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CA FOUNDATION LAW NOTES

Chapter 2 - The Sale of Goods Act, 1930

Unit 1: Formation of the Contract of Sale

Contract of Sale - Section 4

Contract of Sale: A contract of sale of goods is a contract whereby the Seller transfers (sale) or agrees to transfer (agreement to sell) the property in goods to the Buyer, for a price.

Sale and an Agreement to Sell:

(a) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a Sale.

(b) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an Agreement to Sell.

Essentials of Contract of Sale:

- (a) There must be at least two parties,
- (b) The subject matter of the contract must necessarily be goods,
- (c) A price in money (not in kind) should be paid or promised,
- (d) A transfer of property in goods from Seller to the Buyer must take place,
- (e) A contract of sale must be absolute or conditional, and
- (f) All other essential elements of a valid contract must be present in the contract of sale.

Not Applicable:

(a) It does not apply to Hire Purchase Agreement where possession of goods is transferred immediately but ownership of goods is transferred on the payment of last instalment and the hirer has right to terminate the agreement at any time before the transfer of ownership.

(b) It does not apply to Contracts for skill and labour where the rendering of the service and exercise of skill is the essence of contract even though there may be delivery of goods.

Goods

Goods means: Every kind of movable property.

Excludes - Actionable Claims and Money (but not old rare coins).

Includes - Stock and Shares, Growing Crops, Grass & things agreed to be severed under contract of sale.

Existing goods: Goods that are in existence at the time of contract of sale, i.e. owned or possessed by the Seller.

Specific Goods: Goods identified and agreed upon, at the time the contract of sale.

Ascertained Goods: Which are identified and set aside for a given contract out of a mass of unascertained goods.

Unascertained Goods: Which are not identified and agreed upon at the time when a contract of sale is made.

Future goods: Goods to be manufactured or produced or acquired by the seller after making the contract of sale.

Contingent Goods: The acquisition of which by the seller depends upon a contingency which may or may not happen.

Goods perishing before making of contract | Goods perishing before sale but after agreement to sell [Sec 7 & 8]

(a) Goods not existing at the time of contract:

- If at the time a contract of sale is entered into,
- the subject-matter of a contract being specific goods,
- which without the knowledge of the Seller have been destroyed or
- so damaged as not to answer to the description in the contract,
- then the contract is void ab initio.

(b) Goods perishing after the contract is made:

- Where there is an agreement to sell specific goods and the goods,
- subsequently without any fault of the Seller or the Buyer perish or suffer such damages as not to answer to the description in the agreement before the risk passes to the Buyer,
- the agreement becomes void.

The price [Sec 9 & 10]

Ascertainment of Price: The Price may be -

- (a) fixed by the contract,
- (b) agreed to be fixed in a manner provided by the contract, e.g. Valuer, or
- (c) determined by the course of dealings between the parties.

Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a **reasonable price**. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation

Price fixed by third party:

- (a) When Third party does not or cannot make such valuation - Agreement will be void.
- (b) When Third party is prevented by the default of the either of the parties - Party at default will be liable for damages.

Delivery & its types

Delivery means voluntary transfer of possession by one person to another. Delivery may be of three

kinds -

- **Actual Delivery:** When the goods are physically delivered to the Buyer.
- **Constructive Delivery:** When it is effected without any change in the custody or actual possession of the thing, as in the case of delivery by attornment (acknowledgement)
Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.
- **Symbolic Delivery:** When there is a delivery of a thing in token of a transfer of something else, when key of a warehouse containing the goods is handed over to buyer.

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Unit- 2: Conditions & Warranties - Very Important Unit

Condition and warranty [Sec 12]

Condition	Warranty
A Condition is a stipulation essential to the main purpose of the contract.	A Condition is a stipulation collateral to the main purpose of the contract.
The aggrieved party can repudiate the contract or claim damages or both in case of breach.	The aggrieved party can only claim damages in case of breach.
Breach of Condition may be treated as Breach of Warranty.	Breach of Warranty cannot be treated as Breach of Condition.

When condition to be treated as warranty [Sec 13]

- (a) Buyer **waives** the performance of the condition.
- (b) Buyer elects to treat the breach of condition as breach of warranty.
- (c) Contract is **non-severable**, and the Buyer has accepted either the whole goods or any part thereof.
- (d) Fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Implied conditions and warranties [Sec 14 -17]

Implied Conditions:

- (a) **Condition as to Title** - Seller must be the true owner,
- (b) **Sale by description** - Goods should correspond with the description,
- (c) **Sale by sample** - Bulk shall correspond with the sample in quality,
- (d) **Sale by sample as well as description** - Bulk shall correspond both with sample and description,
- (e) **Condition as to quality and fitness** - Condition applies only if Buyer had made known to the Seller the purpose of his purchase and relied upon the skill and judgement of the Seller, and
- (f) **Condition as to wholesomeness** — In case of eatables and provisions, the goods shall be wholesome.

Implied Warranties

Implied Warranties:

- (a) **Warranty as to undisturbed possession** - Buyer shall have and enjoy quiet possession of the goods,
- (b) **Warranty as to non-existence of encumbrances** - Goods shall be free from any charge in favour of any third party,

(c) **Disclosure of dangerous nature of goods** - Seller must warn the Buyer of the probable danger when goods are inherently dangerous, and

(d) **Warranty as to quality or fitness by usage or trade** - Implied Warranty as to quality and fitness for a particular purpose may be annexed by the usage of trade.

