

SALE OF GOODS ACT, 1930

INTRODUCTION

- Sale of Goods Act came into force on 1st July, 1930.
- This Act came into force to determine the Rights and liabilities of buyer as well as seller in case of sale of the goods.
- This act provides sale as a bargain between the buyer and a seller.
- This act gives the right to a person in nature of Right in Rem.

BASIC TERMS IN SALE OF GOODS ACT:

- **Contract of Sale:** According to Section 4(1), “A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to buyer for a price.”
- **Buyer:** According to Section 2(1), “Buyer means a person who buys or agrees to buy the goods.”
- **Seller:** According to Section 2(13), “Seller means a person who sells or agrees to sell goods.”

- **Goods**: According to Section 2(7), “Goods means every kind of movable property other than actionable claim and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of land which are agreed to be severed before sale or under Contract of Sale.”



TYPES OF GOODS:

- On the basis of Existence:
- Existing goods: According to Section 6, Existing goods are such goods as are in existence at the time of Contract of Sale i.e. owned or possessed or acquired by the seller at the time of Contract of Sale.
- Future Goods: According to Section 2(6), Future Goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale.
- Contingent Goods: According to Section 6(2), Goods the acquisition of which by the seller depends upon an uncertain event are called Contingent goods

ON THE BASIS OF IDENTIFICATION:

- **Specific Goods:** According to Section 2(14), Specific goods means those goods identified and agreed upon at the time when contract of sale is made.
- **Unascertained Goods:** Goods which are not specifically identified or ascertained at the time of making contract. They are indicated or defined only by description or sample.
- **Ascertained Goods:** Ascertained Goods are those which are identified in accordance with the agreement after the contract of sale. These type of goods are not defined in the Act but similar to Specific Goods when from large quantity the goods are selected or identified then such identified goods are called Ascertained goods.

TRANSFER OF PROPERTY:

- Transfer of Property means **transfer of ownership** in such a way that buyer can enjoy the goods against whole world including seller.
- Transfer of Property gives a buyer 2 rights: 1) He can **utilize goods** in whatever manner he decides 2) He can **transfer the ownership** to others.
- Property of goods can be of 2 types : 1) **General Property** which is known as actual ownership of goods. 2) **Special Property** is known as beneficial ownership of goods. E.g If Mr.A the actual owner of certain jewelry pledges the same with Mr.B then Mr.A has the general Property and Mr.B has the special property.

PRICE

- According to Section 2(10), Price means **money consideration** for sale of goods.
- As per the provisions of the Act if the consideration is fully in terms of Money then it is allowed, if it is partly in terms of money partly in kind then also it is allowed but if it is fully in terms of kind then it will be considered as Barter not sale.

MANNER OF DETERMINATION OF PRICE

- Price may :
- Either be fixed by the **contract**.
- Agreed to be fixed in **manner** provided by the contract.
- Determined by the **course of dealing** between the parties.
- If nothing is decided then buyer should pay **Reasonable Price**.

DETERMINATION OF PRICE BY THIRD PARTY:

- Where there is an agreement to sell goods on the terms that Price is to be fixed by the valuation of third party and such **third party cannot or does not make such valuation then such contract will become void.**
- Where a third party is prevented from making valuation by fault of seller or buyer then party not in fault may maintain a suit for damages against the party in default.

ESSENTIAL ELEMENTS OF CONTRACT OF SALE:

- The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930:
- There must be at least two parties, the seller and the buyer and the two must be different persons. A person cannot be both the seller and the buyer and sell his goods to himself.
- The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.

ESSENTIAL ELEMENTS OF CONTRACT OF SALE:

- A price in money (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.
- A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
- A contract of sale may be **absolute or conditional**.
- All other essential elements of a valid contract must be present in the contract of sale, e.g. free consent of parties, competency of parties, legality of object and consideration etc.

