

Sale Of Goods Act, Unit - 1

• Introduction:

This act was part of Indian Contract Act, before its formation. However due to lots of contracts based on buying and selling of goods, this act was formed.

• Few Important Definitions:

1. **Buyer:** Person who buys or agrees to buy goods
2(1)

Seller: Person who sells or agrees to sell goods
2(13)

2. **Goods:** Means
2(7).

Movable Property
Includes.

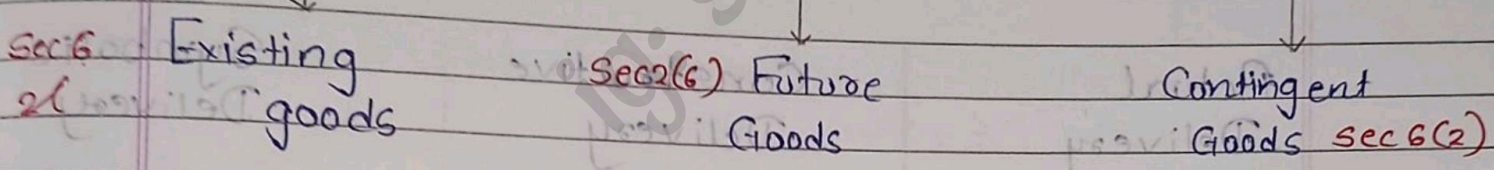
- 1 Stock and shares
- 2 growing crops.
- 3 grass
- 4 things attached to forming part of land. agreed to be served. before sale

Other than
↓

actionable claims
Money

*

Goods.



• Such goods as are in existence at the time of contract of sale.

• Goods to be manufactured or produced or acquired by seller after making contract of sale.

• Acquisition of which by seller depends upon an uncertain contingency.

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Existing Goods

Specific goods

Ascertained Good

Unascertained Goods

• Goods identified and agreed upon at the time of contract of sale.

• Those goods which are identified in accordance with agreement after contract of sale is made.

• Goods which are not specifically identified or ascertained at the time of making contract.

* Delivery:

It means voluntary transfer of possession of goods.

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Delivery

Actual Delivery

• When goods are physically delivered from seller to buyer

Constructive Delivery

• When sale occurs and ownership transfers without change in custody of goods

Symbolic Delivery

• Where delivery of thing is taken of transfer of something else

* Document of Title:

A document transfer of which represents transfer of ownership.

* Document showing title:

A document which has its name of owner & its transfer leaves no change in ownership.

* Property means ownership.

* Price : money consideration.

* Sale v/s Agreement to sell [Sec 4]

• Contract of Sale:

Where in contract parties sell or agrees to sell goods at a price. Contract can be absolute or conditional.

• Sale:

Where property in goods is transferred by seller.

• Agreement to sell:

Where property in goods is transferred on future date or after completion of condition.

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* Essential of a Valid Contract of Sale.

1. There must be atleast two parties: seller and buyer.
2. Subject matter of contract must necessarily be goods.
3. Price in money not in time.
4. Transfer of ownership (property) from seller to buyer.

5 Contract of sale can be absolute or conditional.

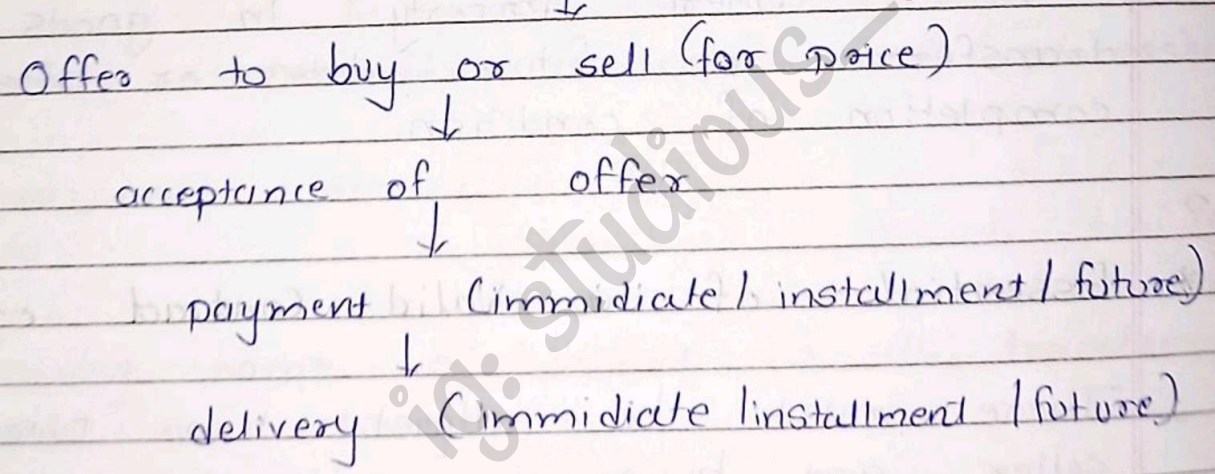
6 All other essential of valid contract must present

* Note: Read difference between

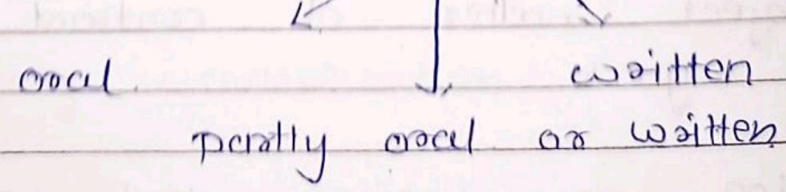
- Sale & hire-purchase
- Sale & bailment.
- Sale & contract for work and labour

* Contract of sale how made

• under sec 5(1): Contract of sale:



• under sec 5(2): contract of sale



• Under sec 6 : Subject matter of contract of sale

1. Goods which are subject to contract of sale may be existing or future goods.
2. Contract of sale may be of goods, acquisition of which depends upon contingency.
3. Contract of sale may be of existing or of future goods on existing time or any future date.

