

# Sales of Goods Act, 1930

# Introduction

- The law relating to sale and purchase of goods, prior to 1930 were dealt by the Indian Contract Act, 1872.
- In 1930, Sections 76 to 123 of the Contract Act was repealed and a separate Act known as the Sale of Goods Act, 1930 was passed.
- The Act came into force on 1 July, 1930
- It extends to the whole of India, except Jammu & Kashmir.
- This act covers only moveable property only

# Definition

- 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.
- Contract of sale is made when there is an offer to buy or sell goods for a price and the acceptance of such offer is also there.
- It can be made in writing or by word of mouth, or partly in writing and partly by mouth.
- The term contract of sale is a generic term, which includes:
  - (a) Sale and
  - (b) Agreement to sell

# SALE AND AGREEMENT TO SELL

## *Sale*

- ◎ Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale.
- ◎ Thus, sale takes place when there is a transfer of ownership in goods from the seller to the buyer.
- ◎ A sale is an executed contract

## *Agreement to sell*

- ◎ Agreement to sell means a contract of sale under which the transfer of property in goods is to take place at a future date or subject to some conditions thereafter to be fulfilled

# Difference

## *Sale*

- ⦿ A sale is an executed contract
- ⦿ Since the ownership has passed to the buyer, the seller can sue the buyer for the price of the goods, if the latter makes a default in payment
- ⦿ In case of loss of goods, the loss will fall on the buyer, even though the goods are in the possession of the seller. It is because the risk is associated with ownership
- ⦿ In case the buyer pays the price and the seller thereafter becomes insolvent, the buyer can claim the goods from the official receiver or assignee as the case may be

## *Agreement to Sell*

- *It is an executory contract*
- *In case of breach, the seller can only sue for damages, unless the price was payable at a stated date.*
- *The loss in this case shall be borne by the seller, even though the goods are in the possession of the buyer*
- *In this case, the buyer cannot claim the goods, but only a rateable dividend for the money paid*

# ESSENTIALS OF A CONTRACT OF SALE

- Bilateral Contract
- Money Consideration
- Goods
- Transfer of Property
- Essential Elements of a Contract

- 1. There must be at least two parties:** a sale has to be bilateral because the property in goods has to pass from one person to another. The seller and the buyer must be different persons.
- 2. Transfer or agreement to transfer the ownership of goods:** In a contract of sale, it is the ownership that is transferred (in the case of sale), or agreed to be transferred (in the case of agreement to sell), as against transfer of mere possession.

3. **The subject matter of the contract must necessarily be goods:** the sale of immovable property is not covered under Sale of Goods Act.
  
4. **Price is the consideration of the contract of sale:** the consideration in a contract of sale has necessarily to be 'money', (i.e. the legal tender money). If for instance, goods are offered as the consideration for goods, it will not amount to sale. It will be called a barter. Where goods are sold for a definite sum and the price is paid partly in terms of valued up of goods and partly in cash, that is sale. These are known as part-exchange contracts. To sum-up: the Act applies only when the buyer pays by cash (or by cheque, credit card, etc).  
Payment by installments: in the case of sale of goods, the parties may agree that the price will be payable by installments

5. **All other essentials of a valid contract as per the Indian Contract Act, 1872 must be present:** the parties to the contract must be competent of contract, the consent of the parties must be free, the object of the contract must be lawful and so on.

# Goods & their classification

- '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.
- Trademarks, patents, copyright, goodwill, water, gas, electricity are all goods.
- In general, it is only the movables that form goods.

- The term goods excludes money
- Money itself cannot be subject of a sale
- The actionable claims are things which a person cannot make use of, but which can be claimed by him by means of a legal action
- Actionable Claim example: A borrows Rs. 5000/- from B at 12% per annum interest on 1st April, 2006 and promises to pay back the amount with interest on 1st July, 2006. Till 1st July, 2006, the debt is an accruing debt and is an actionable claim.

# Classification of goods

Goods may be classified as:

1. Existing
2. Future
3. Contingent

**Existing goods** are those which are owned or possessed by the seller at the time of the contract. Instances of goods possessed but not owned by the seller are sales by agents.