DIFFERENCE BETWEEN SALE AND OTHER TYPE OF CONTRACTS:

- Sale and Agreement to sell:
- Sale: Where under a contract of sale the property in goods is transferred from seller to buyer the contract is called sale.
- Agreement to Sell: Where under a contract of sale the transfer of property in the goods is to take place at a future date or subject to some condition thereafter to be fulfilled , the contract is called agreement to sell.

| Basis of Difference | Sale | Agreement to sell |
|-----------------------------|--|--|
| Transfer of Property | The Property passes to buyer immediately | Property in the goods passes to the buyer on future date or on fulfillment of some condition. |
| Nature of Contract | It is an executed contract | It is an executory contract |
| Remedies for breach | Seller can sue for Price and buyer can sue for goods | Seller and buyer both can claim damages |
| Liability of parties | Subsequent loss or destruction creates a liability on buyer | Subsequent loss or destruction creates a liability on seller. |

SALE AND AGREEMENT TO SELL

| Basis of Difference | Sale | Agreement to sell |
|-----------------------------|--|--|
| Burden of risk | Risk of loss is on buyer. | Risk of loss is on seller. |
| Nature of Rights | Creates jus in Rem | Creates jus in personnem |
| Rights of Resale | Seller cannot resell goods | Buyer may resell goods |
| Insolvency of Seller | Official assignee will not be able to take over the goods but will recover the price from the buyer | Official assignee will acquire control over the goods but price will not be recoverable |
| Insolvency of Buyer | Official assignee will have control over the goods | The official assignee will not have control over goods. |

SALE AND BAILMENT

- **Bailment:** A ‘bailment’ is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished.

SALE AND BAILMENT

| Basis of Difference | Sale | Bailment |
|-----------------------------|--|---|
| Transfer of property | The property is transferred to buyer. | The property is not transfer goods red only possession is transferred |
| Return of Goods | Return of goods is not possible | Bailee must return the goods on completion of purpose |
| Consideration | Consideration is price in terms of money | Consignment may or may not be there |
| Parties | Seller and buyer | Bailor and bailee |
| | | |
| | | |

SALE AND HIRE-PURCHASE

| Basis of Difference | Sale | Hire-Purchase |
|---------------------------------|--|---|
| Time of Passing Property | Property in goods is transferred to the buyer immediately at the time of Contract | Property passes to hirer upon payment of last installment |
| Position of the party | The position of buyer is that of Owner of the goods | Position of hirer is that of a bailee till he pays last installment |
| Termination of Contract | Buyer cannot terminate the contract and is bound to pay the Price of goods | Hirer may if he so likes, terminate the contract by returning the goods to its owner |

SALE AND HIRE PURCHASE

| Basis of Difference | Sale | Hire-Purchase |
|----------------------------|---|---|
| Insolvency of Buyer | Seller takes risk of loss on insolvency of buyer | Owner takes no risk , if buyer gets insolvent , owner has a right to take back the goods |
| Transfer of Title | Buyer can pass a good title to bona fide purchaser for value | Hirer cannot pass any title even to bona fide purchaser |
| Resale | The buyer can resale goods | Hirer cannot resell unless he has paid all the installments. |

DESTRUCTION OF SUBJECT MATTER

- **Destruction of subject matter in Sale:** In contract of Sale if the goods at the time when contract was made were perished or damaged in a way it can no longer be capable of being used then in such a case Sale is void ab initio.
- **Destruction of subject matter in case of Agreement to sell :** In an Agreement to sell if the goods after agreement was entered but before passing of property to buyer were perished or damaged in a way it can no longer be capable of being used then in such a case Agreement becomes void.

RULES AS TO DELIVERY OF GOODS:

- **Delivery :** Delivery means voluntary transfer of possession by one person to another.
- Delivery of goods is necessary for the transfer of property in goods.
- Goods are said to be in a deliverable state when they are in such a condition where buyer , would under a contract, be bound to take the delivery of goods.