• Under Sec 7 : Goods perishing before making contract.

If goods are perish before making contract of sale, without knowledge of seller, then contract is void as goods are so perished that they no longer matches with their description.

• Under sec 8 : Goods perishing before sale but after agreement to sale:

If goods perished after agreement to sell but before sale without fault of buyer or seller, then agreement can be avoided.

• Under sec 9: Ascertainment of Price.

- (i) while making contract, price must fix price of goods.
- (ii) If not determined, buyer shall pay reasonable price to seller.

• Under sec 10: Agreement to sell at valuation.

→ If contract is made on condition that price of goods is ascertained by third party and such third party cannot make valuation, then agreement can be avoided.

However, if goods are already delivered to buyer he will pay reasonable amount.

→ If any of party makes default, party not in fault may maintain suit for damages.

Unit 2 : Condition & Warranty

* Section 11: Stipulation ^{essential/important} as to time:

Time is a ~~an~~ most essential element in any contract of sale, but not time of payment unless otherwise mentioned. In General, time of delivery is essence of contract of sale.

* Section 12: Condition and Warranty

Under sec 12 (2): Condition

" A condition is stipulation essential to main purpose of contract breach of which gives rise to right to treat contract as repudiated".

Under sec 12 (3): (w)arranty

A warranty is stipulation collateral to main purpose of contract, breach of which gives rise to claim damages but not to right to reject goods and treat contract as repudiated.

Most IMP
5 mark

Difference : Condition and Warranty

Condition

Warranty

- | | |
|--|---|
| 1. A condition is stipulation essential to main purpose of contract. | 1. It is only collateral to main purpose of contract. |
| 2. Aggrieved party can repudiate contract or claim damages or both. | 2. Aggrieved party can claim damages on breach. |
| 3. Breach of condition may be treated as breach of warranty. | 3. Breach of warranty cannot be treated as breach of condition. |

* When Condition is treated as Warranty

→ In following cases; A contract cannot be rescinded even if there is breach of condition:

1. Where buyer waives performance of condition i.e. for own benefit waives stipulation.
2. Where buyer elects to treat breach of condition, as one of a warranty i.e. He claims damages instead of repudiating contract.

3. Where contract is non-severable and buyer has accepted either whole goods or any part thereof.

4. Where fulfilment of any condition or warranty is excused by law.

Types of Condition & Warranty

Express

Where it is clearly mentioned in terms & conditions of contract.

Implied.

Where certain norms are followed even though they are not clearly mentioned in contract.

* Implied Condition

1. Condition as to title:

In every contract of sale, it is implied condition that seller selling goods:

- 1) has right to sell goods
- 2) In agreement to sell, he will have right to sell goods at the time property is to pass

2. Sale by Description :

This rule is based on principle that, "If you contract to sell peas, you cannot compel buyer to buy beans." which means : goods must correspond to description by which it is sold.

3. Sale by Sample :

Goods must correspond to sample if buyer bought goods after considering sample.

4. Sale by sample as well as description :

Where goods are sold by sample as well as description, implied condition is that bulk must correspond sample as well as description.

5. Condition as to quality or fitness

This implied condition says goods must be of reasonable quality & fit for the purpose it is bought by buyer, if he had made known to seller purpose of his purchase and relied upon his skills & judgement.

6. Condition as to Merchantability :

Where goods are bought by

description from the seller of goods of that description, implied condition is that goods must be merchantable quality.

7. Condition as to wholesomeness :

In case of eatables, in addition to implied condition as to merchantability, there is another implied condition that goods must be wholesome.

* Implied Warranty :

1. Warranty as to undisturbed possession :

An implied warranty that the buyer shall have and enjoy quiet possession of goods.

2. Warranty as to non-existence of encumbrances :

An implied warranty that goods shall be free from any charge or encumbrance in favour of any third party not declared at the time of contract.

3. Warranty as to quality or fitness by usage of trade :

An implied warranty as to quality

or fitness for a particular purpose may be annexed or attached by usage of trade

4. Disclosure of Dangerous Nature of Goods:

Where goods are dangerous in nature and buyer is ignorant of danger, seller must warn buyer of probable danger.

* 5. Caveat Emptor:

"Let the buyer beware"

It is the duty of buyer to satisfy himself before buying goods that goods will serve the purpose for which they are being bought.

Exception to rule of caveat emptor:

1) Fitness as to quality or use:

Where buyer makes seller know the purpose of buying goods and seller is dealing with such goods and buyer relies on seller skills & judgement then caveat emptor shall not apply.

* Paest v/s Lad

* Bombay v/s Buena trading corporation limited
v/s Aga Muhammad.

2. Goods purchased under patent or Brand name:

In case goods are purchased under patent name or brand name, there is no obligation of seller but brand owner shall be liable for quality issues.

3. Goods sold by description:

Where goods are sold by description they must correspond with description, if not seller will be responsible.

4. Goods of Merchantable Quality:

Where goods are bought by description from seller who deals with goods of such description, there is implied condition that goods must be merchantable & caveat emptor shall not apply.

5. Sale by Sample:

Where goods are bought by sample they must correspond to bulk if not caveat

emptor shall not apply

6. Goods sold by sample as well as description :

Rule of caveat emptor shall not apply if goods does not correspond to sample as well as description :

7. Trade Usage :

If seller deviates from implied condition or warranty of trade usage rule of caveat emptor shall not apply.

8. Seller actively conceals a defect or is guilty of fraud :

If seller is making some misrepresentation or fraud & buyer relies on it and found fraud, then caveat emptor shall not apply.