The Sale of Goods Act, 1930

Dr. M. Charlet Rose Mary Vijaya
Assistant Professor in commerce,
St. Xavier's College (Autonomous),
Palayamkottai.

INTRODUCTION

- Transactions in the nature of sale of goods form the subject matter of the Sale of Goods Act, 1930
- The Act came into force on 1 July, 1930
- It extends to the whole of India, except Jammu & Kashmir
- This chapter deals with the specific types of contract, i.e., sale of goods

DEFINITION OF A CONTRACT OF SALE

- Section 4 defines a contract of sale as “a contract whereby a seller transfers or agrees to transfer the property in goods to the buyer for a price”

ESSENTIALS OF A CONTRACT OF SALE

- From the definition, the following essentials of the contract emerge:

  1) There must be at least two parties: a sale has to be bilateral because the property in goods has to pass from one person to another. The seller and the buyer must be different persons

ESSENTIALS…….contd

- **2) Transfer or agreement to transfer the ownership of goods**: In a contract of sale, it is the ownership that is transferred (in the case of sale), or agreed to be transferred (in the case of agreement to sell), as against transfer of mere possession

ESSENTIALS…….contd

- **3) The subject matter of the contract must necessarily be goods:** the sale of immovable property is not covered under Sale of Goods Act.

- **4) Price is the consideration of the contract of sale:** the consideration in a contract of sale has necessarily to be ‘money’, (i.e. the legal tender money).

ESSENTIALS…….contd

- If for instance, goods are offered as the consideration for goods, it will not amount to sale. It will be called a barter. Where goods are sold for a definite sum and the price is paid partly in terms of valued up of goods and partly in cash, that is sale. These are known as part-exchange contracts. To sum-up: the Act applies only when the buyer pays by cash (or by cheque, credit card, etc)

ESSENTIALS…….contd

- Payment by instalments: in the case of sale of goods, the parties may agree that the price will be payable by instalments

- 5) **All other essentials of a valid contract as per the Indian Contract Act, 1872 must be present:** the parties to the contract must be competent ot contract, the consent of the parties must be free, the object of the contract must be lawful and so on.

SALE AND AGREEMENT TO SELL

- *Sale*
- Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale.
- Thus, sale takes place when there is a transfer of ownership in goods from the seller to the buyer.
- A sale is an executed contract

SALE AND AGREEMENT TO SELL

- ***Agreement to sell***
- Agreement to sell means a contract of sale under which the transfer of property in goods is to take place at a future date or subject to some conditions thereafter to be fulfilled

Difference Between

Sale

- A sale is an executed contract
- Since the ownership has passed to the buyer, the seller can sue the buyer for the price of the goods, if the latter makes a default in payment
- In case of loss of goods, the loss will fall on the buyer, even though the goods are in the possession of the seller. It is because the risk is associated with ownership
- In case the buyer pays the price and the seller thereafter becomes insolvent, the buyer can claim the goods from the official receiver or assignee as the case may be

Agreement to Sell

- *It is an executory contract*
- *In case of breach, the seller can only sue for damages, unless the price was payable at a stated date*
- *The loss in this case shall be borne by the seller, even though the goods are in the possession of the buyer*
- *In this case, the buyer cannot claim the goods, but only a rateable dividend for the money paid*

Distinction between sale and some other transactions

- Sale and Hire purchase
- Sale of goods and ‘work and labour’
- Sale and contract for ‘labour and materials’
- Sale and barter
- Sale and bailment
- Sale and lease
- Sale and gift
- Sale and mortgage, pledge and hypothecation of goods

Goods & their classification

- ‘Goods’ means every kind of movable property, other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale

- Trademarks, patents, copyright, goodwill, water, gas, electricity are all goods

- In general, it is only the movables that form goods

Goods & their classification

- The term goods excludes money
- Money means legal tender and not the rare coins which can be sold and purchased as goods
- Money itself cannot be subject of a sale
- The actionable claims are things which a person cannot make use of, but which can be claimed by him by means of a legal action

Goods & their classification

- Actionable Claim example

- A borrows Rs. 5000/- from B at 12% per annum interest on 1st April, 2006 and promises to pay back the amount with interest on 1st July, 2006. Till 1st July, 2006, the debt is an accruing debt and is an actionable claim.

