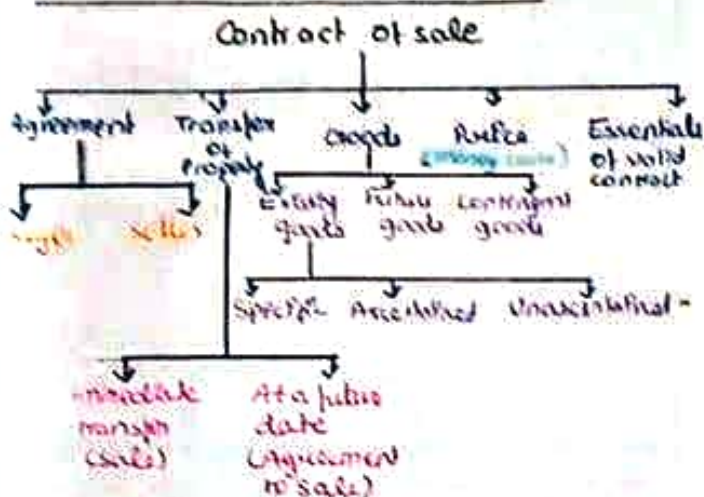


Sale of goods act, 1930

Formation of the contract of sale



Future goods
 Goods are not in existence at the time of contract of sale
 Goods are to be manufactured/produced/acquired by the seller after making the Agreement to sell.

Contingent goods
 Goods whose acquisition of which depends upon the happening or non happening of an uncertain event
 Type of future goods
 Agreement to sell

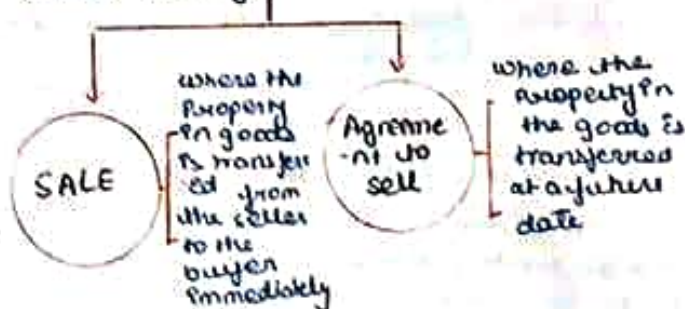
Sale and Agreement to sell

Meaning of contract of sale of goods

- It is a contract whereby
- the seller transfers or agrees to transfer the property in goods to the buyer for a price

Mode for contract of sale of good

A contract for the sale of goods may be either through



An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred

Essentials of contract of sale

- (1) Two parties
- (2) Subject matter must be goods
- (3) Consideration is price
- (4) Conditional or absolute
- (5) Agreement to transfer the ownership of goods
- (6) Other essential elements

IMPORTANT TERMINOLOGIES

Buyer - A person who buys or agrees to buy goods

Seller - A person who sells or agrees to sell goods.

Goods

Means every kind of moveable property
 Includes both tangible + intangible goods,
 Stock, shares, growing crops grass and things attached to or forming part of land which agreed to be severed

Does not include

Actionable claims, immovable goods, Money
 Supply of goods/hotel, contract for labour

Specific Classification of goods

Existing goods

Goods in existence at the time of the contract of sale

OR
 Goods owned / possessed / acquired by the seller at the time of contract of sale

SPECIFIC

Goods agreed + identified upon at the time a contract of sale is made

Ascertained

Goods which are identified after the formation of the contract out of unascertained goods

Unascertained

Goods not identified at the time of making of the contract

Perishable goods

- where there is a contract for the sale of specific goods & if the goods without the knowledge of the seller have at the time when the contract was made destroyed or so damaged

- contract is void ab initio
- seller is not liable to buyer for any damages
- goods perished after the contract, risk is of buyer

- where there is an agreement to sell specific goods subsequently the goods perish without any default on the part of seller or buyer, perish or become damaged

