

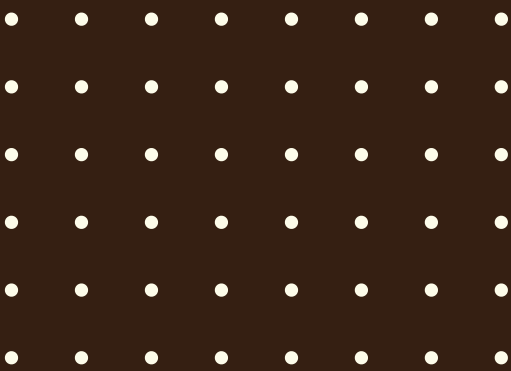


SALE OF GOODS ● ACT, 1930.

HANDWRITTEN NOTES - CHHAVI PATIAL

Complete comprehensive handwritten
notes on Sale of Goods Act, 1930.

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MODULE - 3The Sale of Goods Act, 1930

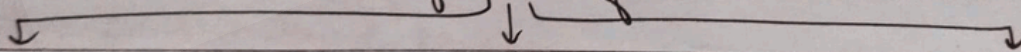
↳ The sale of goods is a specific form of contract i.e. "sale" recognized and regulated by law in India.

↳ Sale is a typical bargain between a buyer and a seller.

Sec 2(1) - Buyer: person who buys or agrees to ~~sell~~ buy.

Sec 2(3) - Seller: person who sells or agrees to sell.

Sec 2(7) - Goods: every kind of movable property other than actionable claim and money.

Classification of GoodsExisting goods

which are present with the seller at the time of contract.

Future goods

which are not present with the seller at the time of contract but will be there in future.

Contingent goods

When the fulfillment of the contract of some future goods is dependent on a particular condition to be fulfilled.
(E.g. + condition)

↓
Unascertained

↓
Ascertained

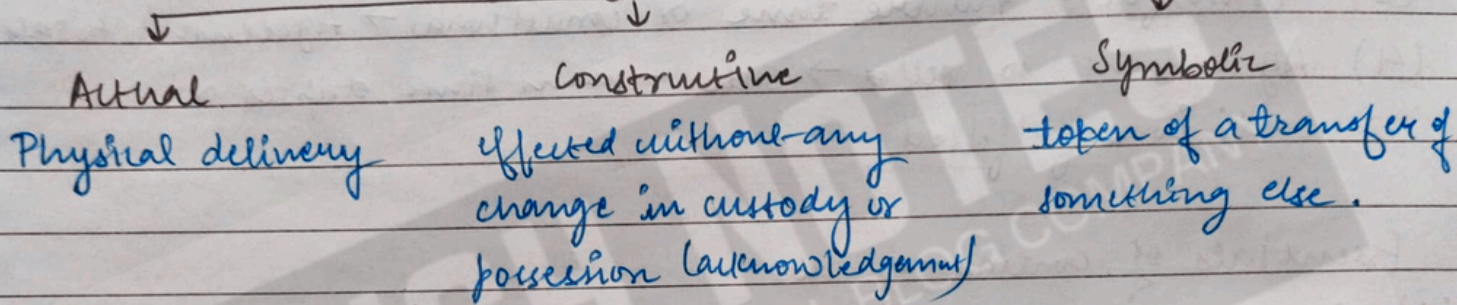
↓
Specific [Sec. 2(14)]
Identified + agreed upon at the time of contract.
Ex - Samsung galaxy

Ex - electronic

Ex - phone

Section 2(2) - Delivery

Voluntary transfer of possession from one person to another
not sale

Types of DeliverySection 2(9) - Mercantile Agent

Agent having authority to sell goods or to consign goods for the purpose of sale, or to buy, or to raise money or security of goods.
Ex - Auctioneers, brokers, etc.

Section 2(11) - Property

general property in goods.

Section 2(4) - Document of title to goods.

Such documents which if given to other person would be considered as a transfer of ownership.

Ex - bill of lading, dock warrant, railway receipt, etc.

