

THE SALES OF GOODS ACT, 1930



Applicability of the Act:

- This Act extends to whole of India, except the State of Jammu and Kashmir.
- This Act came into force w.e.f. 1 July 1930.
- The 'contract of sale' includes both a sale as well as an agreement to sell.
- The word Indian was omitted from the title of the Act in 1963 (22 Sept.)
- This Act does not deal with the sale of immovable property.
- This Act lays down special provisions governing the contract of sale of goods.
- The general law of contract is also applicable to contracts for the sale of goods unless they are inconsistent with the express provisions of the Sale of Goods Act.

Definitions

Buyer [Sec 2 (1)]: Buyer means a person who **buys** or **agrees to buy** goods.

Seller [Sec 2 (13)]: Seller means a person who **sells** or **agrees to sell** goods.

Goods [Sec 2 (7)]: Goods means every kind of **movable property** other than actionable claims & money and **includes:**

- i. Stock and shares
- ii. Growing crops
- iii. Grass &
- iv. Things attached to or forming part of land, which are agreed to be severed before sale or under the contract of sale.

Definitions

Money' and 'actionable claims' have been expressly excluded from the term 'goods'.

1. 'Money' means the legal tender.
2. 'Money' does not include old coins and foreign currency.
3. Old coins can, therefore, be sold or bought as goods.
4. 'Actionable claims', like debts, are things which a person cannot make use of, but which can be claimed by him by means of a legal action
5. Actionable claims cannot be sold or purchased like goods, they can only be assigned, as per the provisions of Transfer of property Act.
6. Grass, growing crops, trees to be cut and their log wood to be delivered, malba of a building to be demolished, etc. are goods.

Definitions

Delivery: According to Section 2 (2) of the Sales of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. Hence, if a person takes possession of goods by unfair means, then there is no delivery of goods.

Modes of Delivery of Goods: Delivery of goods may be made in any of the following three ways:

- 1. Actual Delivery:** Also known as physical delivery, actual delivery takes place when the goods are physically handed over by the seller or his/her authorized agent to the buyer or his/her agent authorized to take possession of the goods.

For example, A, the seller of a car hands it over to B, the buyer; it is a case of actual delivery of the goods.

Definitions

2. Symbolic Delivery: Where the goods are bulky and heavy and it is not possible to physically hand them over to the buyer, delivery thereof may be made by indicating or giving a symbol. Here the goods itself are not delivered, but the means of obtaining possession of goods is delivered.

For example, delivering the keys of the warehouse where the goods are stored, or the keys of a purchased car to its buyer, bill of lading which will entitle the holder to receive the goods on arrival of the ship.

3. Constructive Delivery: In this case neither physical nor symbolic delivery is made. In constructive delivery the individual possessing the products recognizes that he holds the merchandise for the benefit of, and at the disposal of the purchaser. Constructive delivery is also called attornment.



To be Continued

Definitions

Constructive delivery may be effected in the following three ways;

- ❑ Where the seller, after having sold the goods, agrees to hold them as bailee for the buyer
- ❑ Where the buyer, who is already in possession of the goods as bailee of the seller, holds them as his own, after the sale, and
- ❑ Where a third party, for example, a carrier/transporter, who holds the goods, as bailee for the seller, agrees and acknowledges holding them for the buyer.

2. Goods in a deliverable state: Goods are said to be in delivered state, when they are in such state that the Buyer would be bound to take the delivery of them in accordance with the contract.

Example: A contracts to sell timber and makes bundles thereof, goods will be in a deliverable state, after A has put the goods in such a condition.

Definitions

Mercantile Agent [Sec 2 (9)]: It means an agent having in the customary course of business as such agent an authority either:

- i. To sell goods or
- ii. To consign goods for the purpose of sale or
- iii. To buy goods or
- iv. To raise money on the security of the goods.

Contract of Sale [Sec 4(1)]: A contract of sale is a contract whereby the seller transfers (sale) or agrees to transfer (agreement to sell) property (ownership) in goods to the buyer for a price.

The contract of sale can be entered into, expressly or impliedly.

To be Continued

Essentials of Valid Contract of Sales

There must be two parties, one seller and other buyer

Seller and buyer must be different.

- i. Part owner can sell goods to another part owner.
- ii. Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both sellers and buyers. But, a partner may buy goods from the firm or sell goods to the firm.

There must be movable goods as subject matter of contract: Goods here means movable property excluding money and actionable claims.



To be Continued

Essentials of Valid Contract of Sales

There must be transfer of property in goods.

it means general property. (i.e. ownership) and not merely special property in goods. Special property in goods means possession of goods.

Cases where property in goods is not transferred:

- i. Bailment
- ii. Creating charge or pledge

There must be price involved. Price means money consideration for sale of goods.

- i. Exchange of goods for goods is barter.
- ii. If Exchange is for partly goods and partly for money, it is sale

If goods are given without any consideration, the transaction amounts to a gift but not a sale of goods.

