

Business Regulatory Framework for B.Com III Semester

Sale of Goods Act 1930
Goods and Classifications

K.Dhevan
Assistant Professor

Indian Sale of Goods Act, 1930

- ▶ DEFINITION
- ▶ Sec 4(1) of the Indian Sale of Goods Act, 1930 defines the contract of sale of goods in the following manner: “ 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”.

Essentials of a contract of sale

- ▶ the following essentials of a contract of sale may be noted:
 - ▶ 1. There must be at least two parties
 - ▶ 2. Transfer or Agreement to transfer the ownership of goods.
 - ▶ 3. The subject matter of the contract must necessarily be 'goods'. Sale of immovable property is not covered under this act.
 - ▶ 4. The consideration is Price.
 - ▶ 5. A Contract of sale may be in writing or by words
 - ▶ 6. All other essentials of a valid contract must be present
- ESSENTIALS OF CONTRACT OF SALE**

Definition of `GOODS`

- ▶ Definition of `GOODS` under the Act □ 'Goods' means every kind of moveable property and includes stock 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.
 - ▶ Actionable claims and money are not included in the definition of goods. Thus, goods include every kind of moveable property other than actionable claim or money. Example - goodwill, copyright, trademark, patents, water, gas, and electricity are all goods and may be the subject matter of a contract of sale.
 - ▶ The test is if the property on shifting its situation, does not lose its character, the said property shall be movable and fall within the definition of `Goods`.
- GOODS

TYPES OF GOODS

- ▶ **Existing goods**
 - ▶ A) Specific Goods
 - ▶ B) Ascertained goods
 - ▶ c) Unascertained goods
- ▶ **Future goods**
- ▶ **Contingent goods**

- ▶ 1. Existing goods: Goods which are physically in existence and which are in seller's ownership and/or possession, at the time of entering the contract of sale are called 'existing goods.' Where seller is the owner, he has the general property in them.
- ▶ 2. Future goods: Goods to be manufactured, produced or acquired by the seller after the making of the contract of sale are called 'future goods' [Sec. 2(6)].
- ▶ These goods may be either not yet in existence or be in existence but not yet acquired by the seller. Ex:- A agrees to sell to B all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.

Contingent goods:

- ▶ 3. Contingent goods: Though a type of future goods, these are the goods the acquisition of which by the seller depends upon a contingency, which may or may not happen [Sec. 6 (2)].
- ▶ Ex:- (a) A agrees to sell to B a specific rare painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.
- ▶ (b) X agrees to sell to 25 bales of Egyptian cotton, provided the ship which is bringing them reaches the port safely. It is a contract for the sale of contingent goods. If the ship is sunk, the contract becomes void and the seller is not liable.

- ▶ The term “Contract of sale of goods’ is a generic term and it includes: a. Sale and b. An agreement to sell

where the seller transfers the ownership rights to the buyer immediately on making the contract, it is the contract of sale, but where the ownership rights are to pass on some future date upon the fulfillment of certain conditions then it is called an agreement to sell.

SALE` AND 'AGREEMENT TO SELL' DISTINGUISHED

- ▶ Sale: It is a contract where the ownership in the goods is transferred by seller to the buyer immediately at the conclusion contract. Thus, strictly speaking, sale takes place when there is a transfer of property in goods from the seller to the buyer. A sale is an executed contract. It must be noted here that the payment of price is immaterial to the transfer of property in goods.
- ▶ Ex - A sells his Yamaha Motor Bicycle to B for Rs. 10,000. It is a sale since the ownership of the motorcycle has been transferred from A to B. `

Agreement to sell

- ▶ It is a contract of sale where the transfer of property in goods is to take place at a future date or subject to some condition thereafter to be fulfilled.
- ▶ Ex- A agreed to buy from B a certain quantity of nitrate of soda. The ship carrying the nitrate of soda was yet to arrive. This is `an agreement to sale`. In this case, the ownership of nitrate of soda is to be transferred to A on the arrival of the ship containing the specified goods (i.e. nitrate of soda) [Johnson V Mcdonald (1842) 9 M & W 600, 60 RR 838]
- ▶ On 1st March 1998, A agreed to sell his car to B for Rs. 80,000. It was agreed between themselves that the ownership of the car will transfer to B on 31st March 1998 when the car is got registered in B`s name. It is an agreement to sell and it will become sale on 31st March when the car is registered in the name of B.

