

Chapter 2 - Sale of goods Act 1930

Unit 1 - Formation of Contract of Sale

Extends to whole India

w.e.f. 1st July 1930

* Buyer Sec 2(1) is a person
who buys
or
agrees to buy } goods.

* Seller Sec 2(13) is a person
who sells
or
agrees to sell } goods

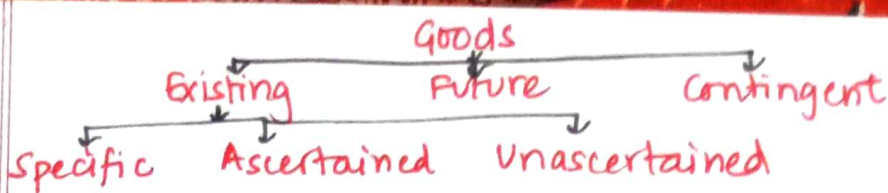
* Goods Sec 2(1)
includes / means every kind of moveable property
other than Actionable claims & Money, &
Includes stocks, shares, growing crops, grass, & things
attached to or forming part of land which
agreed to be severed. before sale or contract of sale

Actionable claims → enforced only by an action or suit.
Eg: debt.

FDR → Goods under ICA read with Sec 2(1) of SOGA.

Goods
└─ tangible goods
└─ intangible goods → goodwill, copyrights, patents, trademarks etc.

Gas, steam, water, electricity, decree of court → Goods.



1. Existing Goods: Goods in existence at time of contract of sale (Sec 6)
- a) those owned, or
b) possessed, or
c) acquired } by seller at time of contract of sale

Types of Existing goods.

- i) Specific goods:
Goods: identified & agreed upon at time of contract of sale made
- ii) Ascertained Goods:
Goods: identified in accordance with agreement **AFTER** the contract of sale is made.
from lot or large quantity of Unascertained goods,
no. of quantity identified → Ascertained Goods.
- iii) Unascertained Goods:
Goods: not specifically identified OR Ascertained at time of making of contract.
Indicated or defined only by description or sample

2. Future Goods: Sec 2(6) (Agreement to sell)
- Goods to be:
- manufactured, or
- produced, or
- acquired } by seller after making contract of sale

3. Contingent Goods: Sec 6(2) (Agreement to sell)
- Acquisition of which by seller depends upon uncertain contingency (uncertain event)

* Delivery Sec 2(2)

Voluntary transfer of possession from one person to another. Delivery may be made by anything, which has the effect of putting goods in possession of buyer, or any person authorized to hold them on his behalf.

Forms of Delivery

i) Actual Delivery : Goods physically transferred to buyer or third person authorised

ii) Constructive delivery : Effected without any change in custody or actual possession of thing

Person in possession of goods belonging to seller acknowledges to buyer that he holds them on buyer's behalf.

iii) Symbolic Delivery :

Delivery of thing in token of transfer of something else i.e. handing over documents of title of goods, eg: bill of lading, railway receipt, or Key of warehouse

Where actual delivery not possible, Symbolic Delivery is done.

* Document of title to goods Sec 2(4)

includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers certificate, railway receipt, multimodal transport of document, warrant or order for delivery of goods, or any other document

* **Merchantile Agent [Sec 2(9)]**

Agent who has authority

- either to sell goods, or
- consign goods for purpose of sale, or
- to buy goods, or
- to raise money on security of goods

Eg: Auctioneer, broker etc.

* **Property [sec 2(11)] → Ownership or General property**
NOT Special property
pledge

* **Insolvent [sec 2(8)]** A person is insolvent when he ceases to pay debts or cannot pay debts when become due.

* **Price [Sec 2(10)]** Money consideration for sale of goods

* **Quality of goods [sec 2(12)]** includes their state or condition

* **Sale & Agreement to sell (sec 4)**

Sec 4(1): Contract of sale of goods → where seller transfers OR Agrees to transfer property in goods to buyer for price.

Sec 4(2): Contract of sale → may be absolute or conditional.