Documents of title to goods

- *Any written instrument, such as a bill of lading, a warehouse receipt, or an order for the delivery of goods, that in the usual course of business or financing is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers.*

- A document of title is usually either issued or addressed by a bailee—an individual who has custody of the goods of another—to a bailor—the person who has entrusted the goods to him or her. Its terms must describe the goods covered by it so that they are identifiable as well as set forth the conditions of the contractual agreement. Possession of a document of title is symbolic of ownership of the goods that are described within it.

Documents of title to goods

- Documents of title are an integral part of the business world since they facilitate commercial transactions by serving as security for loans sought by their possessors and by promoting the free flow of goods without unduly burdening the channels of commerce.

- A person who possesses a document of title can legally transfer ownership of the goods covered by it by delivering or endorsing it over to another without physically moving the goods. In such a situation, a document of title is a negotiable instrument because it transfers legal rights of ownership from one person to another merely by its delivery or endorsement.

Classification of goods

- Goods may be classified as:

1. Existing
2. Future
3. Contingent

Existing goods are those which are owned or possessed by the seller at the time of the contract

Instances of goods possessed but not owned by the seller are sales by agents and pledgees

Classification of goods

- Existing goods may be either:

a) Specific or ascertained

b) Generic and unascertained

Specific goods means goods identified and agreed upon at the time a contract of sale is made

Ascertained goods, though normally used as synonym for specific goods may be intended to include goods which have become ascertained subsequently to the formation of the contract

Classification of goods

- *Generic or unascertained goods* are goods indicated by description and not specifically identified

- *Example*: Anthony, who owns a TV showroom, has 20 TV sets and agrees to sell any one of them to Bharti. The contract is for unascertained goods, since which particular TV set shall become the subject matter of sale is not individualised at the time of the contract of sale.

Classification of goods

- *Future goods* means goods to be manufactured or produced or acquired by the seller after making the contract of sale

Example: Kulkarni agrees to sell future crop of a particular agricultural field in the next season. This is an agreement to sell future goods

Classification of goods

- *Contingent goods* are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingent goods is a part of future goods

Example: Alka agrees to sell to Vivek a certain painting only if Chetan, its present owner sells it to her. This painting is classified as contingent goods

Effect of perishing of goods

- Section 7 and 8 deal with the effect of perishing of goods on the rights and obligations of the parties to a contract of sale.

- Under these sections the word perishing means not only physical destruction of the goods but it also covers:

  - Damage to goods so that the goods have ceased to exist in the commercial sense, ie, their merchantable character as such has been lost, eg, where cement is spoiled by water and becomes almost stone or where sugar becomes sharbat and thus are unsaleable as cement or sugar
  - Loss of goods by theft
  - Where the goods have been lawfully requisitioned by the government

Effect of perishing of goods

- It may also be mentioned that it is only the perishing of specific and ascertained goods that affects a contract of sale
- Where 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 the goods from wherever he likes, otherwise be liable for breach of contract

- Example:

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

Effect of perishing of goods

1.Perishing of specific goods at or before making of the contract (Sec 7)

(i) ***In case of the perishing of the 'whole' of goods:*** *Where specific goods form the subject-matter of a contract of sale (both actual sale and agreement to sell), and they , without the knowledge of the seller , perish at or before the time of the contract , the agreement is void .This provision is based either on the ground of mutual mistake as to a matter of fact essential to the agreement , or on the ground of impossibility of performance, both of which render an agreement void.*

ILLUSTRATION. (a) A sold to B a specific cargo of goods supposed to be on its way from England to Bombay. It turned out, however , that before the day of the bargain, the ship conveying the cargo had been cast away and the goods were lost. Neither party was aware of the fact. The agreement was held to be void.

(b) A agrees to sell to B a certain horse . It turns out that the horse was dead at the time of bargain, though neither party was aware of the fact. The agreement is void.

Effect of perishing of goods

2. *In case of perishing of only 'a part' of the goods:* where in a contract for the sale of specific goods, only part of the goods are destroyed or damaged, the effect of perishing will depend upon whether the contract is entire or divisible.