Sale and AGREEMENT TO SELL

Sale	Agreement to sell
Ownership passes to the buyer	It is a executory contract
It is a executed contract	Ownership remains with the seller.
Risk of loss falls on the buyer	Risk of loss falls on the seller
Seller cannot resell the goods	Seller can sell goods to third party
It can be in case of existing and specific goods.	It can be in case of future and unascertained goods
In case of breach of a contract, seller can sue for the price of the goods	In case of breach of a contract, seller can sue only for damages not for the price.
The seller is only entitled to the ratable dividend of the price due if the buyer becomes insolvent	The seller may refuse to sell the goods to the buyer w/o payments if the buyer becomes insolvent.

CONDITIONS AND WARRANTIES [SEC 11-17]

- ▶ MEANING OF CONDITION
- ▶ A condition is a stipulation -
 - (a) which is essential to the main purpose of the contract
 - (b) the breach of which gives the aggrieved party a right to terminate the contract.
- ▶ It goes to the root of the contract.
- ▶ Its non-fulfillment upsets the very basis of the contract.

CONDITIONS AND WARRANTIES

[SECTIONS 11-17]

- ▶ Sec 12(2) of Sales Of Goods Act, 1930 has defined Condition as: “A condition is 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”.
- ▶ Example :- [Behn v. Burness, 1863] By charter party(a contract by which a ship is hired for the carriage of goods), it was agreed that ship m of 420 tons “now in port of Amsterdam” should proceed direct to new port to load a cargo. In fact at the time of the contract the ship was not in the port of Amsterdam and when the ship reached Newport, the charterer refused to load. Held, the words “now in the port of Amsterdam” amounted to a condition, the breach of which entitled the charterer to repudiate the contract.

WARRANTY

- ▶ It is a stipulation collateral to the main purpose of the contract
- ▶ It is of secondary importance
- ▶ If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.
- ▶ Sec 12(3) of Sale Of Goods Act, 1930 has defined Warranty as : “A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to only claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

DISTINCTION BETWEEN 'CONDITION' AND 'WARRANTY'

1. A condition is a stipulation (in a contract), which is essential to the main purpose of the contract.
1. A warranty is a stipulation, which is only collateral or subsidiary to the main purpose of the contract.

2. A breach of condition gives the aggrieved party a right to sue for damages as well as the right to repudiate the contract.
2. A breach of warranty gives only the right to sue for damages. The contract cannot be repudiated.

A breach of condition may be treated as a breach of warranty in certain circumstances.
3. A breach of warranty cannot be treated as a breach of condition.

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (TYPES)

- ▶ Conditions and Warranties may be either express or implied.
- ▶ They are said to be "express" when they are expressly provided by the parties.
- ▶ They are said to be 'implied' when the law deems their existence in the contract even without their actually having been put in the contract. Sec(14 to17)

▶ **IMPLIED CONDITIONS :**

- ▶ Conditions as to title [Sec.14(a)] [Rowland v. Divall,(1923)]
- ▶ Sale by description [Sec.15] [Bowes v.shand,(1877)]
- ▶ Condition as to quality or fitness.[Sec.16(1)]
- ▶ Conditions as to Merchantability [Sec.16(2)] [R.S.Thakur v. H.G.E. corp., A.I.R.(1971)]
- ▶ Conditions implied by custom[Sec.16(3)].
- ▶ Sale by Sample (Sec.17)
- ▶ Condition as to wholesomeness.

▶ **IMPLIED WARRANTIES**

- ▶ Warranty of Quiet possession-Sec.14(6)
- ▶ Warranty against encumbrances-Sec.14(c)
- ▶ Warranty to disclose dangerous natures 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".
- ▶ It is the duty of the buyer to be careful while purchasing goods of his requirement and in the absence of the enquiry from the buyer, the seller is not bound to disclose every defect in the goods of which he may be cognizant.

