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## **UNIT-IV**

**Law of sale of Goods-Definition-Buyer-Goods-  
Delivery-Mercantile Agent- Sale and agreement to  
sell – condition & warranty.**

# **BUSINESS LAW**

# **LAW OF SALE OF GOODS**

## **DEFINITION OF CONTRACT OF SALE:**

**Section 4(1) of the 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 the buyer for a price.”**

**In other words, a contract to transfer the ownership of goods from the seller to the buyer is known as contract of sale.**



# **ESSENTIALS OF A CONTRACT OF SALE**

- **BUYERS AND SELLER**
- **TRANSFER OF PROPERTY**
- **GOODS**
- **PRICE**
- **SALE AND AGREEMENT TO SELL**
- **OTHER FORMALITIES:**

# **BUYERS AND SELLER**

**There should be two parties to a contract of sale, i.e. a buyer and a seller. One person cannot act as a buyer and seller because a person cannot buy his own goods and similarly a person cannot sell his goods to himself.**

## **EXAMPLES**

**A sells his computer to B for Rs.40,000. A is a seller and B, is a buyer.**



# **TRANSFER OF PROPERTY**

**Transfer of property is the second essential of contract of sale. Property here means ownership. A mere transfer of possession of the goods cannot be termed as sale.**

## **EXAMPLE**

**A sells his A.C. to B for Rs.20,000. The ownership and the possession of the A.C. will transfer from A to B.**

# GOODS

**The subject matter of the contract of sale must be goods. According to section 2(7), “goods means every kind of movable property other than actionable claims and money; and includes electricity, water, gas, stock and shares, growing crops, grass and thing attached to our forming part of the land which are agreed to be severed before sale or under the contract of sale.”**

## **EXAMPLE:**

**A sells his car to M for Rs.3 Lac. It is a contract of sale because here the subject matter i.e. a car is a moveable thing.**



# PRICE

**According to section 2(10), the consideration in a contract of sale must be the price. When goods are sold or exchanged for other goods, the transaction is barter, and not a contract of sale of goods. If goods are sold partly for goods and partly for money, the contract is sale.**

## **EXAMPLES:**

- (i) **A sells his chair to B for Rs.2,000. It is contract of sale.**
- (ii) **X sells his horse to B against B's promise to give 100 mounds of wheat. It is not a contract of sale.**

# **SALE AND AGREEMENT TO SELL**

The terms contract of sale includes, both sale and an agreement to sell. Where under a contract of sale the property (ownership) in the goods is transferred from the seller to the buyer, at the time of making the contract the contract is called as sale. Where under a contract of sale the transfer of ownership 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.

**EXAMPLES:** (i) A buys a book from S and pays the whole price on a counter. It is a sale.

(ii)            agree to buy B's car for Rs.200,000, if his mechanic approves the car. It is an agreement to sell.



# **OTHER FORMALITIES**

**There is no specific procedure to make a contract. Apart from the above, all other essentials of a valid contract like capacity of the parties, free consent, legality of object etc. should also be there in a contract of sale. It may be oral or in writing.**

**EXAMPLE:** A verbally promises to sell his radio to B for Rs.2,000. It is a contract of sale if both the parties are competent to contract and have given their consent freely,etc.