Thus money is the only consideration for sale of goods and all the essential elements of valid contract must be observed.

To be Continued

Formation of the Contract

Contract of Sales

Sale and agreement to sell:

1. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
2. A contract of sale may be absolute or conditional.
3. Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
4. 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.



To be Continued

Formalities of the Contract

Contract of sale how made:

1. A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.
2. Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract

Existing or future goods:

1. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.
2. There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.
3. Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract: Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.



To be Continued

Subject-matter of Contract

Goods perishing before sale but after agreement to sell: Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Ascertainment of price:

1. The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
2. Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case



To be Continued

Subject-matter of Contract

Agreement to sell at valuation:

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

2. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Price of Goods (Sec 9-10)

Price means the money consideration for Sale of Goods 2(10)

The modes of determining price [Section: 9]

(1) Price is specified under the contract.	<ul style="list-style-type: none">• It is the most common method of determining the price.• Here, parties decide the price in advance.
(2) Price is not determined under the contract	
(i) Method of determining price is specified in the contract.	Example: Delivery of rice on 1st December 2008 at the rate prevailing on that day.
(ii) Price may be determined in accordance to custom and usage of trade.	This method is applicable if parties regularly trade.
(iii) Where the price is not fixed as above, the buyer shall pay the seller a reasonable price.	'What is a reasonable price is a question of fact and circumstances.

(3) fixation of price by third party. (Sec. 10)

If it is so, contract shall specify name of third party.	<ul style="list-style-type: none">• If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price.• If the third party is prevented from fixing price, defaulting party is liable for the damages.
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Conditions and Warranties

1. Generally, at the time of sale, the seller makes some representation, statements of stipulations for the praise of his goods.
2. Some of representations are in nature of opinion, others are in nature of facts.
3. Representation as to fact which becomes a part of contract of sale is called as stipulation.
4. Stipulation may be condition or warranty depends upon its importance in relation to contract.
5. Stipulation which is essential to the main purpose of contract is known as condition. Breach of condition gives the aggrieved party right to terminate the contract.
6. Stipulation which is collateral to the main purpose of the contract is warranty. Breach of warranty gives rise to the aggrieved party right to claim damages but contract cannot be terminated.

To be Continued

Conditions and Warranties

7. The conditions and warranties may be express or implied.
8. Express conditions and warranties are those, which the parties agree expressly, i.e. orally or in writing
9. Implied conditions are those, which are implied by the law in the absence of any agreement to the contrary.

Express & Implied Conditions & Warranties:

Express Conditions: are those which are agreed between the parties at the time of contract and are expressly provided in the contract.

Implied Conditions: are those which are presumed by law to be present in the contract. An implied condition may be negated or waived by an express agreement.



To be Continued

Conditions and Warranties

Stipulations as to time: Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty:

1. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
2. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
3. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
4. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

To be Continued

Distinction Between Conditions and Warranties

Conditions	Warranties
Essential to the main purpose of contract.	Collateral to the main purpose of contract.
Aggrieved party can repudiate the contract or claim damages or both in case of breach of condition.	Aggrieved party can claim only damages in case of breach of warranty.
A breach of condition may be treated as breach of warranty.	A breach of warranty cannot be treated as breach of condition

Conditions and Warranties

When condition to be treated as warranty:

1. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
2. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.
3. Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.



To be Continued

Conditions and Warranties

Implied undertaking as to title, etc: In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is;

- a. An implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
- b. An implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- c. An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.



To be Continued

Conditions and Warranties

Sale by description: Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description

Implied conditions as to quality or fitness: Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows;



To be Continued

Conditions and Warranties

Implied conditions as to quality or fitness:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose.

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.



To be Continued

Conditions and Warranties

Implied conditions as to quality or fitness:

2. Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.



To be Continued

Conditions and Warranties

Sale by sample:

1. A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
2. In the case of a contract for sale by sample there is an implied condition.
 - a. that the bulk shall correspond with the sample in quality;
 - b. that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - c. that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Conditions in a sale by Sample as well as by Description: A vast majority of cases where samples are shown, are sales by sample as well as by description. In a contract for sale by sample as well as by description, the goods supplied must correspond both with the sample as well as with the description.

To be Continued

Conditions and Warranties

Condition as to Merchantability: Where the goods are bought by description from a seller, who deals in goods of that description (whether or not as the manufacturer or producer) there is an implied condition that the goods shall be of merchantable quality.

Merchantable quality ordinarily means that the goods should be such as would be commercially saleable under the description by which they are known in the market at their full value.

Example: A radio set was sold to a layman. The set was defective. It did not work in spite of repairs, Held, the buyer could return the set and claim refund.

- i. “Quality” includes state or condition of the goods.
- ii. Merchantable means: Goods shall be of such a quality and in such a condition that a man of ordinary prudence would accept them as goods of that description.