Sec 4(3): **Sale** → Property transfers from seller to buy.
Agreement to sell → Transfer of property to take place at future date/time OR subject to some conditions thereon.

Sec 4(4): Agreement to sell becomes sale when
- time elapses, or
- conditions fulfilled

* Essential Elements which must exist in contract of Sale of goods

1. Atleast two parties
2. Subject matter - Goods (Moveable) Existing
Future
Contingent
3. Price in money (not kind) Paid, or
Promised ⇒ Can be Partly money / Partly Kind
4. Transfer of property in goods from seller to buyer.
5. Contract of sale may be Absolute or Conditional
6. All other essential elements of valid contract.

* D/b Sale & Agreement to sell.

	Sale	Agreement to sell
Transfer of property	Property in goods passes immediately.	Property passes to future date <u>or</u> on fulfilment of some condition
Nature of contract	Executed contract (Consideration paid)	Executory contract (Consideration - future date)
Remedies for breach	Seller can sue for price, as property passed.	Sue for damages only & not for price.
Liability of parties	Subsequent loss or destruction of goods is liability of BUYER	OF SELLER.
Burden of Risk	Risk of loss → Buyer	of seller.

Nature of rights	Creates Jus in Rem (Rights against world)	Creates Jus in Personam (Rights against each other)
Rights of resale	^{seller} Cannot resell goods	Seller may resell goods.
Insolvency of seller	Official Assignee not take over able goods but recover price from buyer.	Official assignee acquire control over goods, price not recoverable.
Insolvency of buyer	Official Assignee → Control over goods.	Official Assignee → Not Control over goods
*	Sale	Hire Purchase
Time of passing	Property passes immediately	Property passes to hirer upon last payment of instalment
Position of party	Position of buyer - owner	Position of Hirer - Bailee till last instalment paid
Termination	Buyer cannot terminate, bound to pay price.	Hirer may terminate by returning goods
Burden of risk of insolvency	seller takes risk of loss	owner takes no risk.
Transfer of title	Buyer passes good title to bona fide purchaser.	Hirer cannot pass title to bona fide
Resale	Buyer can resell.	Hire Purchaser cannot resell unless last paid

*	Sale	Bailment
Transfer of property	Property passes to buyer. General property.	transfers possession from bailor to bailee. Special Purpose
Return of goods	Return of goods not possible.	Must return to bailor on accomplishment of purpose for which bailment made
Consideration	Price in terms of money.	May be gratuitous or non gratuitous.

* Sale & contract for work & labour

No goods sold,
 only doing or rendering of some work of labour.
 Eg. gold given to goldsmith. for
 preparing ornament.
 or artist asked to paint picture

* Contract of sale how made? (Sec 5)

following modes:

- i) made by offer to buy or sell goods for price & acceptance of offer
- ii) May be immediate delivery of goods,
- iii) May be immediate payment of price, may be agreed delivery at future date.
- iv) immediate delivery of goods & immediate payment of price
- v) Delivery or payment or both in instalments
- vi) Delivery or payment or both at some future date.

Contract of sale
[Sec 5(2)]

- in writing, or
- by word of mouth, or
- partly writing & partly word of mouth, or
- may be implied from conduct of parties

* Subject matter of Contract of sale

Existing or Future goods [sec 6] → Already discussed.

* Goods Perishing before making of contract (sec 7)

Contract for sale of specific goods

↓
VOID

If goods without knowledge of seller

↓
Perished

or

damaged as
no longer to answer
their description contract

} at the time when
contract was made

* Goods perishing before sale but after agreement to sell (Sec 8)

Agreement to sell of specific goods

Subsequently seller or buyer } Goods without any fault on part of
 perish or become damaged so no longer to answer description,
 before risk passes to buyer,
 Agreement is avoided or becomes void

Perishing of future goods → If specific, destruction
 ↓
 Supervening impossibility + void

* Ascertainment of Price [Sec 9 & 10]

Price means monetary consideration for sale of goods [Sec 2(10)]

Contract of sale may be: [Sec 9]

- i) fixed by contract,
- ii) agreed to be fixed in manner provided by contract, [valuation]
- iii) determined by course of dealings b/w parties.