# **DISTINCTION BETWEEN SALE & AGREEMENT TO SELL**

<b>SALE</b>	<b>AGREEMENT TO SELL</b>
<p><b>1. Transfer of Property</b></p> <p>In a sale, the ownership in goods passes to the buyer immediately at the time of making the contract.</p>	<p>In an agreement to sell, there is no transfer of ownership to the buyer at the time of the contract. The ownership transfers at a certain date or subject to fulfillment of some condition.</p>
<p><b>2. Type of Goods</b></p> <p>A sale can only be in case of existing and specific goods.</p>	<p>A agreement to sell is mostly in case of future and contingent goods.</p>
<p><b>3. Nature of Rights</b></p> <p>In sale, the buyer becomes and so gets the rights against the goods. Moreover, if the seller refuses to deliver the goods, the buyer may sue for recovery of goods.</p>	<p>In an agreement to sell, the buyer cannot get the rights against the goods. He gets the rights against the seller only so he can sue for damages for breach of agreement and not for recovery of goods</p>
<p><b>4. Right of Resale</b></p> <p>In a sale, he ownership is with the buyer and so the seller cannot resell the goods, even though the goods are in the possession of seller.</p>	<p>In an agreement to sell, the ownership in goods remains with the seller and so he can resell those goods to the new buyer. The original buyer can use for breach of contract only and the subsequent buyer gets at good title to the goods.</p>
<p><b>5. Nature of Contract</b></p> <p>A sale is an executed contract, because the ownership has passed from seller to the buyer</p>	<p>An agreement to sell is an executory contract, as the property has to pass in future.</p>

# Classify of goods

**The goods are classified into three types, namely:**

- **Existing Goods**
- **Specific Goods**
- **Future Goods and**
- **Contingent Goods.**



## **EXISTING GOODS**

**Existing goods are goods which are already in existence and which are physically present in some person's possession and ownership [Sec. 6(1)] Existing goods may be either, specific and ascertained, or generic or unascertained**

**The goods which are owned and possessed by the seller, at the time of entering the contract of sale are called **existing goods**. In other words the goods which are physically in existence and in seller's ownership or possession, at the time of entering the contract of sale are called existing goods.**

# SPECIFIC GOODS

According to section 2(14), the goods which are identified and agreed upon at the time of contract of sale are called Specific goods. Where there is a contract for specific goods, the seller can complete the contract only by delivering the goods agreed upon.

**EXAMPLE:(i)** A agrees to sell to B a particular radio bearing a distinctive number; there is a contract of sale of Specific goods.

**(ii)** X owns a number of cows, and promises to sell one of them; the contract is not for specific goods. But if the cow to be sold has been singled out, the contract is for specific goods.



# FUTURE GOODS

**Future goods:** Future goods are goods which will be manufactured as produced as required by the seller after the making of the contract of sale Sec. 2(6).

***Example;*** P agrees to sell to Q all the mangoes which will be produced in his garden next year. This is an agreement for the sale of future goods.





# CONTINGENT GOODS

**Contingent goods:** There may be a contract for the sale of goods and the acquisition of which by the seller depends upon a *contingency* which may or may not happen [Sec. 6(2)]. In such cases the goods sold are called contingent goods.

**Example:** 'X' agrees to sell to 'Y' a ring provided he is able to purchase it from 'Z'. This is an agreement for the sale of contingent goods.



# Condition And Warranties

- A contract of sale of goods **contains** various terms or stipulations regarding the quality of the goods, the price, the mode of payment, the delivery of goods the time of performance and the place where the goods are to be sent etc.
- Some of there stipulations may be **major** terms while others may be minor terms. In law of **sales** major, **terms** are called **conditions** and minor terms are called **warranties**.



# CONDITION

- According to section 12(2) a “condition is a stipulation essential to the main purpose of the contract the breach of which gives the aggrieved party a right to repudiate the contract itself.”
- In other words, a condition is essential for the main purpose of the contract. It is regarded as the very basis of the contract. Its non-fulfillment causes irreparable loss to the aggrieved party. In case of violation of condition the aggrieved party gets a right to cancel the contract. The party can refuse to accept the goods. If the injured party has already paid the price, he can recover it.



# CONDITION

- **EXAMPLE**

**A contract to deliver 100 Orient fan to B. But A delivers Climax fans. It is breach of condition on the part of A. B is entitled to reject the fans or accept them and claim damages.**

# WARRANTY

- According to Section 12(3) “ a warranty is a stipulation **collateral** to the main purpose of the contract the breach of which gives the aggrieved party a right to use for damages only, and **not to avoid the contract itself.**”
- In other words a **warrantee is not essential** for the main purpose of the contract. It is subsidiary or collateral to the main purpose of the contract. It is not regarded as the basis of the contract.
- It is of secondary importance. The **breach of warranty gives the injured party a right to recover damages only.** It does not give right to reject the goods and treats the contract as repudiated.