Section 2(10) - Price

Money consideration

Section 4 - Sale and agreement to sell.

- (1) Seller transfers or agrees to transfer the property in goods to the buyer for a price.
- (2) Contract - Absolute or conditional.
- (3) Transfer - Future time or conditional → Agreement to sell.
- (4) Agreement to sell → sale - when time elapses or conditions fulfilled.

Essentials of contract of sale

- (1) At least two parties.
- (2) Subject matter must be goods.
- (3) Price paid or promised should be monetary.
- (4) Transfer of property in goods.
- (5) Absolute or conditional.
- (6) Must be a valid contract.

Section - 5 Contract of sale how made

- (1)
 - ↳ Immediate delivery of the goods
 - ↳ Immediate payment of the price.
 - ↳ Both
 - ↳ Either delivery or payment postponed.
 - ↳ Both postponed.

(2) Contract can be made in :-

- ↳ Writing
- ↳ Word of mouth
- ↳ partly in writing & partly by word of mouth.
- ↳ Implied from the conduct of parties.

Section 6 - Existing or future goods.

अगर subject matter existing या future goods हो तो contract of sale माना जाएगा लेकिन अगर contract contingency पे dependant है तो वह contingent contract होगा।

Section 7 - Goods perishing before making of contract.

जब seller, specific goods की sale के लिए किसी contract में enter कर जाए जबकि उसे यह पता नहीं था कि वह goods perish अर्थात् खराब हो चुके हैं, वह contract void-ab-initio होगा।

Section 8 - Goods perishing before sale by after agreement to sell.

जब contract में enter करते same goods ठीक थे लेकिन sale से पहले खराब हो गए, तो वह contract void किया जा सकता है और damages seller को bear करने पड़ेंगे।

Section 9 - Ascertainment of price

- (1) Usually goods का price contract में enter करते time decide किया जाता है।
- (2) अगर price decide नहीं किया गया है तो seller को एक reasonable price pay करना पड़ेगा।

Section-10 - Agreement to sell at valuation.

- (1) जब price fix करने के लिए 3rd party को कहा जाता है और वह 3rd party value नहीं कर पाती है, वह agreement void किया जा सकता है।
Provided that, अगर goods या party की damage हो चुके हैं तो buyer को उसका reasonable price pay करना पड़ेगा।

- (2) अगर 3rd party की valuation ना होने का कारण seller या buyer हैं, तो जो party not in fault है वो दूसरी party के खिलाफ case कर सकता है।

Section - 11 Stipulation as to time.

अगर terms of contract में पहले से ना mention किया हो, तो time of delivery essence है लेकिन time of payment essence नहीं है।

Section - 12 Condition and warranty.

(2) Condition is:-

- ↳ a stipulation
- ↳ essential to the main purpose of the contract
- ↳ breach of condition gives the aggrieved party a right to repudiate the contract.
- ↳ non-fulfillment of a condition upsets the very basis of the contract.

(3) Warranty is:-

- ↳ a stipulation
- ↳ collateral to the main purpose of the contract.
- ↳ secondary importance
- ↳ breach of warranty only gives the aggrieved party a right to claim damages but not the right to repudiate or terminate the contract.

Section 13 - When condition to be treated as warranty

- (1) When the buyer himself waives the condition or treats it as a breach of warranty.
- (2) Contract of sale not severable & the buyer has accepted the goods or part thereof.
- (3) Fulfillment of condition which is excused by law by reason of impossibility.

Express and implied conditions and warranties [Sec. 14-17]

- ↳ Express condition is the one which is agreed upon between the parties at the time of contract and is expressly provided in the contract.
- ↳ Implied condition is the one which is presumed by law to be present in the contract.

Section - 14 (a) - Condition as to title

जब seller goods को बेच रहा हो तो हम यह मान कर चलते हैं कि उसे goods को बेचने का right है।

Section - 15 - Sale by description

जब seller किसी good को describe करके बेच रहा है तो यह एक implied condition होती है कि purchased goods उसकी description से match हो या अगर कोई goods sample देकर purchase किये जाते हैं तो वह goods उसके sample से match करने चाहिए।

Section - 17 - Sale of sample

- (2) (a) bulk shall correspond with the sample in quality
 (b) buyer should have a reasonable opportunity to compare the bulk with sample
 (c) goods shall be free from defects which would not be apparent on reasonable examination of the sample.