RULES AS TO DELIVERY OF GOODS:

- Modes of Delivery:
- **Actual Delivery** : Here goods are **actually** delivered to buyer.
- **Symbolic Delivery**: Goods are delivered by using **some symbol** like keys or Document of title to Goods.
- **Constructive Delivery**: Where the goods are delivered just by **acknowledgment**. Where without change of possession just the right of buyer as an owner is acknowledged and person having possession continues to have possession on behalf of owner.

RULES AS TO DELIVERY OF GOODS:

- Usually a buyer is required to make the request for delivery of goods then the seller is bound to deliver the goods.
- Usually place of delivery is mentioned within the contract but if it is not mentioned then it will be delivered at a place where the contract was made.
- Usually time of delivery of goods is also mentioned within the contract but if it is not mentioned then it will be delivered at reasonable time means Business hours.
- Usually the seller will bear the expense of delivery of goods.

RULES AS TO DELIVERY OF GOODS:

- Sometimes buyer may request for delivery of goods in installments & accordingly it will be given to him.
- Sometimes the goods are delivered through transport company then seller's responsibility will come to an end as soon as he delivers the goods to transport company provided a notice is given to a buyer.
- If notice is given to buyer and seller has also delivered the goods to transport company and afterwards if there is any loss then buyer will bear the loss but if no notice is given then seller will bear the loss.

RULES AS TO DELIVERY OF GOODS:

- If seller has delivered wrong quantity then remedy available to buyer.
- **Excess Quantity delivered:** Buyer may accept total, Buyer may reject total or he may accept the bulk ordered and reject the excess.
- **Short Quantity delivered:** Buyer may accept total or he may reject total quantity delivered.
- **Different Goods delivered from contract:** Buyer may accept total or he may reject total quantity delivered.

PASSING OF PROPERTY:

- When there is an **unconditional** contract for sale of **specific or ascertained goods in a deliverable state**, the property in goods passes to the buyer when the contract is made.
- Ascertainment of goods and their unconditional appropriation to the contract are the two pre-conditions for transfer of property in goods from seller to buyer.
- Therefore in case of **unascertained** goods also property will pass to buyer when goods are ascertained and unconditionally appropriated.

PASSING OF PROPERTY:

- Appropriation of goods: Appropriation of goods involves **selection** of goods with the intention of using them in performance of contract and with the mutual consent of buyer as well as seller.
- The essential elements:
 - The goods must conform with the description and quantity stated in the contract.
 - The goods must be in a deliverable state.
 - The goods must be unconditionally appropriated with the consent of buyer and seller.
 - The consent may be given either before or after appropriation.

PASSING OF PROPERTY:

■ Sale or Return:

- When goods are sent to buyer on sale or return basis then property passes to buyer when:
 - Buyer signifies his approval or acceptance to the seller,
 - When he does any other act adopting the transaction ,
 - When he does not approve the transaction but retain the goods beyond a reasonable time.

PASSING OF PROPERTY:

- Reservation of Right of Disposal:
- In certain situation the seller can reserve the right of disposal until certain conditions are fulfilled.
- If the seller reserves such right of disposal with him then although the goods are delivered to carrier or other bailee for the purpose of transmitting the same to the buyer, the property in goods will not be passed to the buyer till the condition intended by seller is fulfilled by the buyer.

DOCUMENT OF TITLE TO GOODS AND **DOCUMENT SHOWING TITLE TO GOODS:**

- **Document of title to goods:** Document of Title to goods are the documents where the **person having such a document gets the goods** that means the person having the possession of the document will be entitled for goods and therefore these documents **can also be transferred** by endorsement to others and transferee will also be entitled to get the goods.
- **Document showing title to goods:** Document showing Title to goods are the **document which shows that the person named in such document is the owner** of such goods. That means it is just a document showing title of the ownership of a person named in such document. Therefore this document **cannot be transferred** by endorsement to others.