Existing goods may be either:

- a) Specific or ascertained
- b) Generic and unascertained

*Specific goods* means goods identified and agreed upon at the time a contract of sale is made

*Ascertained goods*, though normally used as synonym for specific goods may be intended to include goods which have become ascertained subsequently to the formation of the contract

*Generic or unascertained goods* are goods indicated by description and not specifically identified

*Example:* Anthony, who owns a TV showroom, has 20 TV sets and agrees to sell any one of them to Bharti. The contract is for unascertained goods, since which particular TV set shall become the subject matter of sale is not individualised at the time of the contract of sale.

*Future goods* means goods to be manufactured or produced or acquired by the seller after making the contract of sale

*Example:* farmer agrees to sell future crop of a particular agricultural field in the next season. This is an agreement to sell future goods

*Contingent goods* are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingent goods is a part of future goods

*Example:* Alka agrees to sell to Vivek a certain painting only if Chetan, its present owner sells it to her. This painting is classified as contingent goods

# Effect of perishing of goods

- Section 7 and 8 deal with the effect of perishing of goods on the rights and obligations of the parties to a contract of sale.
- Under these sections the word perishing means not only physical destruction of the goods but it also covers:
  - Damage to goods so that the goods have ceased to exist in the commercial sense, ie, their merchantable character as such has been lost, eg, where cement is spoiled by water and becomes almost stone or where sugar becomes sharbat and thus are unsaleable as cement or sugar
  - Loss of goods by theft
  - Where the goods have been lawfully requisitioned by the government

- It may also be mentioned that it is only the perishing of specific and ascertained goods that affects a contract of sale
- Where unascertained goods form the subject matter of a contract of sale, their perishing does not affect the contract and the seller is bound to supply the goods from wherever he likes, otherwise be liable for breach of contract

Example:

Where A agrees to sell 10 dozen of eggs to B out of 100 dozens lying in his shop and the eggs are completely destroyed due to any circumstance, the contract does not become void. A must supply 10 dozen of eggs after purchasing them from the market or pay damages for the breach.

## 1. Perishing of specific goods at or before making of the contract (Sec 7)

*(i) In case of the perishing of the 'whole' of goods: Where specific goods form the subject-matter of a contract of sale (both actual sale and agreement to sell), and they, without the knowledge of the seller, perish at or before the time of the contract, the agreement is void. This provision is based either on the ground of mutual mistake as to a matter of fact essential to the agreement, or on the ground of impossibility of performance, both of which render an agreement void.*

*ILLUSTRATION. (a) A sold to B a specific cargo of goods supposed to be on its way from England to Bombay. It turned out, however, that before the day of the bargain, the ship conveying the cargo had been cast away and the goods were lost. Neither party was aware of the fact. The agreement was held to be void.*

*(ii) In case of perishing of only 'a part' of the goods:* where in a contract for the sale of specific goods, only part of the goods are destroyed or damaged, the effect of perishing will depend upon whether the contract is entire or divisible.

- If it is entire (i.e. indivisible) and part only of the goods has perished, the contract is void. If the contract is divisible, it will not be void and the part available in good condition must be accepted by the buyer.

## 2. **Perishing of specific goods before sale but after agreement to sell (sec.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 before the risk passes to the buyer, the agreement is thereby avoided, i.e., the contract of sale becomes void, and both parties are excused from performance of the contract.

## ***Examples:***

- (a) A buyer took a horse on a trial for 8 days on condition that if found suitable for his purpose the bargain would become absolute. The horse died on the 3<sup>rd</sup> day without any fault of either party. Held, contract, which was in the form of an agreement to sell, becomes void and the seller should bear the loss.
  
- (b) A, had contracted to erect machinery on M's premises, the price to be paid on completion. During the course of the work, there was a fire which completely destroyed premises and the machinery. It was held that both parties were excused from further performance and A was not entitled to any payment as the price was payable on the completion of entire work.