- agreement becomes void
- seller is not liable

Mode of fixing price

Price

Means the monetary consideration for sale of goods

- Fixed by the contract
- Agreed to be fixed in a manner provided by the contract
- Determined by the past dealings between the parties

Agreement to sell or valuation

- where there is an agreement to sell goods on the terms that the price is to be determined by the valuation of third party and

Such third party cannot make valuation

The agreement is thereby void

Provided that, if the goods are in any part of it has been delivered to, the buyer shall pay a reasonable price

- where such party is prevented from making the valuation by the fault of the seller or buyer

The party not in fault may make a suit for damages against the other party

Stipulations as to time

Stipulations as to time of payment

are not deemed to be of the essence unless a different intention appears

Stipulations as to time of delivery

are usually the essence of the contract & must be made without any delay

Conditions & warranties

Conditions

- Condition is a stipulation ancillary to the main purpose of the contract
- Breach of condition gives right to repudiate & claim damages

Warranties

- Warranty is a stipulation collateral to the main purpose of the contract
- Breach of warranty gives right to claim damages

Cases where breach of condition is treated as breach of warranty

Voluntary warranty

- waive the condition for their own benefit
- Elect to treat it as breach of warranty & claim damages

Compulsory warranty

- Contract of sale is not divisible & the buyer has accepted the goods or part thereof
- Shall be treated as breach of warranty

Conditions & warranties may be expressed or implied

Implied conditions

Condition as to title

- In a contract of sale, unless the circumstances imply otherwise
- there is an implied condition on the part of the seller that
- he has right to sell
- In case of agreement to sell, the seller shall have the right to sell at the time when the ownership is to pass

2) Sale by Sample

Sale by Sample

- | | | |
|--|---|---|
| Bulk shall correspond with the sample in quality | Buyer shall have a reasonable opportunity of comparing the bulk with the sample | goods shall be free from any latent defect i.e. hidden defect |
|--|---|---|

3) Sale by description

→ goods shall correspond with the description

→ Sale by description as well as sample

→ goods shall correspond with both description as well as sample

3) Condition as to quality & fitness

Condition as to quality & fitness

The goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided:

- The buyer should have made known to the seller the particular purpose for which the goods are required
- The buyer should rely on seller's skills + judgement
- The goods must be of a description dealt in by the seller

4) Condition as to merchantability

• Goods shall be fit for the usual purpose for which the goods are used.

Exception - If the buyer has examined the goods, there should be no implied condition as regards defects which such examination ought to have revealed.

→ Condition as to wholesomeness
→ goods shall be fit for human consumption

→ Condition by usage of trade.

→ Conditions by other law

Implied Warranties

Warranty as to undisturbed possession

- buyer shall have & enjoy quiet possession of the goods
- If the buyer having got possession of the goods, is later on disturbed in his possession he is entitled to sue the seller for breach of warranty

Warranty as to non existence of charge

- The goods shall be free from any charge
- in favour of any third party not declared or known to the buyer
- before or at the time the contract is entered into

Warranty as to quality or fitness

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade

Disclosure of dangerous nature

- The goods are dangerous in nature &
- the buyer is ignorant of the danger
- the seller must warn the buyer of the probable danger
- failing which buyer can claim damages for injuries caused to him

Implied conditions & warranty can be removed by

- Express agreement
- usual course of dealing
- customs or usage of trade

Caveat Emptor

There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under the contract of sale.

In other words, it is no part of the seller's duty to give buyer an article suitable for particular purpose unless it is expressly stated.

Exceptions to above

- 1) Expressly states the particular purpose
- 2) Description
- 3) Quality or fitness
- 4) Merchantability
- 5) Sample
- 6) Fraud

Specific & ascertained goods

Transfer of property

Identification of goods

- Goods must be ascertained
- Goods must be specific & ascertained to acquire the ownership right.