Caveat Emptor

Caveat Emptor = Let the Buyer beware:

- (a) **Meaning:** The Seller is not bound to disclose the defects in the goods which he is selling. It is the duty of the buyer to satisfy himself before buying the goods that it will serve the purpose for which they are being bought.
- (b) **Exceptions to the Rule:** (i) Purpose is made known to the Seller, (ii) Goods purchased under its Patent or Brand name, (iii) Goods sold by description, (iv) Goods bought by sample, (v) Implied warranty or condition as to quality or fitness annexed by the usage of trade, and (vi) Seller sells the goods by making some misrepresentation or fraud.

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Unit- 3: Transfer of Ownership and Delivery of Goods

1. **Meaning of "Passing of Property":** It implies passing of ownership. If the property has passed to the Buyer, the risk in the goods sold is that of the buyer and not of the seller, though the goods may still be in the Seller's possession.
2. **Rules for "Passing of Property":** (i) Property will be transferred only when the goods are ascertained, and (ii) For Specific and Ascertained goods, property passes to the Buyer at the time when parties intend it to pass.
3. Passing of Property for different types of goods:

Situation	Passing of Property
Specific Goods [Sec 20 21 22]	<ul style="list-style-type: none"> • Deliverable State - At the time when Contract is made, • Non-deliverable state - After completion of process to make it deliverable.
Unascertained Goods [Sec 18 & 23]	Either when goods are ascertained or unconditionally appropriated.
Goods sent on approval [Sec 24]	<ul style="list-style-type: none"> • On approval by the buyer, or • Does not signify his approval beyond a reasonable time. • When the buyer does an act adopting the transactions, or

Section-26 Risk prima facie passes with property

- (a) Unless otherwise agreed, the goods remain at the Seller's risk until the property therein is transferred to the buyer.
- (b) But when the property in goods is transferred to the Buyer, the goods are at the Buyer's risk, whether delivery has been made or not.

Exceptions: The following are the exceptions to the general rule that risk passes with property

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- (a) **Delayed delivery:** Where delivery of Goods has been delayed through the fault of either Buyer or Seller, goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(b) **Agreement between parties:** The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.

(c) **Usage of Trade:** In some cases trade customs may put the ownership and risk separately in two parties.

Transfer of title

Section-27 Sale by person not the owner

(a) "Nemo dat quod non habet" - it means that no one can give what he has not got. If the Seller is not the owner of goods, then the Buyer also will not become the owner.

(b) **Exceptions to the Rule:**

- (i) Sale by Mercantile Agent,
- (ii) Sale by one of the Joint Owners,
- (iii) Sale by a person in possession under a voidable contract,
- (iv) Sale by one who has already sold the goods but continues possession thereof,
- (v) Sale by Buyer obtaining possession before the property in goods has vested in him,
- (vi) Effect of Estoppel,
- (vii) Sale by an Unpaid Seller, and
- (viii) Sale by Official Assignee.

Section 42 - Acceptance

Acceptance of delivery: Acceptance is deemed to take place when the Buyer -

- (a) Intimates to the Seller that he had accepted the goods, or
- (b) Does any act to the goods, which is inconsistent with the ownership of the Seller, or
- (c) Retains the goods after the lapse of a reasonable time, without intimating to the Seller that he has rejected them.

Unit- 4: Unpaid Seller

"Unpaid seller" and his rights against goods

1. **Meaning:** Seller is deemed to be an Unpaid Seller when - (a) whole of the price has not been paid or tendered, and Seller had an immediate right of action for the price, or (b) Dishonour of a Bill of Exchange or Negotiable Instrument.
2. **Rights of Unpaid Seller:**
 - (a) **Rights against Goods:**
 - **Right of Lien** - Exercise of Right: For recovery of price, when he is in possession of goods.
Conditions -
 - (i) Goods are sold without any stipulation of credit,
 - (ii) goods are sold on credit, but the term has expired, or
 - (iii) buyer becomes insolvent.**Right is lost when -**
 - (i) Seller delivers the goods to Carrier for transmitting to the buyer without reserving the right of disposal of the goods,
 - (ii) Buyer or his agent lawfully obtains possession,
 - (iii) Seller has waived the right of lien, or
 - (iv) by estoppel.
 - **Right of stoppage in transit:** Exercise of Right: Unpaid Seller has parted with the goods and buyer has become insolvent.
Conditions -
 - (i) Seller must be unpaid,
 - (ii) he must have parted with the goods,
 - (iii) goods are in transit,
 - (iv) buyer has become insolvent.
 - **Right of Re-sale:** Conditions:
 - (i) Goods are of perishable nature (buyer need not be informed), or
 - (ii) he gives notice to the buyer about the re-sale and buyer does not make the payment within reasonable time.
 - (b) **Rights against Buyer:** (i) Suit for Price, (ii) Suit for damages for non-acceptance, (iii) Repudiation of contract before due date, and (iv) Suit for Interest.

Rights of an unpaid seller against the buyer | Rights of buyer against the seller

- (a) Buyer's Right against the Seller: (i) Suit for non-delivery, (ii) Suit for specific performance, (iii) Suit for damages for breach of warranty, and (iv) Suit for recovery of Price.
- (b) Seller's Right against the Buyer: (i) Suit for Price, and (ii) Damages for non-acceptance.

Auction Sale

- (a) It is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.
- (b) An Auctioneer is only an Agent of the Seller.
- (c) Sale is complete when the Auctioneer announces its completion by the fall of hammer.
- (d) Right to bid may be reserved expressly by or on behalf of the Seller.
- (e) If the Seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the Buyer.

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