

BUSINESS LAW

UNIT 4: The Sale of Goods Act, 1930

TOPIC- CONTRACT OF SALE OF GOODS

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CONTRACT OF SALE OF GOODS

The law relating to sale of goods is contained in Sale of Goods Act, 1930 which came into force on 1st July, 1930. The Act contains 66 Sections and extends to the whole of India.

The general provisions of the Contract Act like those relating to offer , acceptance capacity of parties, free consent, etc. continue to be applicable to the contract of sale of goods in so far as they are not inconsistent with the express provisions of the Sale of Goods Act, 1930.

Section 4(1) of Sale of Goods Act defines a contract of sale of goods as – ‘a contract whereby the **seller transfers or agrees to transfer the property in goods** to a **buyer** for a **price**’. This definition brings out the following characteristics of a contract of sale of goods-

- Two parties- two distinct parties in a contract of sale- buyer & seller
 - A person cannot sell goods to himself
 - But if one part owner sells his share to other part owner, it is regarded as sale
- Transfer of property- Property means ownership
 - Mere transfer of possession of goods is not sale
 - Property here means general property and it must be distinguished from special property

CONTRACT OF SALE OF GOODS(ESSENTIALS)

- Goods- means every kind of **movable property** other than actionable claims 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 the contract of sale

These are regarded as goods	These are not regarded as goods
Goodwill, trademarks, copyrights, water, gas, electricity etc. are all regarded as goods	Immovable properties like land, buildings etc are not goods and are governed by the Transfer of Property Act,1882.
Stocks and shares are goods and can be bought/ sold/traded	Actionable claims like book debts are not goods as they can only be assigned as per Transfer of Property Act and cannot be sold. Actionable claims like bill of exchange, promissory notes etc are also not goods as these can be transferred as per Negotiable Instruments Act
Old and rare coins can be regarded as goods as they are no more used as medium of exchange and can be bought/sold	Money is not regarded as goods as it is the medium of exchange for sale/ purchase of goods
Growing crops, grass, things attached to or forming part of land are regarded as goods when they are agreed to be separated from the land	Contracts of sale of things forming part of the land itself eg. coal mine, building stone quarry are not contracts of sale of goods.

CONTRACT OF SALE OF GOODS(ESSENTIALS)

- Price-The consideration for a contract of sale **must be money consideration called price**. Here it differs from definition of consideration in the Indian Contract Act where consideration could be anything... not necessarily in money.
 - if goods are sold/exchanged for other goods, it is barter and will be governed by Transfer of Property Act and not by Sale of Goods Act.
 - If goods are sold partly for goods and partly for money then it will be covered under Sale of Goods Act.
 - Modes of fixing the price- Price could be fixed in any of the manner prescribed below
 1. It may be expressly fixed by the contract itself-it is the most usual mode. Parties are free to fix any price and no one can question the adequacy of price. But the sum fixed must be definite and should not have any element of uncertainty /ambiguity / wager.
 2. It may be fixed as per the agreed manner in the contract. Eg. It may be agreed that the buyer will pay the price prevailing on a particular date say, date of placing the order. Or it may be agreed that price is to be fixed by a third party (valuer) appointed by the parties.
 3. It may be determined by the course of dealings between the parties. Eg. If the buyer is a regular customer of a seller and had entered several transactions in the past too, the price for the present transaction will also be determined in the customary/habitual manner. Eg if customer is always been paying 90% of MRP., this time also he will pay at same rate.
 4. If the price is not determined in any of the above manner, reasonable price is to be paid by buyer. What is reasonable price depends on the circumstances. Generally , the market price of goods prevailing on the date of supply is taken as reasonable price.

● **Contract of sale is a generic term which includes both ‘sale’ & ‘agreement to sell**

SALE	AGREEMENT TO SELL
Under sale, the property in goods gets transferred from seller to buyer, immediately at the time of making the contract.	Under agreement to sell, the property in goods gets transferred to buyer at a future time or on fulfilment of some condition.
It refers to absolute sale or executed contract	It refers to conditional sale or executory contract.
Since there is immediate conveyance of ownership to the buyer , it creates <i>jus in rem</i> i.e. gives right to buyer to enjoy goods as against the whole world.	Since ownership is not conveyed to buyer immediately, he does not have rights over the goods. It creates <i>jus in personam i.e</i> it gives right to buyer/seller against the other person only
If goods are lost or destroyed, loss falls on buyer even if they are in the possession of the seller.	If goods are lost or destroyed, loss falls on the seller even if they are in the possession of the buyer.
If there is breach of contract, the seller can sue for the price even if goods are in his possession.	On breach of agreement by the buyer, seller can sue for only damages and not the price, even if goods are with he buyer.
As the property is with the buyer, seller cannot resell the goods. If he has sold, buyer can recover goods from 3 rd person and can sue seller for breach of contract and tort of conversion	The property is with the seller and he can dispose them off as he likes. The original buyer can sue him for breach of agreement only, he cannot recover goods from third person.
If buyer is declared insolvent before making payment , the seller will have to deliver goods to the official receiver and can claim only rateable dividend for the price.	If buyer is declared insolvent before making payment , the seller may refuse to deliver goods to the official receiver unless paid for.
If seller is adjudged insolvent, the buyer can recover goods from the official receiver as buyer is owner of those goods.	If seller is adjudged insolvent and buyer had already paid, he can claim rateable dividend (like a creditor) but not the goods.