- If it is entire (i.e. indivisible) and part only of the goods has perished, the contract is void. If the contract is divisible, it will not be void and the part available in good condition must be accepted by the buyer.

Effect of perishing of goods

- Example:

  There was a contract for the sale of a parcel containing700 bags of Chinese groundnuts of different qualities. Unknown to the seller 109 bags had been stolen at the time of the contract. The seller delivered the remaining 591 bags and, on the buyer's refusal to take them, brought an action for the price. It was held that the contract being indivisible had become void by reason of the loss of the goods and the buyer was not bound to take delivery of 591 bags or pay for the goods.

Note: Had there been all bags of the same weight and quality for certain price per bag, the contract would have been divisible and the buyer could only have avoided the contract as to those goods which had actually perished

Effect of perishing of goods

3. Perishing of specific goods before sale but after agreement to sell (sec.8).

- 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 before the risk passes to the buyer, the agreement is thereby avoided, i.e., the contract of sale becomes void, and both parties are excused from performance of the contract.

- This provision is based on the ground of supervening impossibility of performance which makes a contract void

Effect of perishing of goods

- If only part the goods agreed to be sold perish, contract becomes void if it is indivisible. But if it is divisible then the parties are absolved from their obligations only to the extent of the perishing of the goods (i.e., the contract remains valid as regards the part available in goods condition).

It must further be noted that if fault of either party causes the destruction of the goods, then the party in default is liable for non-delivery or the pay for the goods, as the case may be (sec.26).Again, if the risk has passed to the buyer, he must pay for the goods, though undelivered [unless otherwise agreed… risk prima facie passes with the property (sec. 26)].

Effect of perishing of goods

Examples:

(a) A buyer took a horse on a trial for 8 days on condition that if found suitable for his purpose the bargain would become absolute. The horse died on the 3rd day without any fault of either party. Held, contract, which was in the from of an agreement to sell, becomes void and the seller should bear the loss (Elphick vs Barnes).

(b) A, had contracted to erect machinery on M's premises, the price to be paid on completion. During the course of the work, there was a fire which completely destroyed premises and the machinery. It was held that both parties were excused from further performance and A was not entitled to any payment as the price was payable on the completion of entire work (Appleby vs myers.19).

Effect of perishing of goods

- **Effect of perishing of future goods.** As observed earlier, a present sale of future goods always operates as an agreement to sell [sec. 6(3)]. As such there arises a question as to whether section 8 applies to a contract of sale of future goods. (amounting to an agreement to sell) as well? The answer is found in the leading case of Howell vs Coupland 20, where it has been held that future goods, the destruction of which makes the contract void . The facts of the case are as follows:

Example: C agreed to sell to H 200 tons of potatoes to be grown on C's land. C sowed sufficient land to grow the required quantity of potatoes, but without any fault on his part, a disease attacked the crop and he could deliver only about ten tons. The contract was held to have become void.

Conditions & Warranties (Sec. 11-17)

- In a contract of sale, parties make certain stipulations, i.e., agree to certain terms regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place
- All stipulations cannot be treated on the same footing
- Some may be intended by the parties to be of a fundamental nature, eg. Quality of the goods to be supplied, the breach of which therefore will be regarded as a breach of the contract
- Some may be intended by the parties to be binding, but of a subsidiary or inferior character, eg., time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach liable to damages
- The former stipulations are called ‘conditions’ and the latter ‘warranties’

Stipulations as to time

- Stipulations as to time in a contract of sale fall under the following two heads:
  1. Stipulation relating to time of delivery of goods
  2. Stipulation relating to time of payment of the price

  As regards the ***time fixed for the delivery of goods***, time is usually held to be the essence of the contract'. Thus if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer. In case of late delivery, therefore, the buyer may refuse to accept the delivery and may put an end to the contract.

Stipulations as to time

- As regards the ***time fixed for the payment of the price***, the general rule is that 'time is not deemed to be the essence of the contract', unless a different intention appears from the terms of the contract (sec. 11). 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 before resale of the goods. The seller may, however, claim compensation for the loss occasioned to him by the buyer's failure to pay on the appointed day.