EXCEPTIONS TO THE DOCTRINE OF CAVEAT EMPTOR (SEC16)

- ▶ In case of misrepresentation by the seller
- ▶ In case of concealment of latent defect
- ▶ In case of sale by description
- ▶ In case of sale by sample
- ▶ In case of sale by sample and description
- ▶ Fitness for a particular purpose
- ▶ Merchantable quality

PASSING / TRANSFER OF PROPERTY

- ▶ Transfer of property in goods from the seller to the buyer is the main object of a contract of sale.
- ▶ “property in goods” means the ownership of goods
- ▶ An article may belong to A although it may not be in his possession. B may be in possession of that article although he is not its owner.
- ▶ It is important to know the precise moment of time at which the property in goods passes from the seller to the buyer for the following reasons
- ▶ Significance - Time of transfer of ownership of goods decides various rights and liabilities of the seller and buyer.
- ▶ Risk - Owner to bear the risk and not the person who merely has the possession
- ▶ Action against third party - Owner can take action and not the person who merely has possession.

RIGHTS OF UNPAID SELLER

▶ UNPAID SELLER (SEC.45)

A seller of goods is deemed to be an unpaid seller when:-

- The whole of the price has not been paid or tendered;
- A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

CONDITIONS

- ▶ The term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed or agent who has himself paid, or is directly responsible for, the price.
- ▶ The seller shall be called an unpaid seller even when only a small portion of the price remains to be unpaid.
- ▶ It is for the non payment of the price and not for other expenses that a seller is termed as an unpaid seller.
- ▶ Where the full price has been tendered by the buyer and the seller refused to accept it, the seller cannot be called as unpaid seller. Where the goods have been sold on credit, the seller cannot be called as an unpaid seller. Unless :
- ▶ If during the credit period seller becomes insolvent, or
- ▶ On the expiry of the credit period, if the price remains unpaid,
- ▶ Then, only the seller will become an unpaid seller.

RIGHTS OF AN UNPAID SELLER

- ▶ RIGHTS OF AN UNPAID SELLER
- ▶ Against goods
- ▶ AGAINST GOODS Where the property in goods has passed to the buyer
- ▶ Where the property in goods has not passed to the buyer
- ▶ Where the property in goods has passed to the buyer
 - ▶ Right of lien
 - ▶ Right of stoppage in transit
 - ▶ Right of resale

Against buyer personally

- ▶ RIGHT OF LIEN (SEC.47-49)
- ▶ The right of lien means the right to retain the possession of the goods until the full price is received.

Circumstances under the right of lien can be exercised

- ▶ Where the goods have been sold without any stipulation to credit
- ▶ Where the goods have been sold on credit, but the term of credit has expired
- ▶ Where the buyer becomes insolvent.
- ▶ RIGHT OF STOPPAGE OF GOODS IN TRANSIT (SEC.50-52)
- ▶ 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. Conditions under which Right of stoppage in transit can be exercised
- ▶ (i) Seller must have parted with the possession of goods, ie, the goods must not be in the possession of the seller
- ▶ (ii) the goods must be in course of transit □ (iii) buyer must have become insolvent

- ▶ RIGHT OF RESALE (SEC.54)
- ▶ An unpaid seller can resell the goods under the following circumstances:
- ▶ (i) Where the goods are of a perishable nature
- ▶ (ii) Where the seller expressly reserves the right of resale if the buyer commits a default in making payment
- ▶ (iii) 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 buyer does not pay or tender within a reasonable time. Where the property in goods has not passed to the buyer Withholding delivery Stoppage in transit.

SUITS FOR BREACH OF THE CONTRACT

- ▶ **Suit for price.-**
- ▶ (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- ▶ (2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract

- ▶ **Damages for non-acceptance.**- Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
- ▶ **Damages for non-delivery.**- Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.