To be Continued

Conditions and Warranties

Re Jackson's case: A person orders motor horns from a manufacturer of horns and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them being unmerchantable.

Goods are not merchantable if they have defects which make them unfit for ordinary use or are such that a reasonable person knowing of their condition would not buy them.

Re. Morellies case:- Sale of bottle of "Stones Ginger Wing" at a public house is a sale of goods by description and if the bottle breaks while opening with a corkscrew by reason of defect in the bottle and injures the buyer, there is breach of condition as to Merchantable Quality and the buyer is entitled to damages.



To be Continued

Conditions and Warranties

Proviso: If the buyer has examined the goods, there shall be no such implied conditions as regards defects which ordinary examination ought to have revealed. But if examination does not reveal the defects and he approves and accept the goods, but when they are to work, the goods are found to be defective. Then this is breach of condition of Merchantable Quality w.r.t. Latent defects.

Warranties

Implied Warranty as to undisturbed possession

Section 14(b) provides that:

There is 'an implied warranty that the buyer shall have and enjoy quiet possession of goods'.

If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer is entitled to hold the seller liable for breach of warranty.



To be Continued

Conditions and Warranties

Implied Warranty as to non-existence of encumbrances

Section 14(c) states that: In a contract for sale, there is an implied warranty that the goods shall be so free from any charge or encumbrances in favor of any third party not declared or Known to the buyer before or at the time when the contract is made. But, if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.

Disclosure of dangerous nature of goods If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. Failure to do so will make the seller liable to pay damages.

Example: A sold a tin of disinfectant to B, knowing that it was likely to be dangerous to open the tin, whereupon disinfectant powder went into her eyes, causing her injury. Held, A was liable in damages to B, as he failed to warn B of the probable danger.



To be Continued

Conditions and Warranties

Condition as to Wholesomeness: In case of sale of eatable provisions and foodstuff, there is another implied condition that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness' it means that goods must be for human consumption.

Wholesomeness - the quality of being beneficial and generally good for you

- i. 'F' bought milk from 'A' and the milk contained typhoid germs.
- ii. 'F's wife became infected and died.
- iii. 'A' was liable for damages.
- iv. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.



To be Continued

Conditions and Warranties

Condition Implied by Custom or Trade Usage: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In certain sale contracts, the purpose for which the goods are purchased may be implied from the conduct of the parties or from the nature or description of the goods. In such cases, the parties enter into the contract with reference to those known usage. For instance, if a person buys a perambulator or a medicine the purpose for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.

Conditions in a Sale by Sample: A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect. Usually, a sale by sample is implied when a sample is shown and the parties intend that the goods should be of the kind and quality as the sample is.

Unpaid Seller

Unpaid Seller: The seller of goods is deemed to be unpaid seller:

- a. When the whole of the price has not been paid or tendered; or
- b. When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonored

Rights of an Unpaid Seller against the Goods: An unpaid seller's right against the goods are:

- a. A lien or right of retention
- b. The right of stoppage in transit.
- c. The right of resale.
- d. The right to withhold delivery.



To be Continued

Unpaid Seller

Rights of an unpaid seller against the buyer:

1. An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.
2. The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.

Under Section 56, the seller may sue the buyer for damages or breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods. Thus an unpaid sellers' rights against the buyer personally are:

- a. a suit for the price.
- b. a suit for damages.



To be Continued

Unpaid Seller

Right of Lien: An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfilment or tender of the price in cases where:

- i. the goods have been sold without stipulation as to credit; or
- ii. the goods have been sold on credit, but the term of credit has expired; or
- iii. the buyer becomes insolvent.



To be Continued

Unpaid Seller

Till when seller can exercise right of lien:

- i. The lien depends on physical possession.
- ii. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods.
- iii. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost:

- i. 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 the goods;
- ii. When the buyer or his agent lawfully obtains possession of the goods;
- iii. By waiver of his lien by the unpaid seller.

Stoppage in transit

What is the right of stoppage in transit: The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

Till when is the right to stop goods available to an unpaid seller?

The right to stop goods is available to an unpaid seller

- i. when the buyer becomes insolvent; and
- ii. the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.



To be Continued

Stoppage in transit

When does this right come to an end?

The transit comes to an end in the following cases:

- i. If the buyer obtains delivery before the arrival of the goods at their destination;
- ii. If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;
- iii. If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.



To be Continued

Stoppage in transit

Who will bear expense of stoppage in transit?

The right to stop in transit may be exercised by the unpaid seller

- i. Either by taking actual possession of the goods or
- ii. By giving notice of the seller's claim to the carrier or other person having control of the goods.
 - a. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.
 - b. The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it.
 - c. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

Right of Resale

The unpaid seller may re-sell:

- i. where the goods are perishable;
- ii. where the right is expressly reserved in the contract;
- iii. where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realized, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.



To be Continued

Right of Withhold Delivery

- i. If the property in the goods has passed, the unpaid seller has right as described above.
- ii. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.