the goods must have perished before the agreement to sell becomes sale.

Example 1-X agrees to sell a particular horse to Y on the expiry of 8 days trial. The horse was delivered on trial for 8 days. However, the horse died on the third day, without any fault of either the buyer or the seller. This agreement becomes void and X could not recover the price from Y.

Example 2-X agreed to sell to Y 10 tonnes of potatoes to be grown on his land. X sowed sufficient land to grow more than 10 tonnes of potatoes. But without any fault on X’s part, a disease attacked the crop and only about 8 tonnes of potato could be grown. It was held that the agreement to sell has become void.

PRICE OF GOODS

Section 2(10) defines price “as a money consideration for a sale of goods”.

- It forms an essential part of the contract.
- It may be paid partly in term of cash and partly in terms of valued goods.

Modes of fixing price:

- It may be fixed by the contract
- Fixed in an agreed manner
- It may be determined by the course of dealing between the parties.

- In the absence of this, the buyer must pay to seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case.
- 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 becomes void except as to part of goods delivered and accepted.

CONDITIONS AND WARRANTIES

Meaning of stipulation[Sec. 12(1)]- the fact which becomes a part of the contract of sale is called stipulation.

The stipulation may be a condition or warranty depending upon its importance in relation to the contract.

Meaning of condition[Sec.12(2)]-

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

Meaning of warranty[Sec.12(3)]-

- A warranty is a stipulation which is collateral to the main purpose of the contract, and
- 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.

Difference between Condition and Warranty

Condition

- Stipulation essential to the main purpose of the contract.
- Its non-performance may be considered as failure to the performance of the contract.
- The aggrieved party may treat the contact as repudiated.
- A breach of condition can be treated as the breach of warranty.

Warranty

- Stipulation only collateral to the main purpose of the contract.
- Its non-performance cannot be considered as failure to the performance of the contract.
- The aggrieved party cannot treat the contract as repudiated but can claim damages.
- A breach of warranty cannot be treated as the breach of condition.

When condition to be treated as warranty [Sec.13]-

Where the buyer waives a condition

Where the buyer elects to treat breach of the condition as a breach of warranty

Where the contract is not severable and the buyer has accepted the goods or part thereof.

Types of conditions and warranties

Express conditions and warranties: The express conditions and warranties are those which the parties agree expressly, i.e. orally or in writing

Implied conditions and warranties: The implied conditions and warranties are those which are implied by the law in the absence of any agreement to the contract.

Implied conditions

- Condition as to title[sec.14(a)]
- Condition as to sale by description [sec.15]
- Condition as to sale by sample[sec.17]
- Condition as to quality or fitness[sec.16]
- Condition as to merchantable quality [sec.16(2)]
- Condition implied by custom[sec.16(3)]
- Condition as to wholesomeness

Implied Warranties

- warranty as to quiet possession[sec.14(b)].
- warranty of freedom from charge or encumbrance[sec.15(c)].
- Warranty to disclose dangerous nature of goods.
- Warranty as to quality or fitness by usage of trade[sec.16(4)]

DOCTRINE OF *CAVEAT EMPTOR*

- Caveat Emptor is a fundamental principle of the law of sale of goods.
- It means “Caution Buyer”, i.e. “Let the buyer beware”.

Exceptions to the doctrine of Caveat Emptor [sec.16]:

- When implied condition as to title applies.
- When implied warranty as quiet possession apply.
- Misrepresentation by the seller.
- Concealment of latent defects by the sellers.
- Sale by description and sample.
- Merchantable Quality.
- Quality of fitness for buyer’s purpose.
- When there is a usage of trade.

TRANSFER OF OWNERSHIP It means the transfer of all the rights of the property in goods from the seller to the buyer for the price. A contract of sale of goods involves transfer of

ownership from the seller to the buyer. Transfer of ownership or property in goods is in fact the object of making a contract of sale.

‘Ownership’ is the ‘soul’ and ‘possession’ is the ‘body’.

Significance of transfer of ownership-

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

- Who shall bear the risk
- Who can take action against third party.
- Whether a seller can sue for price.
- In case of insolvency of a buyer whether the official receiver or assignee can take possession of goods from seller.
- In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer.

RULES RELATING TO PASSING OF PROPERTY FROM SELLER TO BUYER

•Three categories-

1 Rules relating to the transfer of ownership of specific or ascertained goods The ownership is transferred to the buyer at such time as parties intend it to be transferred i.e. terms of the contract, conduct of the parties and circumstances of the case.

In case intention of the parties cannot be judged. To meet such cases, the act lays down the following rules:

1. When specific goods are in a deliverable state: Property in the goods passes to buyer when the contract is made.
2. When specific goods are not in a deliverable state: Property in the goods is not affected till such time as the necessary work has been done on the goods and the buyer has notice thereof.
3. When the seller has to something to ascertaining the price (measurement, weightage or test): Property in the goods is not affected till such act is done.