# WARRANTY

- There is no hard and fast rule as to know which stipulation is a condition and which one is a warranty. The only suitable method to distinguish between these two terms is that if the stipulation is such that its breach would be very harmful for the rights of the aggrieved party, then such a stipulation is a condition and where it is not so the stipulation is only a warranty.

**EXAMPLE:** A promise to deliver to B 100 washing machines at his showroom. But A delivers them at the home. It is a breach of warranty on the part of A. B cannot reject them. He can claim damages only.





# **DISTINCTION BETWEEN CONDITION AND WARRANTY**

<b>CONDITION</b>	<b>WARRANTY</b>
<p><b>1. Value</b></p> <p>A condition is a stipulation, which is Essential to the main purpose of the Contract.</p>	<p>A warranty is a stipulation, which is not essential to the main purpose of Contract.</p>
<p><b>2. Basis</b></p> <p>It forms the basis of a contract and goes direct to the root of the contract.</p>	<p>It does not form the basis of a contract and does not go direct to the root of the contract</p>
<p><b>3. Breach</b></p> <p>The breach of a condition gives the aggrieved party the right to reject the contract.</p>	<p>The breach of warranty does not give aggrieved party a right to reject the contact.</p>
<p><b>4. Treatment</b></p> <p>A breach of condition may be treated as a breach of warranty.</p>	<p>A breach of warranty cannot be treated as a breach of condition.</p>
<p><b>5. Option</b></p> <p>In case of breach of condition, the Aggrieved party has an option to Claim damages instead of rejecting.</p>	<p>In case of breach of warranty the aggrieved party has no option to reject the contract. He can only claim damages.</p>

## **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES**

- **Conditions and warranties may be express or implied. The conditions and warranties which are included in clear words the contracts are called express. The conditions and warranties which are not included in the contract but the law presume their existence in the contract is called implied.**



# IMPLIED CONDITIONS

- **CONDITIONS AS TO TITLE**
- **SALE BY DESCRIPTION**
- **SALE BY SAMPLE**
- **SALE BY SAMPLE AS WELL AS BY DESCRIPTION**
- **CONDITION AS TO FITNESS OR QUALITY**
- **CONDITION AS TO MERCHANTABILITY**
- **CONDITION AS TO WHOLESOMENESS**

# CONDITIONS AS TO TITLE

## EXAMPLE:

(a) A purchased a car from B. After few months the car is seized by the police as a stolen one. A can recover the price from B.

- (b) R purchased a motor from D and used for several months. D had no title to the car and, therefore, R was compelled to return the car to the true owner. R used D to recover the price, which he had already paid. He was held entitled to recover the whole of the price paid by him.



# SALE BY DESCRIPTION

- **EXAMPLE:**

**A advertised a car for sale as ‘Corolla, 2008 Model. ‘B after buying the car, found it of an earlier model. B could return the car.**



# **SALE BY SAMPLE**

- **EXAMPLE:**

**Two parcels of wheat were sold by sample. The buyer examined the bulk a week after. One parcel was shown to him but the seller refused to show the other parcel, which was not there in the warehouse. It was held, that the buyer was entitled to cancelled the contract.**

## **SALE BY SAMPLE AS WELL AS BY DESCRIPTION**

- **EXAMPLE:**

**N agreed to sell G some oil described as ‘foreign refined oil’, was similar to sample only. The oil supplied, though corresponded with the sample, was mixed with local oil. Held, that since the oil supplied was not in accordance with the description, the buyer was entitled to reject the same.**



# **CONDITION AS TO FITNES OR QUALITY**

- **EXAMPLE:**

**A enters into an agreement with B to buy 100 oil filters to be used for Suzuki cars. The oil filters were unfit. A can reject them.**



## **CONDITION AS TO WHOLESOMENESS**

- **EXAMPLE:**

(a) F bought milk A, a dairy owner. The milk contained germs of typhoid fever. F's wife, on taking the milk, became infected and died of it. A, was held liable in damages.

