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 Definations:

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

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

2. Goods : Means
2 (7).

Movable Property — Other than
Includes.

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

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*. Goods.

Sec 6 2(Existing goods	Sec2(6) Future Goods	Contingent Goods sec 6(2)
• 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.	• Acquisation of which by seller depends upon an uncertain contingency.

* Existing Goods

Specific goods	Ascertained Good	Unascertained Goods
• Goods identified and agreed upon at the time of contract of sell.	• 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

*. Delivery

Actual Delivery	Constructive Delivery	Symbolic Delivery
• When goods are physically delivered from seller to buye	• When sale occurs and ownership transfers without change in custody of goods	• Where delivery of thing in token of transfer of something else

* Document of Title:

A document tranfer of which represents transfer of ownership.

* Document showing title :

A document which ~~has~~ is only showing 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. Tranfer of ownership (property) from seller to buyer

5 Contract of sale can be absolute or conditional.

6. All other essential of valid contract ~~nc~~ 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:

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Offer to buy or sell (for price)

↓

acceptance of offer

↓

payment (immidiate / installment / future)

↓

delivery (immidiate / installment / future)

- under sec 5(2): contract of sale

↙ ↓ ↘

oral | partly oral or written | written

- 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, than 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 befor sale without fault of buyer or seller, than agreement can be ~~are~~ 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 deliver 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 as to time:**

essential / important

Time is a ~~ext~~ 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 ~~(r~~ (3) : Warranty

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

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Difference : Condition and Warranty

Condition	Warranty
1. A condition is stipulation essential to main purpose of contract	1. It is only colletral to main purpose of contract.
2. Aggrived party can repudiate contract or claim damages or both.	2. Aggrived party can claim damages on breach.
3. Breach of condition may be treated as breach of warrenty	3 Breach of warranty cannot be treated as breach of condition.

* When Condition as treated as Warranty

→ In following ~~In~~ cases ; A contract cannot be ~~resig~~ rescinded (cancel) 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 ~~etc~~ 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, emplied 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 it 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 seller dealing in 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 quite possession of goods.

2. Warranty as to non-existense 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 wage of trade:

An implied warranty as to quality

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

4. Disclouseur of Dangerous Nature of Goods:

Where goods are dangerous in nature and buyer is ignorant of danger, seller must waint 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:

i) 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 than caveat emptor shall not apply

* Priest v/s lad

* Bombay Burma 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

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Unit - 3 : Tranfer of Ownership & Delivery of Goods

1. Importance of time of transfer of PROPERTY

(a) Risk Prima facie passes with property

(b) If goods are lost or damaged, loss will be borned by owner at the time of such damage.

(c) If goods are damaged by act of third party, owner can take action.

(d) Seller can only sue for price after passing of ownership to buyer.

2. Passing of PROPERTY:

Primarily, passing of property from seller to buyer depends upon type of goods based on that it is ~~vitamin~~ determined as follows.

Passing of Property

Specific / Ascertained Goods

1. Intend of buyer & seller
2. Term & condition of contract

↓

(i) specific goods in deliverable state
(ii) Put to Deliverable state.
(iii) Speific goods in Delivarable State. However seller has to do something to ascertain price

Unascertained Goods

(i) Ascertain

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(a) are goods by description (assent)
(b) Delivery to carrier

Goods are sent on return or approval.

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(i) Buyer accepted goods
(ii) Not returned in reasonable time.
(iii) Pledge gift goods sold for cash or return

Right of Disposal

• If seller kept rights on goods sold. Ownership cannot be transferred to buyer.

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Buyer has right to check goods before acceptance

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* Risk Prima Facie Passes with property:
section 26:

Explain goods shall remain seller's property unless ownership passes to buyer. However when property tranfer to buyer, goods are now at buyer's risk.

→ However if Delivery of goods are Delayed by buyer or seller's fault, loss will be bourned by party at fault.

* Sale by person not the owner:

"Nemo Dat Quod Non habet" means no one can give what he has not got". This rule says only owner can sale or tranfer property (ownership) of goods. However in certain cases a non owner can also pass valid title of goods

* Sale by merchantile Agent:

A merchantile agent shall pass valid title of goods in following circumstances:

- If he is in possession of goods or Documents
- Sale is made in ordinary course of business

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- Buyer had acted in good faith.

Sale by joint owners:

If one of the joint owners of goods has sale possession with permission of co-owners he can pass valid title to bonafied buyer.

- Sale by person in possession under voidable contract:

Buyer shall get valid title of goods from seller who have obtained goods by coercion, undue influence, fraud or misrepresentation provided that such contract not rescineded untill this sale.

- Sale by a person who have sold goods but continous in possessions

If a person sold goods & continous in possession of goods, sold them to another person, who obtains goods in good faith then subsequent sale is valid

Sale by buyer obtaining possession before property in goods wasted in him.

Where buyer with consent of seller sells goods to third party without getting property in goods shall pass valid title to third party

Effect of Estoppel:

Where seller sells goods to buyer in front of owner representing himself owner & true owner did not deny & buyer buys goods in good faith.

Sale by ~~up~~ unpaid seller:

Where ~~up~~ unpaid seller exercised right of lien or resales goods, they pass valid title to buyer.