Where Price not determined → Buyer to pay reasonable price.

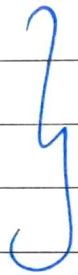
Reasonable → Question of fact dependent on circumstances of particular case

Agreement to sell at valuation [sec 10]

1. Agreement to sell goods on terms that price to be fixed by valuer (third party)

AND

Third party
cannot
or
does not



make such
valuation



Agreement
avoided

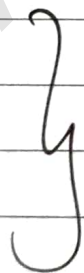
But if goods or part delivered & appropriated

↓
by buyer
↓

Buyer to pay reasonable price.

2. Third party prevented from making valuation by fault of

Seller
or
buyer



Party ~~not~~ ⁱⁿ default may maintain
suit for damages against third party

Unit 2- Conditions & Warranties

* Stipulation as to time (Sec 11)

Unless it appears from contract, Time of payment of price not of essence of contract of sale
BUT delivery of goods must be made without delay.

* Stipulation (Sec 12: → stipulation may be condition or warranty)

Section 12(1)

Condition [Sec 12(2)]



Stipulation essential to main purpose of contract.

Breach of stipulation

↓ gives

Right to repudiate contract.

Warranty [Sec 12(3)]



Stipulation collateral to main purpose of contract

Breach of stipulation

↓ gives

Right to claim for damages but no right to reject goods & treat contract repudiated

[Sec 12(4)] → Whether stipulation is Condition or Warranty depends upon case of contract.

D/b

Condition

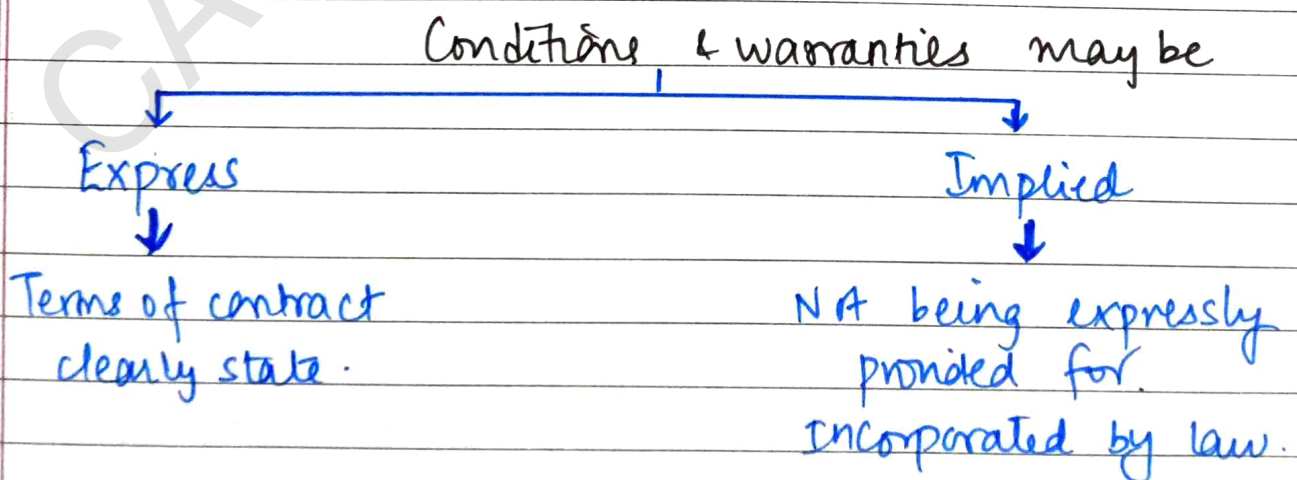
Warranty

* When Condition to be treated as warranty [sec 13]