(b) C bought a bun containing a stone, which broke one of C's teeth. Held C could recover damages.

# CONDITION AS TO MERCHANTABILITY

- EXAMPLE:
- A sold a Radio to B. The Radio was defective. It did not work in spite of repairs. B could return the Radio and claim refund.



# IMPLIED WARRANTIES

- Unless otherwise agreed, the law includes the following warranties into a contract of sales of goods.

- **1. QUIET POSSESSION:**

In every contract of sale, it is implied warranty on the part of seller that the buyer shall have and enjoy quiet possession of the goods. It is an implied assurance to the buyer that he shall have the possession and enjoyment of the goods sold to him without disturbance by the seller of any other person. If this right of buyer is disturbed by a person having a superior right than that of the seller, the buyer can claim damages from seller.



# IMPLIED WARRANTIES

## EXAMPLE:

**A** bought a motor car from **B** and used it for some months, after some months it appeared that **B** had no title to it and **A** was compelled to surrender it to the true owner. **A** was entitled to recover the purchase price from **B**.

# Define Of Unpaid Seller

According to Section 45(1) the seller of goods is deemed to be an unpaid seller:

1. When the whole of the price has not been paid or tendered; or
2. when a bill of exchange or other negotiable instrument has been received as a conditional payment and the same has been dishonored.



# **FEATURES OF UNPAID SELLER**

**The following are the features of unpaid seller;**

- **1. He must sell goods on cash basis and he must be unpaid.**
- **2. If he sells the goods on credit, he is not an unpaid seller.**
- **3. He is unpaid seller if the term of credit has expired and the price has not been paid.**
- **4. He must be unpaid either wholly or partly. If only a part of the price remains unpaid he is deemed to be an unpaid seller.**



## EXAMPLES

- (a) **A sells goods to B on 5 months credit. A is not an unpaid seller. But if B becomes insolvent after 2 months A becomes an unpaid seller.**
- (b) **A sells goods to B for Rs.5 thousand. B has paid Rs.3 thousand and the remaining are still to be paid. A is an unpaid seller.**
- (c) **A sells 50 books to B. A gets a cheque from B for a period of 10 days. On the date of maturity, the cheque is dishonored. A becomes an unpaid seller.**
- (d) **A sells a mixee to B. B tenders the payment to take delivery. But A refuses to accept payment. A is not unpaid seller.**

# **RIGHTS OF AN UNPAID SELELR**

**An unpaid seller has the following rights:**

- (1) Right of unpaid seller against the goods.**
- (2) Right of unpaid seller against the buyer personally.**

**We shall examine these rights in detail one by one.**



## **RIGHTS OF UNPAID SELLER AGAINST THE GOODS**

**An unpaid seller has the following three rights in spite of the fact that the ownership in the goods has passed to the buyer.**

- (a) Right of lien;**
- (b) Right of Stoppage of goods in transit;**
- (c) Right of resale.**



## **(a) RIGHT OF LIEN**

**Lien is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. An unpaid seller in possession of the goods can exercise his right of lien on the goods in the following cases.**

- **(i) Where the goods have been sold without any stipulation as to credit;**
- **(ii) Where the goods have been sold on credit, but the term of credit has expired;**
- **(iii) Where the buyer becomes insolvent even though the period of credit may not have yet expired.**

## **RULES REGARDING LIEN:**

- (i) The right of lien can be exercised only when the goods are in possession of seller.**
- (ii) It can be exercised by the unpaid seller if he is in possession of goods as agent or bailee of the buyer.**
- (iii) It can be exercised even if the document of title has been delivered but the goods are in the possession of the seller.**
- (iv) It can be exercised for price and not for other expenses.**



## **RULES REGARDING LIEN**

**(v) If seller delivers some goods, he can retain the remainder.**

**(vi) If the seller delivers the goods under the circumstances as to show in agreement to waive the lien, the seller cannot retain the remainder.**

**EXAMPLE:** A sells the goods to B for Rs.1 Lac B pays 50 thousand and promises to pay the remaining after sometime. A has a right to exercise a lien on the goods.