Intention of the parties

- Intention of the parties
- Terms of the contract, circumstances of the case

Different stages of goods while passing of property

- Specific goods in deliverable state, the ownership passes at the time when the contract is made.
- Specific goods not in deliverable state, property passes only when such thing is done & buyer has notice thereof.
- Where there is a contract for the sale of specific goods in deliverable state but the seller is bound to weigh, measure for ascertaining the price. The property does not pass till such act or thing is done & the buyer acknowledges.

Unascertained or future goods

Transfer of property

In case of such goods, the ownership is not transferred to the buyer unless until the goods are

- (a) Ascertained and
- (b) Unconditionally appropriated

Ascertainment

Process by which goods answering to the description or quality stated in the contract, are identified

Unconditionally Appropriated

Appropriation of goods involves selection of goods with the intention of using them in performance of the contract & with the mutual consent of seller & buyer.

Essentials of Appropriation

Goods match with description & quality

The appropriation must be made by the seller with the assent of the buyer & vice versa

Goods must be in deliverable state

The assent may be expressed or implied. It may be given before or after the appropriation

Seller does not reserve the right of disposal over goods - ship & delivery

Sale on Approval Basis

Transfer of property

- When the signifies their acceptance or approval
- Fails to return the goods to seller within specified or reasonable time
- Does something to the goods which is equivalent to acceptance

Risk passes with ownership

- (a) Until the ownership is transferred to the buyer
 - Goods remain at seller's risk
- (b) When the property therein transferred to the buyer
 - Goods are at buyer's risk whether delivery has been made or not
- (c) If the delivery is delayed by the fault of the seller or the buyer
 - Goods remain at the risk of party in fault
- (d) The owner of the goods must bear the loss or damage of goods unless otherwise is agreed to
 - There may be special agreement b/w parties that will pass sometimes after or before passing of ownership

Nemo Dat Quat Non Habet

- The general rule is that only the owner of the goods can transfer a good title. No one can give a better title than what he himself has.
- Where goods are sold by a person who is not the owner thereof & who does not sell them authoritatively with consent of owner
- Buyer acquires no better title than what the seller had.

Exceptions to the above

① Sale by mercantile agent

- Sale by mercantile agent shall pass valid title to the ~~owner~~ buyer even though such sale is not made as per directions of the seller, if the following conditions are satisfied
- a) The sale is made by mercantile agent in capacity of mercantile agent
- b) Goods came into his possession with the consent of the seller
- c) It should take place in the ordinary course of business
- d) Buyer buys the goods in good faith for consideration.

② Sale by one of the joint owners

- The sale by one of the joint owners shall pass valid title to the buyer even though such sale is not made as per the directions of other joint owners if following conditions are satisfied
- a) Goods came into his possession with the consent of other joint owners
- b) The goods are in sole possession of him
- c) Buyer buys in good faith & for consideration

③ Effect of estoppel

- When the true owner, by his conduct or act or omission
- Leads the buyer to believe that the seller has the authority to sell
- & induces him to buy the goods
- He cannot deny the fact of want or authority of the seller
- The buyer gets the better title

④ Sale by a person in possession under a voidable contract

- A resale of goods by a buyer shall pass a valid title to new buyer if following conditions are satisfied
- a) A buyer buys the goods under a voidable contract
- b) Such buyer resells the goods to a new buyer
- c) At the time of resale, the voidable contract has not been rescinded by the original seller.
- d) The new buyer buys the goods in good faith & for consideration

⑤ Sale by seller in possession of goods after sale

- a) The ownership of goods has been passed to the buyer
- b) Seller continues to be in possession of goods
- c) Seller resells the goods to a new buyer
- d) The new buyer buys the goods in good faith & for consideration

① Sale by buyer in possession of goods before sale

- A person who agrees to buy, with the consent of seller
- obtains the possession of the goods or document of title to the goods
- The delivery / sale or transfer by such person will be effective & valid.
- Provided, the person receiving acted in good faith & for consideration