2 Rules relating to the transfer of ownership of unascertained goods or future goods

Unascertained goods means goods which have not been identified and agreed upon at the time when contract of sale is made. The ownership of unascertained goods is transferred to the buyer when the following conditions are satisfied:

1. The goods must have been ascertained.
2. Unconditionally appropriated by the seller or the buyer. It means doing some act by the parties which has effect in ascertainment of certain goods. The contract to sell unascertained goods is not a complete sale. It is the agreement to sell.

3. Rules relating to the transfer of ownership of goods sale on approval or on sale or return' basis—sec24

. The term sale 'on approval' or 'on sale or return 'basis means the buyer has the option either to return or retain the goods. Here, the property in goods passes from the seller to the buyer:

- When the buyer signifies his approval.
- Buyer does some act adopting the transaction.
- Buyer fails to return the goods on expiration of such time or reasonable time.

TRANSFER OF TITLE BY NON -OWNERS

•General rule is ‘NEMO DAT QUO NON HABET’ means no one can give what he does not himself possess.

Exceptions

- Sale by mercantile agent [Sec 27]
- Sale by one of Joint owners.[Sec 28]
- Sale by a person in possession under voidable contract.[Sec 29]
- Sale by a buyer in possession before the transfer of ownership.[Sec 30 (2)]
- Sale by an unpaid seller [Sec 54]
- Sale by owner by Estoppel

PERFORMANCE OF CONTRACT OF SALE

It implies delivery of goods by the seller and acceptance of the delivery of the goods and payment for them by the buyer, in accordance with the contract.

DELIVERY

•Meaning of delivery-Sec 2(2) Delivery means the voluntary transfer of possession from one person to another.

Modes of Delivery-

1. Actual delivery
2. Symbolic delivery
3. Constructive delivery

UNPAID SELLER

Meaning of unpaid seller-Sec 45

The seller to whom the full price of the goods sold has not been paid is known as unpaid seller. A seller of goods is deemed to be unpaid in the following cases:

1. The price must be due but not paid.
2. A negotiable instrument like cheque and bill of exchange was received but same has been dishonoured.
3. The seller shall be called an unpaid seller even when only a small portion of the price remains to be paid.

RIGHTS OF AN UNPAID SELLER

- Rights of an unpaid against the goods when the property in the goods has passed

1.Right of lien

Lien means the right to retain the possession of goods until the full price is received. An unpaid seller can exercise his right of line in the following cases :

- Where the goods have been sold on the cash basis
- Where the goods have been sold on credit basis and the term of credit has expired.
- Where the buyer has become insolvent even if the period of credit has not been expired

Other rules to satisfy conditions for this right are :

- i)-The unpaid seller must be in actual possession of goods sold .
- ii) It can be exercised even if the documents of title have been delivered to the buyer.
- iii) It can be exercised for the price and no for other expenses.
- iv) If the seller delivers some goods ,it can be exercised on the remaining.

The Unpaid seller loses his Right of Lien following conditions:

- 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.
- When the buyer or his agent lawfully obtains the possession of the goods.
- When the seller waives his Right of Lien.
- When the buyer disposes off the goods by sale with the consent of the seller.

2. Right of stoppage of goods in transit

The right of stoppage in transit 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.

Unpaid seller can stop the goods in transit in the following cases:

- While the goods are out of actual possession of seller, but have not reached buyer's possession, ie, goods are in transit with carrier.
- The unpaid seller can stop the goods in transit only for payment of the price of the goods and not for any other charges.
- While the buyer becomes insolvent before paying for the goods.

The unpaid seller cannot stop goods in transit in the following cases:

- When the goods reach the destination.
- While the buyer or his agent takes possession of delivery even if it has not reached destination.
- In case the carrier is agent of the buyer, the transit comes to an end the instance carrier receives the goods and seller cannot stop the transition.
- Part delivery of goods to the buyer.
- Where sub sale or other disposition by the buyer has been done with the seller's consent.

3. Right of Re-sale

If a buyer fails to pay the price within a reasonable time, the unpaid seller has the right of re-sell the goods –

- Where the goods are of perishable nature
- Where the notice is given but buyer does not pay.
- Where the unpaid seller has expressly reserve a right of re-sale if the buyer commits a default in making the payment

➤ Rights against the buyer personally(rights ‘in personam’)

1. Suit for Price
2. Suit for damages for non -acceptance.
3. Suit for damages for repudiation of the contract
4. Suit for interest

Auction of sale

Meaning:

Sale of auction is the public sale where the goods are generally sold to the highest bidder from among the public [Sec. 64].

Rules of Auction Sale:

- 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;
- The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may withdraw his bid.
- A right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so re-served, the seller or any one person on his behalf may bid at the auction.

- A sale may be notified to be subject to reserve price .The minimum price below which the auctioneer will not sell the goods put for auction sale.