Conditions & Warranties (Sec. 11-17)

- Sec. 12(2) defines a ‘condition’ as, ‘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’ (denied),
- Sec 12(3) defines a ‘warranty’ as, ‘stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated’ .

Conditions & Warranties (Sec. 11-17)

- The effect of a breach of a ‘condition’ is to give the aggrieved party a right to treat the contract repudiated, i.e., if price has been paid, the buyer can claim the refund of price plus damages for breach
- In case of breach of ‘warranty’, only damages can be claimed, i.e., the buyer must accept the goods and claim damages for the breach of warranty
- 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 a contract [sec. 12(4)]

Conditions & Warranties (Sec. 11-17)

Example: 1

Kaushal asks a dealer to supply him a shirt which would not shrink after use and wash. The dealer supplies a shirt which shrinks after use and wash. Kaushal can reject the shirt or keep the shirt and claim damages. Here the stipulation to supply a shirt which would not shrink after use and wash is a condition.

Now if Kaushal buys a particular shirt which is warranted by the dealer to be one which would not shrink after use and wash and the shirt does shrink after use and wash, Kaushal's only remedy is to claim damages

Conditions & Warranties (Sec. 11-17)

- ***Example: 2***

  A man buys a particular horse which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer's only remedy is to claim damages. But if instead of buying a particular horse, a man asks a dealer to supply him with a quiet horse and the dealer supplies him with a vicious one, the stipulation is a condition, and the buyer can return the horse and can also claim damages for breach of contract (Hartley vs Hyman)

- The illustrations are a clear proof of the fact that an exactly similar term may be a condition in one contract and a warranty in another depending upon the construction of the contract as a whole

Condition & Warranty Distinguished

1. ***As to value:***

   A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

2. ***As to breach:***

   The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages.

3. ***As to treatment:***

   A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

When breach of Condition is to be treated as breach of Warranty

- Section 13 deals with cases where a breach of condition is to be treated as a breach of warranty, as a consequence of which the buyer loses his right to rescind the contract and has to be content with a claim for damages only.

- These cases are as follows:

1. Voluntary waiver by buyer:
   - Although on a breach of condition by the seller, the buyer has a right to treat the contract as repudiated and reject the goods, but he is not bound to do so
   - He may instead elect to waive the condition, i.e., to treat the breach of condition as a breach of warranty and accept the goods and sue the seller for damages for breach of warranty

When breach of Condition is to be treated as breach of Warranty

- Illustration:

  A agrees to supply B 10 bags of first quality sugar @ Rs. 1625 per bag but supplies only second quality sugar, the price of which is Rs. 1500 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ Rs. 125 per bag.

Express & Implied Conditions & Warranties

Express condition or warranty:

These may be of any kind that the parties may choose to agree upon, eg, it may be agreed that delivery of goods shall be made or taken on or before a certain date. Similarly, in a contract of sale of a car, express warranty as to its soundness may be incorporated

Implied conditions and warranties:

They are deemed to be incorporated by law in every contract of sale of goods unless the terms of the contract show a contrary intention

Implied conditions

i. Condition as to title (sec. 14)
ii. Sale by description (sec. 15)
iii. Condition as to quality or fitness for buyer's purpose [sec. 16(1)]
iv. Condition as to merchantable quality [sec. 16(2)]
v. Condition as to wholesomeness
vi. Implied condition in the case of sale by sample (sec. 17)
vii. Implied condition in the case of sale by sample as well as description (sec. 15)

Transfer of ownership

- A contract of sale is performed in two inter-related stages
- 1-Transfer of possession of goods
- 2-Transfer of ownership of goods

Followings reason-

A-Risk of Losses-

B-Only owner can sue-if third party destroyed or damaged

C-Insolvency of buyer & Seller-when seller or buyer become insolvent then liquidator can take over property

D-Suit for price-only seller can sue.

Time when property passes

1-in case of unascertained goods

2-in case of ascertain goods

3-Inn case of goods sent on approval basis

Sale by non co –owners Exceptions

1-sale by a mercantile agent

2-sale under the implied authority

3-sale by one of the several joint owner

4-sale by seller in possession after sale

5-sale by buyer in possession after sale