② Under other acts

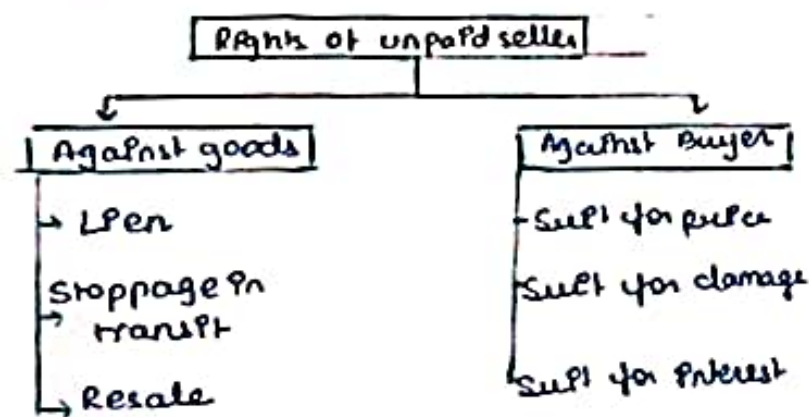
- Sale by tender of last goods
- Sale by pawnor or pledgee

③ Sale by unpaid seller

Unpaid seller

- The whole price has not been paid & the seller has an immediate right of action.
- When a bill of exchange or other negotiable instrument has been received as conditional payment & it has been dishonoured

Rights of unpaid seller



Right of Lien

- Lien is a right to retain the goods in the possession until conditions fulfilled
- It can be exercised only for non payment of the price not for any charges due against the buyer
- When part delivery has been made, he may still exercise his right of lien for the full price on remaining goods.

Right of Lien in law

- When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of goods
- By reserving the right of lien or seller's lien credit period
- Buyer or agent lawfully obtains the goods
- Where the assents to sub-sale by the buyer
- Where the takes a security from the buyer for payment of the price

Right of stoppage in transit

→ Right of stopping the goods in transit after the has parted with the possession to a carrier, only if

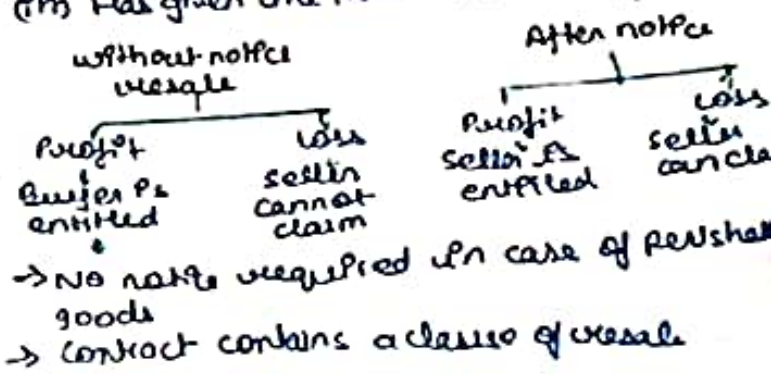
- Seller is unpaid
- Buyer become insolvent
- The goods must be in transit
- Seller has parted with the possession of goods

Transit comes to an end

- If the buyer obtains the delivery before the arrival of the goods at their destination
- If the carrier wrongfully refuses to deliver to the buyer
- If the carrier/bailee acknowledges to the buyer that he holds the goods on his behalf.

Right of resale

- Buyer fails to pay the price within the reasonable time
- Unpaid seller has exercised both lien or stoppage of goods.
- Has given the notice to resell the goods



reasonable opportunity of examining them

(14) When the goods are delivered at a distant place, the liability for deterioration necessarily incident to the course of transit will fall on the buyer, even if otherwise agreed

(15) The buyer is not bound to accept delivery in installments

Effect of subsale or pledge by the buyer

→ The unpaid seller's right of lien or stoppage in transit is not affected by any further sale or disposition of the goods by the buyer

Exception

- a) Seller has assented to the sale, mortgage.
- b) Document of title has been transferred to buyer & he further transfers to the new buyer in good faith

Buyer's rights against the seller

- ① suit for specific performance
- ② suit for interest
- ③ Damages for non delivery.