## **TERMIANTION OF LIEN:**

**The unpaid seller losses his lien in the following cases:**

- (i) When he delivers the goods to a carrier or other bailee for the purposes of transmission to the buyer without reserving the right to disposal of the goods.**
- (ii) When the possession of the good is obtained lawfully by the buyer or his agent.**
- (iii) When the seller waives his right of lien on the goods.**
- (iv) It may be noted that right of lien if once lost, will not revive if the buyer delivers the goods to the seller for any particular purpose.**

## **EXAMPLE**

**Where a refrigerator after being sold was delivered to the buyer and since it was not functioning properly the buyer delivered back the same to the seller for repairs, it was held that the seller could not exercise his lien over the refrigerator.**



## **(b) RIGHT OF STOPPAGE OF GOODS IN TRANSIT:**

- **The second right of the unpaid seller is to stop the goods in transit. Goods in transit mean that the goods must be neither with the seller, nor with the buyer nor with their agent. They should be in the custody of a carrier. He can regain possession of the goods as long as they are in course of transit and retain them until payment or tender of the price.**



## **The unpaid seller can exercise this right under the following circumstances.**

- (i) When the buyer becomes insolvent;**
- (ii) When the buyer or his agent takes delivery of the goods before their arrival at the appointed destination.**
- (iv) when the buyer requests the carrier to carry the goods to a new destination after the original destination is reached.**
- (v) When the carrier wrongfully refuses to deliver the goods to the buyer or his agent.**
- (vi) When part delivery of the goods has been made to the buyer or his agent with the intention of delivering the whole of the goods.**

## **EXAMPLE:**

**A** sells 20 bags of cement to **B**. **A** gives the delivery of the cement to carrier to carry to **B**. Later on **A** gets news that **B** has becomes insolvent. **A** can stop delivery of cement in transit to **B**.



## **(c) RIGHT OF RESSALE:**

**The third right of unpaid seller is resale. He can resell the goods in the following cases:**

- (i) Where the goods are of perishable nature; or**
- (ii) Where there is express provision regarding such right in the contract; or**
- (iii) Where the seller gives a notice to the buyer of his intention to resell and the buyer does not pay or tender the price within a reasonable time.**



## **SALE WITH NOTICE:**

- (i) **If on a resale there is a loss to the seller, he can recover it from the defaulting buyer.**
- (ii) **If the resale results in profit, the seller can retain it.**
- (iii) **If the unpaid seller sells without giving notice to buyer he will not be entitled to recover damages from buyer.**
- (iv) **In case of profit on resale, the buyer will be entitled to profit.**

## **EXAMPLE:**

- **(a) X sells some vegetables to Y on credit. Y does not pay. X can resell to any other person.**
- **(b) M sells 100 blankets to N for Rs.1 Lac and gives him one week for payment N does not pay. M can resell those blankets to any other person.**



### **(3) RIGHTS OF UNPAID SELLER AGAINST THE BUYER PERSONALLY:**

**The unpaid seller, in addition to his rights against goods has the following rights against the buyer personally:**

➤ **(a) SUIT FOR PRICE:**

➤ **(b) SUIT FOR DAMAGES FOR NON-ACCEPTANCE:**

➤ **(c) SUIT FOR SPECIAL DAMAGES AND INTEREST:**



## **(a) SUIT FOR PRICE:**

**Where the ownership in goods has passed to the buyer and the buyer refuses to pay the price according to the terms of the contract, the seller can use the buyer for price, irrespective of delivery of goods.**

**EXAMPLE:**            **A** sells the goods to **B** for Rs.1 Lac  
refuse to pay the price. **A** can use for the price.