Section - 16 - Implied condition as to quality or fitness

(1) implied condition when:-

- ↳ seller deals in the ordinary course of the business.
- ↳ buyer relies on the seller's skill & judgement.
- ↳ seller is knowledgeable about the purpose of the goods.

(2) condition as to ~~merch~~ merchantability:-

- ↳ Goods shall be of merchantable quality i.e. they should fulfil the purpose of buying such goods.
- ↳ In case of eatables, goods shall be ~~whole~~ fit for consumption in wholesome.

Section - 14 (b) - Warranty as to undisturbed possession.

- ↳ Buyer has the right to have and enjoy quiet the possession of goods and can sue the seller for breach of warranty if disturbed later.

Section - 14 (c) - Warranty as to non-existence of encumbrances.

- ↳ Goods shall be free of charge or encumbrances (mortgage or other claims).

Section - 16(3) - Warranty as to quality or fitness by usage of trade

Section - 18 - Goods must be ascertained
transfer of property → transfer of ownership

goods ascertain करनी पड़ती है identify और agreed upon होनी चाहिए।

Section - 19 - Property passes when intended to pass.

- ↳ The time of passing of property is determined by the specific intention of the parties.
- ↳ Such intention can be ascertained by the terms of the contract, conduct of the parties and circumstances of the case.

Section - 20 - Specific goods in a deliverable state

- ↳ When the contract is made, the goods pass to the buyer where :-
 - There is an unconditional contract
 - specific goods
 - in deliverable state.

Section - 21 - Specific goods to be put into a deliverable state

- ↳ To ~~possess~~ pass the property :-
 - The seller has to do something to the goods for the purpose of putting them into a deliverable state.
 - and has to notify the buyer thereof.

Specific goods

Section - 22 - Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

↳ To pass the property :-

- the seller is bound to weigh, measure, test, etc. the goods to ascertain their price and.
- notify the buyer thereof.

Section - 23 - Sale of unascertained goods and appropriation

↳ When there is a contract of sale of unascertained goods or future goods, the property will pass when the goods are appropriated i.e. when unascertained goods are converted into ascertained goods.

Section - 24 - Goods sent on approval or on "sale or return"

↳ This section provides the buyer the opportunity to evaluate the goods before purchase.

↳ The property passes when -

- he signifies his approval or acceptance to seller.
- he signifies his acceptance but retains the goods without rejection, then at expiration of fixed or reasonable time.

Section - 25 - Reservation of right of disposal

↳ This section provides the seller the security of the goods

↳ Provides the seller with the right to dispose the goods until certain conditions are fulfilled.

↳ Passing of property does not take place until such conditions are fulfilled.

Section-26 - Risk prima facie passes the property

- ↳ Unless otherwise agreed, the risk of the goods is with the person with its property irrespective of delivery being made or not.
- ↳ Provided there is ^{not} a party at fault due to whom there has been a delay in delivery.

Transfer of Title [Sec. 27-30]

Section-27 - Sale by person not the owner

"nemo dat quod non habet" - no one gives what they do not have.

It is only the owner / seller who can pass the property and no one else. (title by estoppel)

Proviso :- A ~~merchant~~ mercantile agent can make a valid sale if :-

- ↳ he was in possession of goods or document of title
- ↳ with the consent of owner,
- ↳ deals in the ordinary course of business
- ↳ buyer had acted in good faith.
- ↳ buyer had no notice of the fact that seller had no authority to sell.

Section-28 - Sale by one of the joint owner.

Sale by one of the joint owners will be valid when :-

- ↳ he has the sole possession of the goods with the permission of the co-owners.
- ↳ Buyer acts in good faith.

Section-29 - Sale by a person in possession under voidable contract.

