

Sale of Goods Act 1930

The sale of Goods Act deals with 'Sale of Goods Act,1930,'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 a generic term which includes both a sale as well as an agreement to sell.

Essential elements of Contract of sale

1. Seller and buyer
2. Goods
3. Transfer of property
4. Price
5. Essential elements of a valid contract

Meaning and types of goods

Meaning of goods

Goods means every kind of movable property other than actionable claims and money and includes the following:

- Stock and share
- Growing crops,
- grass
- thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

Types of Goods

1.Existing Goods

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

a) Specific Goods

These are the goods which are identified and agreed upon at the time when a

contract of sale is made.

b) Ascertained Goods:

Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract. Thus, when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

c) Unascertained Goods:

These are the goods which are not identified and agreed upon at the time when a contract of sale is made.

2. Future Goods

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. There can be an agreement to sell only. There can be no sale in respect of future goods because one cannot sell what he does not possess.

3. Contingent Goods

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Price Of Goods Meaning

Price means the money consideration for a sale of goods.

Modes of determining Price [Section 9(1)]

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

Meaning of Conditions

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

Meaning of Warranty

A warranty is a stipulation Which is collateral to the main purpose of the contract. 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.

Implied Conditions

1. Conditions as to title

There is an implied condition on the part of the seller that

In the case of 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.

2. Condition in case of sale by description

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

3. Condition in case of sale by sample

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions:

The goods must correspond with the sample in quality. The buyer must have a reasonable opportunity of comparing the bulk with the sample.

The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

4. Condition in case of sale by description and sample

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

5. Condition as to quality or fitness

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

6. Condition as to merchantable quality

Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

7. Condition as to wholesomeness

In case of eatables or provisions or food stuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

8. Condition implied by custom

Condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Implied warranties

a) Warranty as to quiet possession

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

b) Warranty of freedom from encumbrances

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

- Warranty as to quality or fitness for a particular purpose annexed by usage of trade
- Warranty to disclose dangerous nature of goods

Rules relating to Passing of Property/Transfer of Ownership from seller to buyer

For the purposes of ascertaining the time at which the ownership is transferred from seller to the buyer, the goods have been classified into the following three categories:

a) Specific or ascertained goods

b) Unascertained goods

c) Goods sent 'on approval' or 'on sale on return' basis.

Performance of the Contract

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

Delivery (Sections 33-39) Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic.

1) Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

2) Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.

3) Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the “means of obtaining possession” of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to delivery of goods

The following rules apply regarding delivery of goods:

- (a) Delivery should have the effect of putting the buyer in possession.
- (b) The seller must deliver the goods according to the contract.
- (c) The seller is to deliver the goods when the buyer applies for delivery
- (d) Time of delivery of goods
- (e) The seller should tender delivery so that the buyer can take the goods
- (f) The place of delivery.
- (g) The seller has to bear the cost of delivery unless the contract otherwise provides.
- (h) If the goods are to be delivered at a place the expenses of delivery to be borne by the buyer.
- (i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

Unpaid seller and his rights

Meaning of an 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 When a bill of exchange or other negotiable instrument (such as cheque) has been received as conditional payment and it has been dishonoured.

Rights of an Unpaid Seller

The rights of an unpaid seller can broadly be classified under the following two categories:

Rights against the goods

Rights against the buyer personally

I Rights against the goods where the property in the goods has passed to the buyer

a) Right of Lien [Section 47,48 and 49]

Meaning of Right of Lien:

The right of lien means the right to retain the possession of the goods until the full price is received.

Three circumstances under which right of lien can be exercised [Section 47(1)]

1. Where the goods have been sold without any stipulation to credit;
2. Where the goods have been sold on credit, but the term of credit has expired;
3. Where the buyer becomes insolvent.

b) Right of Stoppage of Goods in Transit

The right of stoppage of goods 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.

c) Right of Resale

An unpaid seller can resell the goods under the following three circumstances:

1. Where the goods are of a perishable nature.
2. Where the seller expressly reserves a right of resale if the buyer commits a default in making payment.
3. Where the unpaid seller who has exercised his right of lien or stoppage in transit gives a notice to the buyer about his intention to resell and the buyer does not pay or tender within a reasonable time.

II Rights against the goods where the property in the goods has not passed to the buyer

Right of withholding delivery [Section 46(2)]

Where the property in the goods has not been passed to the buyer, the unpaid seller, cannot exercise right of lien, but gets a right of withholding the delivery of goods, similar to and co-extensive with lien and stoppage in transit where the property has passed to the buyer.

Rights of Unpaid Seller against the Buyer Personally

The unpaid seller, in addition to his rights against the goods as discussed above,

has the following three rights of action against the buyer personally:

1. Suit for price
2. Suit for damages for non-acceptance
3. Suit for Interest