Effect: → Buyer loses his right to rescind contract,
& can claim damages only

1. Where buyer waives condition (Voluntary waiver by buyer)
2. Buyer elects to treat breach of condition as ^{one of} warranty
Buyer not waived condition, decided to treat it as warranty
(Voluntary by buyer)
3. Contract is non severable → buyer accepted either
whole or part. (Compulsory waiver)
4. Fulfilment of condition or warranty is excused by law of reason of impossibility
or otherwise. (Compulsory waiver)

* Express & Implied Conditions & warranties (Sec 14 to 17)



An Implied Condition may be negated or
waived by express agreement

* Implied conditions

1. Condition as to title [Sec 14(a)]

Seller has
 → Right to sell goods. [Sale]
 will have
 → Right to sell goods [Agreement to sell]

If seller's title defective → Buyer must return goods to true owner
 → Buyer must recover price from seller

2. Sale by description [Sec 15]

Goods should correspond with description.

Principle → 'If you contract to sell peas, you cannot sell beans.'

to be
 It has determined whether buyer has undertaken to purchase goods by description

Gives buyer right to reject goods. whether buyer is able to inspect or not

'Description' not defined in Act:

- i) where class / kind of goods belong specified
- ii) goods described by certain characteristics essential to identification.

3. Sale by sample [Sec 17]

Implied condition that:

- a) bulk shall correspond with sample in quantity
- b) buyer shall have reasonable opportunity of comparing bulk with sample
- c) goods to be free from any defect



renders them un-merchantable
which could not be discovered by ordinary
examination of goods.
(latent defect)

4. Sale by sample as well as Description [Sec 15]

Implied condition that: Bulk of goods supplied corresponds
↓ to
sample description

If goods correspond with sample but not description
[or] vice versa → Buyer can repudiate contract.

5. Condition as to quality or fitness [Sec 16(1)]

Implied condition if
all conditions
fulfilled

- ① Buyer made known to seller, purpose for which goods required
- ② Buyer relied on skill + Judgement of Seller
- ③ Goods must be description dealt in by Seller → whether manufacture or not

↓ Not applied
if goods sold
under
trademark or
Patent name

6. Condition as to Merchantability Sec 16(2)

Implied condition: goods to be merchantable

- ① Goods should be brought by description
- ② Seller should be dealer in goods of that description

But if buyer had examined goods then no implied condition if such defects were of such that examination would have revealed.

↓
(Ordinary diligence)

7. Condition as to Wholesomeness:

Eatables & provisions

- ① Condition as to merchantability
- ② Goods shall be wholesome.

* Implied Warranties

1. Warranty as to undisturbed Possession Sec 14(b)

Buyer:

have & enjoy quiet possession of goods

If buyer after getting possession → later disturbed in his possession,
Entitled to sue seller for breach of warranty.

2. Warranty as to non-existence of encumbrances [Sec 14(c)]

Goods free from charge or encumbrance in favor of third party not declared or known to buyer before or at time of contract entered into

3. Warranty as to quality or fitness by usage of trade [Sec 16(3)]

Let buyer beware, i.e. seller under no duty to reveal unflattering truths to buyer about goods.
(Doctrine of Caveat Emptor)

4. Disclosure of dangerous nature of goods

Where goods are dangerous, seller must warn buyer
If breach of warranty → seller liable in damages

* Caveat Emptor → Let buyer beware (Sec 16)

↓
Duty of buyer to make proper selection of goods

Exceptions of Caveat Emptor:

1. Fitness as to quality or use [Sec 16(1)]

Case law: Priest vs. Last

Case law: Bombay Burma Trading Corp. vs. Aga Muhamma

2. Goods purchased under patent or brand name [Sec 16(1)]

3. Goods sold by description [Sec 15]

4. Goods of Merchantable Quality [Sec 16(2)]
5. Sale by sample (Sec 17)
6. Goods by sample as well as description [Sec 15]
7. Trade usage [Sec 16(3)]
8. Seller actively conceals a defect or is guilty of fraud

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