Valid sale of good title when:-

- ↳ Buyer buys them in good faith ~~and~~
- ↳ without notice of the actual owner of the title.

Section-30 - Seller or buyer in possession after sale

(1) If the seller continues to be in possession of the already sold goods and sells it to ~~the~~ a third party, then the third party would be a valid owner if he buys the goods in good faith and without notice of the fact that those goods were already sold to somebody else.

(2) If the buyer has the possession of goods before passing of property to him and sells it to a third person, then the third person would be a valid owner of the goods if he buys them in good faith and without notice of the actual owner of the goods.

Section-31 - Duties of seller and buyer

seller की duty है goods को deliver करना और buyer की duty है goods को accept करना और उनके लिए pay करना।

Section-32 - Payment and delivery are concurrent conditions

- ↳ Seller shall be ready and willing to give possession of goods in exchange for the set price and buyer ~~the~~ ~~also~~ ready and willing to accept the goods and pay for them.

Section-33 - Delivery

delivery of goods का तरीका वही होना चाहिए जिससे buyer और seller दोनों agree करें as long as वो goods buyer की possession में आ जाए।

Section-34 - Effect of part delivery

अगर partial delivery whole delivery का part है, तो वह partial delivery complete delivery की transfer of property मानी जाएगी।

अगर partial delivery को complete delivery से अलग किया जाता है, तो वह बाकी बचे हुए goods की ownership transfer नहीं करता है।

Section-35 - Buyer to apply for delivery.

जब तक buyer seller से goods की request ना करे, seller obligated नहीं है goods को deliver करने के लिए।

Section-36 - Rules as to delivery

(1) parties के freedom होती है place of delivery decide करने की। लेकिन अगर have decided नहीं हो तो :-

sale - future goods are located at the time of sale

agreement to sell - where goods are situated at the time of agreement

future goods - where the goods are manufactured or produced.

(2) Usually time of delivery is decided by the parties at the time of entering into the contract. But if it is not decided then the delivery should be made at a reasonable time.

if the time of delivery is an essence of the contract and there is a delay in delivery, the buyer may reject the goods but if time is not an essence then he can only claim damages for delay but has to accept them.

- (3) When the goods sold are held by a third party, delivery is incomplete until the third party confirms that they now hold the goods on buyer's behalf.

Proviso - document of title to goods is an exception

- (4) Unless otherwise agreed upon, demand for delivery by buyer must be made at a reasonable hour. If not made at a reasonable hour, the demand is deemed invalid.

- (5) Unless otherwise agreed upon, the seller is responsible for covering the incidental expenses required to make the goods deliverable.

Section 37 - Delivery of wrong quantity

- (1) less quantity - buyer has the right to reject but if accepts, he must pay the contract price for them.
- (2) larger quantity - buyer can accept the goods that match the contract and reject the excess, reject the entire delivery, or accept all the goods.
- (3) mixed goods - buyer can accept the goods which comply with the contract and reject the rest or to reject the entire consignment.

Section 38 - Installment delivery

- (1) Unless otherwise agreed upon, the buyer is not obligated to accept goods delivered in separate installments.
- (2) If the seller fails to deliver or delivers defective goods in one or more installments, or if the buyer refuses or neglects to accept or pay for one or more installments, it depends on the specific terms of the contract. If the failure to perform part of the contract undermines its fundamental purpose, it may be treated as a breach of the whole contract. However, if the contract is divisible & the breach does not significantly impact the performance of the remaining parts, it should be treated as a partial breach limited to specific installment in question.

If a breach in any instalment is minor in relation to the overall contract and there is little likelihood of it recurring, the other party is not justified to treat it as a breach of the entire contract and repudiate it.

Section-39 - Delivery to carrier or wharfinger

- (1) When a contract authorizes the seller to send goods to the buyer, delivering the goods to a carrier or wharfinger is generally considered as delivering them to the buyer.
- (2) When delivering goods to a carrier or wharfinger, seller has to make a reasonable contract with them on the behalf of buyer, taking into account the nature of the goods and circumstances.
- (3) In circumstances in which it is usual to insure, the seller should give such notice to the buyer to enable him to insure them during their sea transit.