Auction Sale

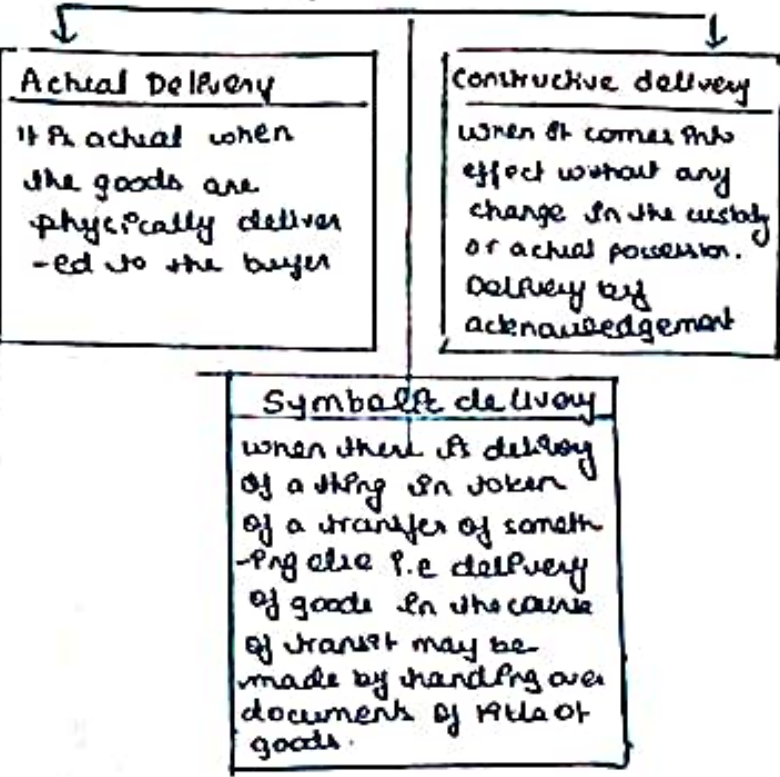
It is made selling property by inviting bids publicly & it is sold to the highest bidder

- Goods sold in lots
- Completion of contract of sale
- Right to bid may be reserved
- Bid may be withdrawn before the final call
- Reserved price
- Pretended bidding

DELIVERY

It means voluntary transfer of possession by one person to another

Types of delivery



Rules of delivery

- ① Delivery and payment are concurrent condition
- ② Delivery of part with the intention of delivering whole has the same effect as delivery of the whole
- ③ The seller is under no obligation to deliver unless the buyer applies for it
- ④ The goods sold are to be delivered at the place at which they are at the time of sale.
- ⑤ The goods should be delivered within reasonable time
- ⑥ The expenses of putting the goods in deliverable state are borne by the seller.

① When the goods at the time of sale are in possession of a third party, there is no delivery, unless & until such third party acknowledges to the buyer that he holds the goods on his behalf.

② For short & excess qty the buyer may either accept the same & pay for it at the contract or reject it when the buyer rejects the seller may give contracted qty & buyer is bound to accept. For mixed delivery the buyer may either accept the goods in accordance with the contract & reject the rest or reject the whole

③ Delivery of goods to the carrier for the purpose of transmission to the buyer deemed to be delivery of goods to the buyer

④ Acceptance of delivery of goods
a) intimates to the seller, acceptance
b) does any act to the goods which is inconsistent with the ownership of seller
c) retains the goods after lapse of reasonable time

⑤ Return of rejected goods sent on approval basis -
He is not bound to return them to the seller but he is bound to inform the seller he has refused them within reasonable time

⑥ If the buyer neglects or refuses to take delivery within a reasonable time, he is liable to the seller for loss & charges for care & custody of the goods

⑦ Where goods, which are not previously examined are delivered to the buyer, he is not deemed to have accepted them unless he has a