# Conditions & Warranties (Sec. 11-17)

- In a contract of sale, parties make certain stipulations, i.e., agree to certain terms regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place
- All stipulations cannot be treated on the same footing
- Some may be intended by the parties to be of a fundamental nature, eg. Quality of the goods to be supplied, the breach of which therefore will be regarded as a breach of the contract
- Some may be intended by the parties to be binding, but of a subsidiary or inferior character, eg., time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach liable to damages
- The former stipulations are called 'conditions' and the latter 'warranties'

# Stipulations as to time

Stipulations as to time in a contract of sale fall under the following two heads:

1. Stipulation relating to time of delivery of goods
2. Stipulation relating to time of payment of the price

As regards the ***time fixed for the delivery of goods***, time is usually held to be the essence of the contract'. Thus if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer. In case of late delivery, therefore, the buyer may refuse to accept the delivery and may put an end to the contract.

As regards the ***time fixed for the payment of the price***, the general rule is that 'time is not deemed to be the essence of the contract', unless a different intention appears from the terms of the contract (sec. 11). Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account. He has to deliver the goods if the buyer tenders the price within reasonable time before resale of the goods. The seller may, however, claim compensation for the loss occasioned to him by the buyer's failure to pay on the appointed day.

- Sec. 12(2) defines a 'condition' as, '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' (denied),
- Sec 12(3) defines a 'warranty' as, 'stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated' .
- The effect of a breach of a 'condition' is to give the aggrieved party a right to treat the contract repudiated, i.e., if price has been paid, the buyer can claim the refund of price plus damages for breach
- In case of breach of 'warranty', only damages can be claimed, i.e., the buyer must accept the goods and claim damages for the breach of warranty
- Whether a stipulation in a contract of sale is a 'condition' or a 'warranty' depends in each case on the construction of the contract
- A stipulation may be a condition though called a warranty in a contract [sec. 12(4)]

### ***Example: 1***

Kaushal asks a dealer to supply him a shirt which would not shrink after use and wash. The dealer supplies a shirt which shrinks after use and wash. Kaushal can reject the shirt or keep the shirt and claim damages. Here the stipulation to supply a shirt which would not shrink after use and wash is a condition.

Now if Kaushal buys a particular shirt which is warranted by the dealer to be one which would not shrink after use and wash and the shirt does shrink after use and wash, Kaushal's only remedy is to claim damages

### ***Example: 2***

A man buys a particular horse which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer's only remedy is to claim damages. But if instead of buying a particular horse, a man asks a dealer to supply him with a quiet horse and the dealer supplies him with a vicious one, the stipulation is a condition, and the buyer can return the horse and can also claim damages for breach of contract

The illustrations are a clear proof of the fact that an exactly similar term may be a condition in one contract and a warranty in another depending upon the construction of the contract as a whole

# Condition & Warranty Distinguished

## **1. *As to value:***

A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

## **2. *As to breach:***

The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages.

## **3. *As to treatment:***

A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

# Caveat Emptor

- Let the “buyer be aware”
- *A warning that notifies a buyer that the goods he or she is buying are "as is," or subject to all defects.*
- When a sale is subject to this warning the purchaser assumes the risk that the product might be either defective or unsuitable to his or her needs.  
This rule is not designed to shield sellers who engage in Fraud or bad faith dealing by making false or misleading representations about the quality or condition of a particular product.
- It merely summarizes the concept that a purchaser must examine, judge, and test the product considered for purchase himself or herself.

# Duties of the buyer

- Duty to accept the goods and pay for them in exchange of possession.
- Duty to apply for delivery of goods.
- Duty to demand delivery at a reasonable hour.
- Duty to accept installment delivery and pay for it.
- Duty to take risk of deterioration in the course of transit.
- Duty to intimate the seller where he rejects the goods.
- Duty to take delivery.
- Duty to pay the price.
- Duty to pay damages for non-acceptance.

# Unpaid Seller

The seller of goods is deemed to be an "unpaid" seller –

- when the whole of the price has not been paid or tendered; or
- when a bill of exchange or other negotiable instruments has been received as conditional payment
- the conditions has not been fulfilled by reason of the dis honour of the instrument or otherwise. [Sec 45(1)]

# Rights of Unpaid Seller

- Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller, has, by implication of law-
  - a) a lien on the goods for price while he is in possession of them;
  - b) in case of insolvency of the buyer a right of stopping the goods in transit; and
  - c) a right of resale. [Sec 45(1)]