Section-40 - Risk where goods are delivered at a distant place.

Unless otherwise agreed upon, if the seller agrees to deliver goods at their own risk to a location different from where the goods are at the time of the contract, they are not liable for loss that is inherently part of the transit process.

Section-41 - Buyer's right to examining the goods

- (1) When goods are not previously examined, buyer is not deemed to accept them until he has the reasonable opportunity to examine them.
- (2) Unless otherwise agreed upon, the seller must give the buyer a chance to check the goods.

Section. 42 - Acceptance

The buyer is considered to have accepted the goods when:-

- ↳ Explicit - The buyer tells the seller that they accept the goods.
- ↳ Implied by action - The buyer does something with the goods that shows they consider themselves the owner.
- ↳ Implied by silence - The buyer keeps the goods for a reasonable amount of time without telling the seller they reject them.

Section. 43 - Buyer not bound to return rejected goods

If the buyer rejects the goods, he is not bound to return them, he just needs to inform the seller about the rejection.

Section. 44 - Liability of buyer for neglecting or refusing delivery of goods.

If the seller is ready to deliver the goods and asks the buyer to take them, but the buyer doesn't do so within a reasonable time, the buyer is responsible for any losses caused by their delay or refusal. The buyer may also have to pay a fee for storing the goods. However, this doesn't affect the seller's rights if the buyer's actions indicate that they no longer want to fulfill the contract.

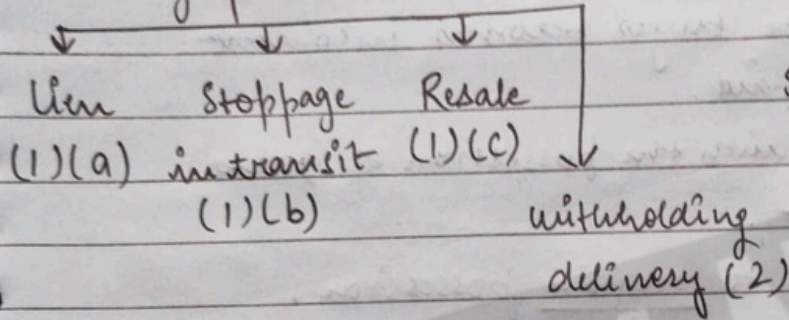
UNPAID SELLER

Section. 45 - "Unpaid seller" defined

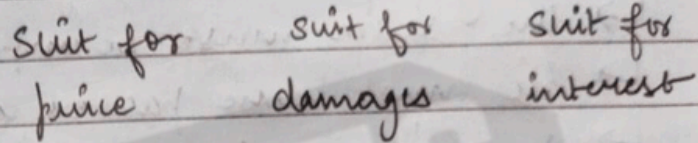
- ↳ The seller of goods becomes an "unpaid seller" when:-
 - (a) whole price not been paid.
 - (b) bill of exchange or other negotiable instrument as conditional payment and condition not fulfilled.
- ↳ agent or consignor also included.

Rights of an unpaid seller

Against Goods [Sec. 46]



Against the buyer



→ Rights against goods -

Right of lien

Section-47 - Seller's Lien

→ (1) Unpaid seller of goods who is in possession of them is entitled to retain possession when :-

- (a) goods sold without any stipulation as to credit
- (b) goods sold on credit and term of credit has expired
- (c) buyer becomes insolvent.

→ (2) agent included.

Section-48 - Part delivery

→ Right of lien applicable ~~also~~ on remainder goods unless agreement to waive lien has been made.

Section-49 - Termination of lien

- (1) (a) buyer के behalf पे जो goods को लेने वाला था (carrier/bailee) seller ने उसको goods deliver कर दिए।
- (2) buyer या agent के पास lawfully goods पहुँच गए हैं।
- (3) seller ने lien की right waive कर दिया है।

Right of stoppage in transit

Section - 50 - Stoppage in transit

- ↳ Only applicable when the buyer becomes insolvent.
- ↳ the seller must be unpaid.
- ↳ he must have parted with the possession of goods
- ↳ the goods are in transit.
- ↳ it ~~can~~ entitles the seller to regain possession.