PASSING OF RISK:

- The general rule is that “Unless otherwise agreed the goods remain at seller’s risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer’s risk whether delivery has been made or not.”
- **Risk passes with the property.** The owner of goods must bear the loss or damage of goods but there are two exceptions:
- The delivery has been delayed by default of either of the party then the risk will be with the Party in default.
- When the buyer or seller are working as the bailee of goods for the other party.

RULE AS TO OWNERSHIP:

- The concept dealing with passing of ownership is known as “**Nemo dat quad non Habet**” that means the person who is not the owner cannot pass the valid ownership. If he is selling the goods then he will not pass a good title. He will pass the same title as he has.
- There are Certain Exceptions to this rule:
- **Mercantile Agent:** If the agent is having possession with the permission of owner and sells it to the buyer acquiring the goods in good faith for consideration then he will pass a good title.
- **Co-owner:** If one of the co-owner is having possession of goods with the consent of other co-owners and he sells the whole goods then the buyer acquiring the goods in good faith for consideration then he will pass a good title.

RULE AS TO OWNERSHIP:

- **Unpaid Seller:** If the buyer has not paid price and seller by exercising Right of Lien or Right of stoppage in transit has the possession of goods then he can sell the goods and person buying will get good title.
- **Estoppel:** If the Owner is estopped from denying seller's authority to sell then the seller selling the goods will get a good title. E.g. If Mr.A introduced Mr.B as his agent in front of Mr.X though he was not then afterwards if Mr.B sells some goods to Mr.X then Mr.A will be estopped from denying Mr.B's authority to sell and buyer will get a good title.

RULE AS TO OWNERSHIP:

- **Person having possession of goods under Voidable Contract:** If person having possession of goods under a voidable contract sells the goods before recession by aggrieved party then the buyer purchasing will get a good title.
- **Seller in possession of goods after transfer of property:** If the seller after transfer of property has the possession of goods and he sells it to a buyer acquiring in good faith and consideration then such buyer will get a good title.

RULE AS TO OWNERSHIP:

- **Buyer in possession of goods before transfer of property to him:** If the buyer has the possession of goods with the consent of seller before transfer of property in his favor and he sells the goods to third party who acquires in good faith without consideration then buyer will get good title.
- **Operation of law:** In case of Pledge the pledgee can sell the goods, In case of insolvent official receiver can sell the goods.

UNPAID SELLER AND HIS RIGHTS

- **Meaning:** A seller will be treated as an unpaid seller if in case of cash sales he has not received the cash or in case cheque or negotiable instrument has been received as conditional payment and condition has not been fulfilled by the reason of dishonor or otherwise.
- **Rights of Unpaid Seller:** Unpaid seller have two types of Rights: 1) Right against goods 2) Right against buyer

UNPAID SELLER AND HIS RIGHTS

- **Rights against goods:** Following are the rights of unpaid seller against goods:
- **Right of Lien:** The right of lien means to keep the possession of goods belonging to buyer until and unless the dues are clear. This right is a Right to Retain the Possession of goods.
- **Conditions of exercising Right of Lien:**
- Seller must be unpaid.
- Goods must be in the possession of seller.

UNPAID SELLER AND HIS RIGHTS

- **Right of stoppage in transit:** The right of stoppage in transit means to stop the goods in transit when they are handed over for transport. This right is a right to Re gain the possession already handed over to courier.
- **Conditions of exercising Right of Stoppage in Transit:**
 - Seller must be unpaid
 - Seller must have parted with the goods
 - Goods must be in Transit
 - Buyer must be insolvent

UNPAID SELLER AND HIS RIGHTS

- **Right of Resale:** If the seller has the possession of goods by using Right of Lien or Stoppage in Transit then he can sell such goods.
- **Conditions for Resale:**
- **If the goods are perishable:** He can sell the goods without giving notice to the buyer and in such a case he will not be liable to share the profits with buyer and he will be entitled to claim the loss from buyer.

