

BBA II Semester

Subject- BUSINESS LAW

TOPIC- SALES OF GOODS ACT 1930

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Sale of Goods Act, 1930

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. The Act came into force on 1st July, 1930. Provisions pertaining to the sale of goods were earlier contained in Chapter VII of the Indian Contract Act, 1872. The Act of 1930 extends to whole of India, except Jammu and Kashmir. It deals with provisions relating to passing of ownership of the goods from seller to buyer, duties of seller and buyer, rights of unpaid seller, remedies available to buyer if the goods are not delivered to him etc.

❖ **Contract of Sale**

The term contract of sale is a generic term and it includes both sale and agreement to sell. Where, under a contract of sale, the property in goods is transferred from seller to the buyer, it is called 'Sale' but where the transfer of property in goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called 'agreement to sell'. Section 4 (1) of the Act defines a contract of sale of goods as *a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for price.*

❖ **Essentials of Contract of Sale**

The following are the essentials of contract of sale:

1. *Two parties:* There are two distinct parties in a contract of sale – seller and buyer.
2. *Transfer of general property:* 'Property' means the general property in goods and not merely a special property [Section 2 (11)].
3. *Goods:* Goods form the subject matter of the contract and must be movable. Goods mean every kind of movable property other than actionable claims and money and include stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed sale or under the contract of sale.
4. *Price:* The consideration for the contract of sale must be in the form of money and is called price.
5. *All essentials of a valid contract:* All the essential elements of a valid contract like agreement, free consent, consideration, etc. must be present in a contract of sale of goods.

❖ Sale v/s Agreement to sell

There are a number of distinctions between sale and agreement to sell. Following are the main points of difference between the two:-

Distinction between sale and agreement to sell

Sale	Agreement to sell
1. Sale is an executed contract.	1. Agreement to sell is an executory contract.
2. Performance of sale is absolute and without any condition.	2. Performance is conditional and is made in future.
3. The property of the goods passes from the seller to the buyer immediately and the seller is no longer the owner of the goods sold.	3. The transfer of property takes place on a future date, or at times subject to fulfillment of certain conditions.
4. If the goods are lost or destroyed, the loss falls on the buyer, even if they are in the possession of the seller.	4. If the goods are lost or destroyed, the loss falls on seller, even if they are in the possession of the buyer
5. If there is a breach of contract, the seller can sue for the price, even if the goods are in his possession.	5. If the buyer fails to accept the goods, the seller can only sue for damages and not the price even if the goods are in the possession of the seller.
6. As the property is with the buyer, the seller cannot resell the goods.	6. The property remains with the seller and he can dispose off the goods as he likes.

❖ Conditions and warranties

Contract of sale of goods will have various terms or stipulations regarding quality of goods, price and mode of payment, delivery of goods and its time and place, etc. All these terms and stipulations are not of equal importance. Some of them may be major terms that go to the very basics or root of the contract and their breach may upset the very purpose of the contract. Certain others are not vital and may not be a breach of contract as such. The major terms, the breach of which may go to the basics of the contract, are known as 'Conditions' and the minor terms are

called the 'Warranties'. Section 12[2] and [3] of the Act, deal with conditions and warranties respectively. While conditions are the very basis of a contract of sale, warranty is only of secondary importance.

Condition is defined in Section 12 [2] as a stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to reject the contract itself. In addition, action for damages for losses suffered, if any, due to breach of condition can also be made.

Warranty is defined in Section 12 [3] as stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved party a right to sue for damages and not to void the contract itself.

❖ **Express and Implied conditions and warranties**

Conditions may be express or implied. They are express when, at the will of the parties, they are inserted in the contract. They are said to be implied when the law presumes their existence in the contract, even though it has not been put into it in express words. According to Section 62, implied conditions and warranties may be varied by express agreement or by the course of dealing between the parties, or by usage of trade.

❖ **Doctrine of Caveat Emptor**

The doctrine of *caveat emptor* means 'let the buyer beware'. According to this doctrine, it is the duty of the buyer to be careful while purchasing goods. In the absence of any enquiry from the buyer, the seller is not bound to disclose defects in the goods. It is the buyer who must examine the goods thoroughly and must see that the goods that he buys are suitable for the purpose of which he wants them. If the goods turn out to be defective, the buyer cannot sue the seller, as there is no implied undertaking by the seller that he shall supply goods to suit the buyer's purpose.