Section - 51 - Duration of transit

Transit ends when:-

- ↳ Buyer takes delivery of goods
- ↳ Buyer or his agent takes delivery of goods before appointed destination
- ↳ Carrier / bailee at appointed destination acknowledge possession of goods
- ↳ Carrier / bailee wrongfully refuses to deliver goods to buyer / his agent.
- ↳ If buyer refuses goods - transit does not come to an end.

Section - 52 - How stoppage in transit is effected

The right of stoppage in transit can be effected by the seller by:-

- ↳ Taking actual possession of goods
- ↳ By giving notice to the carrier / bailee not to deliver it.
- ↳ re-deliver the goods to / as to dirⁿ, to seller.
- ↳ The expenses of such re-delivery shall be borne by the seller.

Section-53- Effect of sub-sale or pledge by buyer.

अगर unpaid seller के goods को buyer ने sell या pledge कर दिया तो इससे unpaid seller के lien or stoppage in transit का right खत्म नहीं होता unless seller ने खुद assent ना करा हो।
 proviso - document of title buyer के पास ना हो

Section-54- Sale not generally rescinded by lien or stoppage in transit. (right of resale)

The unpaid seller can exercise the right to resell the goods when -

(2) (1) The goods are of perishable nature

In such a case, the buyer need not to be informed of the intention of resale.

(2) Where he gives notice to the buyer of his intention to re-sell the goods and if the buyer does not pay in a reasonable time, he can re-sell the goods. He can also recover the difference b/w contract & resell price from the original buyer and also retain the profit earned.

→ But if notice is not given, no damages can be recovered.

(3) अगर right of lien या stoppage in transit exercise करने के बाद unpaid seller goods re-sell कर देता है तो good title new buyer को मिल जाएगा और इसके लिए unpaid seller को notice भेजने की कोई जरूरत नहीं है।

(4) अगर unpaid seller ने contract में पहले से ही mention किया हो कि buyer के किसी default पे goods re-sell कर दिए जाएंगे और इसके के seller को कोई notice भेजने की जरूरत नहीं है।

→ Rights against buyer

Section 55 - Suit for Price

- (1) जब goods buyer को pass हो गए हों और वह wrongfully pay करने से मना कर दे।
- (2) जब contract में price pay करने की date decided हो irrespective of delivery और buyer wrongfully pay करने से मना कर दे।

Section 56 - Suit for damages for non-acceptance

जब buyer wrongfully goods को लेने और उनके लिए pay करने से मना कर दे।

Section 60 - Repudiate the contract before due date ^(also a right of buyer against seller)

जब buyer due date से पहले contract repudiate कर दे तो seller contract को cancelled treat करके damages के लिए buyer को sue कर सकता है। (rule of anticipatory breach of contract)

Section 61 - Interest by way of damages and special damages ^(also a right of buyer against seller)

→ (1) अगर agreement में पहले से mentioned है कि payment ना होने पर एक specific amount of interest charge होगा तो उन्हें agreement के according उतना interest pay करना होगा।

→ (2)(a) अगर parties ने कोई fixed interest पे agree नहीं किया है तो court decide करेगा कि seller को कितना interest मिलना चाहिए।

→ Buyer's rights against the seller

Section 57 - Damages for non-delivery

अगर seller wrongfully, goods deliver करने से मना कर देता है तो buyer seller को sue कर सकता है।

Section 58 - Suit for specific performance

Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance (only when goods are ascertained or specific)

Section 59 - Suit for breach of warranty

In case of breach of warranty or when buyer treats breach of condition as warranty, he cannot reject the goods or repudiate the contract as breach of warranty, He can :-

→ set up against ~~against~~ the seller in diminution or extinction of price.

→ ~~sue~~ sue the seller for damages.