## **(b) SUIT FOR DAMAGES FOR NON-ACCEPTANCE:**

**Where the buyer refuses to accept and pay for the goods the seller may use him for damages for non-acceptance. The seller can recover damages only. He cannot recover full price.**

**EXAMPLE:**      **A** sells the goods to **B**. **B** refuses to take the goods and pay the price. **A** can use **B** to compel to take the goods.



## **(c) SUIT FOR SPECIAL DAMAGES AND INTEREST:**

**The seller can use the buyer for special damages also where the parties are aware of such loss at the time of contract the unpaid seller can recover interest at a reasonable rate on the total unpaid price of goods sold, from the time it was due it is actually paid.**

**EXAMPLE:** **X** sells some goods to **Y**. **Y** does not pay the price. **X** can use for damages and interest on unpaid price if the parties are aware of such circumstances.



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### **EXAMPLE:**

**X sells some goods to Y. Y does not pay the price. X can use for damages and interest on unpaid price if the parties are aware of such circumstances.**



## **BUYER'S RIGHTS AGAINST SELLER:**

**The buyer has the following rights against the seller for breach of contract:**

- **1.Suit For Damages For Non-delivery:**
- 2. Suit For Specific Performance**
- **3.Suit For Damages For Breach Of Warranty:**
- **4. Suit For Cancellation And Damages For Breach Of Condition:**



## **SUIT FOR DAMAGES FOR NON-DELIVERY:**

**Where the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may use the seller for damages for non-delivery.**

**EXAMPLE:** A sells iron to B at Rs.50 thousand a ton. A does not supply the iron on a stated date. The price of iron increases to 60 thousand a ton. B can use for damages arising due to non-delivery.

## **2. SUIT FOR SPECIFIC PERFORMANCE:**

**Where there is breach of a contract for the sale of specific goods the buyer may file a suit for specific performance. This remedy is granted only when damages would not be adequate remedy. It is granted when subject-matter of the contract is rare goods, say, a picture by a dead painter.**

### **EXAMPLE:**

**A Promise to sell B a rare painting. A refuse to give painting. B can use for specific performance.**



## **SUIT FOR DAMAGES FOR BREACH OF WARRANTY:**

**Where there is breach of warranty by the seller, the buyer is entitled to use for damages if he has paid the price to seller. But if the buyer has not yet paid the price he may ask the seller for a reasonable reduction in price.**

### **EXAMPLE:**

**A promises to sell and deliver tables to B on 1st March 2000. But A delivers on 10th March. B can claim damages.**



## **4. SUIT FOR CANCELLATION AND DAMAGES FOR BREACH OF CONDITION:**

**Where there is a breach of condition by the seller, the buyer can avoid the contract and claim damages.**

- **EXAMPLE:**

**A Promise to sell to B Sony TV. A sends Sharp TV to B. B can avoid the contract and claim damages.**



# **DISTINCTION BETWEEN SALE AND BAILMENT**



	<b>Sale</b>	<b>Bailment</b>
<b>Possession</b>	Possession of goods is transferred to the buyer.	Possession of goods is transferred to the bailee.
<b>Ownership</b>	Ownership is transferred to the buyer.	Ownership resides with the bailor.
<b>Usage</b>	The buyer may use the goods in any way he likes.	A bailee can use the goods only according to the directions of the bailor.
<b>Return</b>	There is no return of goods from the buyer to the seller, unless there is breach.	The goods are returned after the specified time or accomplishment of the purpose.
<b>Consideration</b>	The consideration is the price in terms of money.	The consideration is an undertaking to return the goods after the accomplishment of the purpose.
<b>Charges</b>	The question of any charges to be paid by the seller to buyer or vice versa does not arise.	The bailor has to repay the charges which the bailee has incurred in keeping the goods safe.
<b>Duration</b>	Final. Once the sale is transacted, the seller keeps the goods until he decides to sell them to another.	Temporary. The bailee has to return the goods to the bailor once the specified time is passed.