❖ **Exceptions to caveat emptor**

The doctrine of caveat emptor does not apply in the following situations:

- a. When the seller makes a representation of fact, whether innocent or fraudulent, regarding the product.
- b. When the seller actively conceals a defect in the goods which could not be revealed by ordinary examination.

- c. Where goods are supplied by description and they do not correspond with the description given by the seller.
- d. Where goods are supplied by description and they are not of merchantable quality.

❖ Performance of contract of sale

The performance of a contract of sale implies delivery of goods by the seller and the acceptance of the delivery of goods and payment for them by the buyer, in accordance with the contract. The parties are free to provide any terms they like in their contract about the time, place and manner of delivery of goods, acceptance thereof and payment of the price. But if the parties are silent and do not provide anything regarding these matters in the contract then the rules contained in the Sale of Goods Act are applicable.

❖ Delivery

Delivery of goods means voluntary transfer of possession of goods from one person to another [Sec. 2(2)]. If transfer of possession of goods is not voluntary, that is, possession is obtained under pistol point or by theft, there is no delivery.

❖ Rights of unpaid seller

A seller of the goods is deemed to be an unpaid seller when the whole of the price has not been paid or tendered or a bill of exchange or other negotiable instrument has been received as conditional payment. The unpaid seller has the following rights:

- a) *Against the goods*: Against the goods, the unpaid seller has the right of lien, the right of stoppage of goods in transit, and the right of resale. The right of lien can be exercised only for non – payment of the price and not for any other charges. The right of stoppage of goods in transit means the right of stoppage of goods while they are in transit to regain the possession and to retain them till the full price is paid. The right to resale gives the seller the right to resell the goods in the following cases:
 - I. When the goods are perishable.
 - II. When the right is expressly reserved in the contract.
 - III. When despite the seller giving a notice to the buyer of the intention to resell, the buyer does not pay or tender the price within a reasonable time.
- b) *Against the buyer personally*: the unpaid seller can file a suit for price, as well as file a suit for damages for non – acceptance.

❖ **Transfer of Ownership in Goods including Sale by a Non – Owner:**

Transfer of ownership is studied under two heads:

1. *Transfer in specific or ascertained goods.*
2. *Transfer in unascertained and future goods*

1. Transfer in specific or ascertained goods:

Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case [Sec. 19 (1) (2)]. Thus, in the case of specific goods, the transfer takes place when the parties intend to pass it. The parties may intend to pass the property at once at the time of making of the contract or when the goods are delivered or when the goods are paid for.

2. Transfer in unascertained and future goods:

The rule relating to transfer of property in unascertained and future goods is contained in Sections 18 and 23. These Sections provide that where goods contracted to be sold are not ascertained or where they are future goods, the property in goods does not pass to the buyer unless and until the goods are ascertained or unconditionally appropriated to the contract so as to bring them in a deliverable state, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

The process of ascertainment or appropriation consists in earmarking or setting apart goods as subject matter of the contract. It involves separating, weighing, measuring, counting or similar acts done in relation to goods with an intention to identify and determine the specific goods to be delivered under the contract.

Transfer of Title/ Sale by a Non – Owner

The general rule relating to transfer of title on sale is that “the seller cannot transfer to the buyer of goods a better title than he himself has.” If the title of the seller is defective the buyer’s title will also be subject to the same defect. Section 27 also lays down to the same effect and provides that “where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the

goods than the seller had..." This rule is expressed by the maxim, "*nemo det quod habet*", which means *that no one can give what he has not got*.

Thus, a buyer cannot get a good title to the goods unless he purchases the goods from a person who is the owner thereof or who sells them under the authority or with the consent of the owner. This above general rule as to title is subject to the following exceptions where the buyer gets a better title to the goods than what the seller himself possesses:

1. An unauthorized sale by a mercantile agent.
2. Transfer of title by estoppels
3. Sale by a joint owner
4. Sale by person in possession under voidable contract
5. Sale by seller in possession after sale
6. Sale by buyer in possession after 'agreement to buy'
7. Resale by an unpaid seller
8. Exceptions under other acts