KINDS OF GOODS

- Goods are the subject matter of the contract of sale . Goods may be classified as
 - ✓ Existing goods- these are the goods which are physically in existence and are in seller's ownership or possession, at the time of entering the contract of sale. These could be
 - a) Specific / ascertained goods-these are the goods which have been identified and agreed upon at the time of making the contract of sale.
 - b) Unascertained goods-these are the goods which have not been identified or ascertained at the time of the contract but have only been indicated or defined only by description
eg. A agrees to sell B one bag of rice from the stock lying in the godown. Since it is not known which particular bag is to be delivered, it is unascertained goods. As soon as bag is separated from stock and notice is given to the buyer, it becomes specific goods
 - ✓ Future goods-Goods which are to be manufactured, produced or acquired by the seller after making of the contract of sale are called future goods. There can be no 'sale' of future goods and for them there can only be 'agreement to sell' since property cannot pass in what is not owned by the seller at the time of contract.
eg. A agrees to sell B all the apples which will be produced in his garden next year.
 - ✓ Contingent goods-Goods, the acquisition of which by the seller depends upon uncertain contingency are called contingent goods. They are like future goods only and therefore here also ,there can only be 'agreement to sell' and not 'sale'. Further, the fate of contract of sale of contingent goods depends on whether the event on the happening of which performance is dependent happens or not. If it happens, it will be enforceable otherwise it will become void.
eg. A agrees to sell B 25 bales of Egyptian cotton, provided the ship carrying it reaches India safely. If ship lands in India safely it will be enforced but if the ship sinks, the contract becomes void.

MISCELLANEOUS TOPICS

Effect of perishing of Goods- Perishing includes physical destruction of goods; damage to the goods so that they cease to exist in the commercial sense ;loss of goods by theft ; lawful requisition of goods by the government etc

It is the perishing of specific and ascertained goods that affects a contract of sale. Where after an agreement to sell but before sale , the goods perish and loss is not attributable to the fault of any party, the contract becomes void on the ground of supervening impossibility. Both seller and buyer are so excused from performance.

When unascertained goods form the subject matter of a contract of sale, their perishing does not affect the contract and the seller is bound to supply goods from wherever he likes, otherwise he will be liable for breach of contract.

eg. A agrees to sell B ten bales of Egyptian cotton out of 100 bales lying in the godown. Suppose the godown catches fire and all the bales in the godown are completely destroyed. Here, the contract does not become void. A must supply 10 bales of cotton after purchasing them from somewhere or pay damages for breach.

Earnest or Deposit- Money deposited by the buyer with the seller as security for due fulfilment of the contract is called earnest or deposit. Where the contract is carried through , this deposit counts as part payment and only the balance of the price is required to be paid. But if the contract goes off , we have to see who is responsible for it. If it is because of the fault of buyer, seller is entitled to forfeit the earnest money. But if it is because of fault of seller, the buyer is entitled to recover it from seller along with damages for breach.

MISCELLANEOUS TOPICS

Stipulations as to Time in a contract of sale fall under two heads

- Stipulation relating to **time of delivery** of goods- Here time is usually held 'to be of essence of the contract'. Thus if time is fixed for delivery of goods and seller makes a delay, the contract is voidable at the option of the buyer. The buyer may refuse to accept the delivery and end the contract.
- Stipulation relating to **time of payment** of the price- Here usually time is not deemed to be of essence of the contract. Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account. He has to deliver the goods if the buyer tenders the price within reasonable time but yes, the seller can claim compensation for loss suffered by him due to buyer's failure to pay on the appointed day.

Document of title to goods- Document of title is a proof of the ownership of the goods .It authorizes its holder to receive goods mentioned therein or to further transfer such right to another person by proper endorsement or delivery. Eg. Bill of lading, dock warrant, warehouse receipt, wharfinger's certificate, railway receipt etc.