UNPAID SELLER AND HIS RIGHTS

- **If the goods are Non Perishable:** In this situation unpaid seller should give notice to buyer before selling the goods
- **If the goods are sold without giving notice:**
- In this case Seller will not be entitled to claim loss from buyer but if there is any profit he will be liable to share the profits with buyer.
- **If goods are sold after giving notice:**
- In this case seller will be entitled to claim loss from buyer and if there is any profit he is not required to share it with buyer.

DIFFERENCE BETWEEN RIGHT OF LIEN AND STOPPAGE IN TRANSIT:

- Right of Lien is about **retaining the possession** whereas Right of Stoppage in Transit is about **regaining possession** which is already given to transport company.
- Right of lien can be exercised even when buyer is **not insolvent** whereas right of stoppage in transit can be exercised **only when the buyer is insolvent**.
- In Right of lien the **possession** must be there **with the seller** but in case of Right of Stoppage in Transit the **seller must have parted with possession**.
- Right of Stoppage in Transit begins when Right of Lien ends.

DIFFERENCE BETWEEN RIGHT OF LIEN AND STOPPAGE IN TRANSIT:

- **Effect of Sub-sale or Pledge by the Buyer:**
- The right of Lien or Stoppage in Transit is not defeated by Sub sale or pledge made by the buyer except when seller has given consent for such Sub Sale or Pledge.
- The Right of Stoppage in Transit will be defeated when the Buyer has transferred document of title or pledges to a sub-buyer who acquires in good faith by paying consideration.

HOW STOPPAGE IN TRANSIT IS EFFECTED:

- There are two modes of stoppage in transit:
- By taking actual possession of goods.
- By giving notice to the carrier not to deliver goods.
- Where the notice of stoppage in transit is given by seller to carrier or bailee in possession of goods, he shall redeliver the goods to or according to directions of seller. The expenses shall be borne by seller.

HOW STOPPAGE IN TRANSIT IS EFFECTED:

- **When does transit comes to an end:**
- When buyer or other bailee obtains delivery.
- Buyer obtains delivery before arrival of goods at the destination.
- Where buyer is communicated by carrier or other bailee that they are holding the goods.
- Where goods are delivered to carrier hired by the buyer.
- Where goods are delivered to a ship chartered by buyer.

UNPAID SELLER AND HIS RIGHTS

- **Rights of Unpaid Seller against buyer:**
- **Suit for Price:** Where price is payable on a certain day irrespective of delivery of goods then seller may sue the buyer for price of goods. Where the goods are delivered and buyer wrongfully refuses to accept and pay for goods then also the seller may sue for price.
- **Suit for damages for Non-Acceptance:** Where the seller has delivered the goods as per the requirements of buyer but buyer wrongfully rejects the goods then seller may sue for damages for non-acceptance.

UNPAID SELLER AND HIS RIGHTS

- **Suit for Interest:** Where the interest is decided by terms of contract then that interest will be provided to seller or if nothing was decided then buyer will be required to pay interest which seller indicated at that time and if no interest is determined then court will award interest at the reasonable rate.

RIGHTS OF BUYER AGAINST SELLER:

- Suit for non-delivery: In case the seller promised to deliver the goods on certain day irrespective of payment and seller has not delivered the goods then buyer can sue for non-delivery.
- Suit for breach of conditions and warranties: When there is breach of condition or warranty then buyer can exercise the option of repudiation of contract or claiming damages.

RIGHTS OF BUYER AGAINST SELLER:

- Suit for Specific performance: When buyer has ordered some goods which are unique or for which no replacement is available then on failure of seller to deliver the goods buyer can demand a specific performance and require the seller to deliver the same goods which were promised by seller.
- Suit for interest: Buyer can also claim interest for the amount to be recovered from seller till the time it is actually paid.