Sale under provision of other acts

- Sale by official receiver / liquidator
- Finder of goods
- Sale by pawnee

* Delivery :

- Defination : Voluntary transfer from one person to another

- Duties of seller and buyer.

Seller : Deliver goods
Buyer : Accept goods and make payment.

* Rules Regarding Delivery of GOODS:

1. Delivery: which party agrees as Delivery.

2. Part Delivery:
   If goods are deliverd in parts it is assumed delivery as whole, however it may vary with intention.

3. Buyer to apply for Delivery

4. Place of Delivery:
   As decided by contract between buyer and seller else place of agreement.

5. Time of Delivery:
   As per contract else reasonable time.

6. Goods in possession of third party:
   No delivery unless such person acknowledge to buyer.

7. Time for tender of Delivery

Demand of delivery is ~~important~~ infectual unless made in reasonable hour.

8. Expenses of Delivery :
In General bourne by seller or as per contract.

9. Delivery of wrong Quantity :
Less : Buyer may reject goods or accept and pay.
More : Reject all goods
Reject extra goods
Accept all goods

10. Installment Delivery :
Buyer is not bound to accept goods in installment.

11. Delivery to carrier :
Delivery to carrier is assumed to be deliver to buyer

12. Deterimination During transit :
This loss is bourned by buyer generally.

13 Buyer's r

13. Buyer's Right to examine goods:
Buyer must yet reasonable opportunity of examining goods

U/s 42 Rules Related to acceptance of Delivery

(i) Intimates seller that he accepts goods.

(ii) Does any act to goods, which only owner can Do. (sale / pledge)

(iii) Retain goods after lapse of reasonable time.

U/s 43 Buyer not bound to return rejected goods

→ Buyer is expected only to intimates seller about rejection of goods & not returned.

U/s 44 Liability of buyer for neglecting or Refusing delivery of goods

Buyer shall be liable to pay to seller loss caused by his action.

4. Unpaid Seller

According to section 45 (1), an unpaid seller is

(i) Seller who has immediate right to take action for price of goods, However haven't received whole price.

(ii) When he received bills of exchange or promisory note or any negotiable instrument However when presented, got dishonoured.

* Unpaid seller's right :

Right against goods
↓
When property in goods has passed to buyer

(i) Seller's lien :
Also known as possessionary lien, that can be exercised by seller.

1. Where goods are sold without credit (Cash Sale).

2. Goods are sold for credit but term expired.

3. buyer is insolvent.

* Lien can be Terminated:

(i) where goods are delivered to carrier without reserving right.

(ii) when buyer / agent obtains possessions

(iii) By waiver

(iv) By estoppel

* Right of stoppage in transit:

→ This right is exercised only when following condition are satisfied:

(i) Seller must be unpaid.
(ii) He must have transfer goods to carrier
(iii) Goods in transit buyer became insolvent
(iv) Right are as per act.

* When transit comes to an end:

(i) When buyer or his agent obtains delivery
(ii) Buyer obtains delivery before arrival of goods
(iii) Carrier acknowledges buyer about holding goods
(iv) If carrier wrongfully refuses to deliver goods.
(v) Goods are delivered to carrier highered by buyer.

(vi) Goods deliver to ship charted by buyer.

Sec58: Effect of subsale or pledge by buyer

Right of lien, stoppage in transit shall not get affected by buyer selling or pledging unless assented to it.

→ However, Rights get defected once document of title tranferred.

* Right of Resale section 54

(i) If goods are perishable:
Seller need not inform buyer about seller resale

(ii) If goods are non - perishable:

Seller shall give notice to buyer about intension of resale. If seller fails to give notice then:

Loss of resale shall be bourn by seller & profit needs to be transferred to buyer. However if notice is given, loss will be bourn by buyer & profit will be taken by seller.

(iii) If property in goods are not passed to buyer:

all other rights remain same except one additional right i.e.

- Right of withholding:

This is similar to lien & known as Quasi Lien.

* Right of unpaid seller Against buyer:

1. Suit for price [section 55]:

unpaid seller can sue buyer for not paying price of goods sold

2. Suit for damages for non acceptance [sec 56]

where buyer wrongfully denies to accept goods, seller may sue him for damages.

3. Repudiation of contract before due date [sec 60]

Seller may sue buyer for damages of anticipatory breach.

4. Suit for interest:

Seller may sue buyer for interest due from goods price that are yet to be delivered

* Right of buyer:

1. Damages for non Delivery
Suit for specific performance
Suit for breach of warranty
Suit for anticipatory breach.
Suit for interest

* Auction Sale

→ mode of selling property by inviting bides publically.

1 * where goods are sold in lots:
→ separate contracts are created.

2 Completion of the contract of sale
→ Sale is complete when announces its completion by fall of hammer

3. Right to bid may be reserved:

4. where sale is not notified by seller:
→ It is unlawfull for seller to bid himself or to employee any person

5. Reserved Price :

6 Pretended bidding :
→ Sale is voidable at option of buyer

7 Change in tax rates :
If increases before sale but after agreement to sale

→ buyer shall pay higher tax

- If Decreases : Buyer shall pay lower tax

"here tax means GST"