DOCTRINE OF CAVEAT EMPTOR(PRINCIPLE OF LET THE BUYER BEWARE):

- According to such doctrine **buyer should be careful** in selection of goods if later on goods are found defective or unfit for buyer's purpose then he cannot blame the seller.
- Here, for the wrong selection of goods made by buyer, he himself will be held responsible for.
- Following are the situations where the buyer will not be responsible for wrong selection rather the seller will be responsible.:

DOCTRINE OF CAVEAT EMPTOR(PRINCIPLE OF LET THE BUYER BEWARE):

- When buyer has **expressly** relied upon **expertise** of seller for selection of goods.
- When buyer has purchased goods **as per a brand name** or trade name.
- When goods are not of **merchantable quality**.
- When buyer has purchased goods under **sample or brand name**.
- When seller has sold the goods by way of **fraud**.

CONDITIONS AND WARRANTIES:

- **Conditions:** Conditions are the stipulations which are **essential** to the main purpose of contract. Breach of which gives a buyer right to Repudiate contract or claim damages or both.
- **Warranties:** Warranties are the stipulations which are **collateral** to the main purpose of contract. Breach of which gives a buyer right to claim damages but not a right to repudiate the contract.
- Conditions and Warranties can be expressly decided by seller and buyer at the time of contract and it will be known as Express Conditions or Warranties.
- Conditions and Warranties if not decided can be implied by law and it will be known as Implied Conditions or Warranties.

CONDITIONS AND WARRANTIES:

- Implied Conditions:
- **Condition as to title:** In case of sale of goods there is an implied condition that seller has the ownership of goods or has a right to sale the goods i.e. he can pass the good title.
- **Condition as to sample or description:** When the goods are sold as per sample or description there is an implied condition that actual goods must co-relate with sample or description.

CONDITIONS AND WARRANTIES:

- **Condition as to Quality or Fitness:** Goods must be of the quality which is suitable for buyer's purpose. This condition will be applied only if Buyer has informed the purpose for which he is purchasing the goods to seller.
- **Condition as to Merchantability:** Goods must be of merchantable quality. Merchantable quality has not been defined by the act but it can be said that merchantable quality means a person of ordinary prudence should consider the goods as merchantable. This Condition is not applicable when buyer has checked the goods.
- **Condition as to Wholesomeness:** In case of eatables or provisionary items there is an implied condition that actual goods consumed will not affect human health.

CONDITIONS AND WARRANTIES:

- Implied Warranties :
- **Warranty as to Quiet Possession:** It is a warranty that buyer can enjoy the possession of goods against whole world including seller.
- **Warranty as to Quality or fitness by usage or trade:** Goods must be of merchantable quality.
- **Warranty as to free from encumbrances:** In case of sale of goods, there is implied warranty that goods are free from defect of title.
- **Warranty to disclose dangerous nature of goods:** If the goods contain anything of dangerous nature then there is an implied warranty that such dangerous nature must be disclosed.

CONDITIONS AND WARRANTIES:

- Situations where Conditions will be considered as warranties:
- Mandatory situations:
- Where the performance of condition is excused by law.
- Where the contract is non-severable and buyer has appropriated some of the goods out of that lot.
- Voluntary situations:
- Where buyer has elected to treat breach of condition as breach of warranty.
- Where buyer has waived the performance of Condition.

AUCTION SALE:

- In case of auction sale an auctioneer sales goods on behalf of owner in public.
- The relationship between auctioneer and owner will be that of Principle & Agent.
- Different goods may be put for display & for each type of goods a separate bid will be made.
- A bid will come to an end with the fall of hammer.
- An owner can keep a reserve price below which no one can bid.
- Moreover an owner can keep his own reservation of bidding.
- If owner has reserved the right of bidding then he must reserve the right expressly and he should either bid himself or appoint any one person as an agent to bid on his behalf.

THANK YOU