INSOLVENCY LECTURE SERIES

Sale of Goods Act, 1930
(Overview)

By,

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Important Terms and Definition

- **Goods [S. 2(7)]** - means every **kind of moveable property.**

Including-

(a) stock and shares,

(b) growing crops, grass, and

(c) things attached to or forming part of the land which are agreed to be severed before **sale** or under the **contract of sale.**

Does not include - Actionable Claims and money;

Future Goods [S. 2(6)] - Goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

Deliverable State [S. 2(3)] - goods are said to be in a "deliverable state" when they are in **such state that the buyer would under the contract be bound to take delivery** of them.

Specified goods [S. 2(14)] - goods identified and agreed upon at the time a contract of sale is made.

Delivery [S. 2(2)] - voluntary transfer of possession from one person to another.
It may of three kinds: (a) Actual Delivery (b) constructive delivery (c) Symbolic Delivery.

Document of title to goods [S. 2(4)] - includes a bill of lading, dockwarrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, 5 [multimodal transport document,] warrant or order for the delivery of goods and any other document. It is used as a proof of possession.

Contract of Sale (S. 4)

- 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.**

Sale

Where under a contract of sale the property in the goods **is transferred** from the seller to the buyer.

Agreement to Sale

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.

or

Where by a contract of sale pertaining to **present sale of future goods**, the contract operates as an agreement to sell the goods.

Becomes sale, **when**

the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Essentials of Contract of Sale

- There must be at least two parties i.e. **seller and buyer.**
- **Subject matter** of contract must be goods i.e. **movable property.**
- Price must be **money** (not in kind). It may be **paid or promise to pay**.
- **Transfer of property in goods must take** place. (in present or in future).
- There should an offer to buy or sell and acceptance by the other party.
- A contract of Sale **may be oral or in writing** or partly in both. It may **be expressed or implied** by the conduct of parties.
- A Contract must be **absolute and unconditional**.
- Other general conditions pertaining to valid contract are applicable.

Difference between sale and agreement to sale.

	Sale	Agreement to Sale
Meaning	Exchange of goods for money consideration **takes place immediately.**	parties to contract agree to exchange the goods for a price at a **future specified date**
Nature	Absolute	Conditional
Type of Contract	Executed Contract	Executory Contract
Transfer of ownership	Yes	No (to take place in future)
Transfer of Risk	Yes	No
Subsequent Losses or destructions of goods	Liability of Buyer	Liability of Seller
Rights in case of breach by seller	The buyer can claim damages from the seller and proprietary remedy against the party which brought them	Here the buyer has the right to claim damages only.
Right of unpaid seller	Right to sue for the price	Right to sue for damages

Condition and warranty (S. 12)

- **Stipulation in a contract of sale may be either condition or warranty**.

Condition

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.**

Warranty

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**

Unless otherwise provided in Contract, a contract of sale shall have:

- **Implied Condition** – Seller has right to sell the goods or in case of agreement to sale, would have right to sale the goods in future when goods are transferred.

- **Implied Warranty** - (a) buyer shall have and enjoy quiet possession of the goods.
  (b) property is free from charge or encumbrance, unless expressly told to buyer.
- **Buyer, at, it will, may treat the breach of condition as breach of warranty, but not vica-versa.**
- Generally **time is not be essence** of a contract of sale.

Sale by Description (S. 15) -

Sale of goods by description - there is an implied condition that the goods shall correspond with the description.

Sale by Sample and 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.

Sale by Sample (S. 17) -

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.

Let the Buyer Beware (S. 16)

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 when:

(a) Implied **condition** of reasonable fitness of good - When has told the particular purpose of purchase to the seller and buyer **relies on skill and judgment of the seller** to select the best goods. Not applicable on sale of specified article under its trademark or patent.

(b) Implied **condition** that goods are merchandisable quality - When Goods are brought by **description from seller who deals in such goods**. However, if buyer examines the goods then no implied condition.

(c) An implied **warranty or condition** as to **quality or fitness for a particular purpose may be annexed by the usage of trade**

Rights of unpaid Seller

Unpaid Seller (S. 45) – A seller is deemed to be an unpaid seller, when:

(a) when the whole of the price has not been paid or tendered;
(b) when a **bill of exchange or other negotiable instrument** has been received as conditional payment but the said instrument was **dishonored by buyer.**

Right of Unpaid Seller

Against the Goods
Lien on the goods
right of stopping the goods in transit .
right of re-sale
Withhold delivery

Against the Buyer
Suit for price.
Suit for damages
Suit for interest

Seller Lien (S. 47)

Seller's Lien - Unpaid seller has right to lien on the goods for the price **till the time he is in possession of goods**. The seller may exercise his right of lien notwithstanding that he is in possession of the **goods as agent or bailee for the buyer.**

Cases in which lein can be exercised:

(a) where the goods have been sold **without any stipulation** as to credit;

(b) where the goods have been **sold on credit, but the term of credit has expired**;

(c) where the **buyer becomes insolvent.**

Cases in which seller looses right to lien:

(a) when he **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**;

(b) when **the buyer or his agent lawfully obtains possession** of the goods;

(c) by waiver thereof.

Stoppage in transit (S. 48)

Stoppage in Transit- when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit.

Essential conditions for exercising Stoppage in Transit

a) Seller must be unpaid seller.

b) He must have parted with possession.

c) The goods are in transit.

d) The Buyer has become insolvent.

e) The Rights is subject to provisions of the Act.

Let check the knowledge:

- **Q. The Sale of Goods Act deals only with goods which are _____ in nature.**

  (a) Immovable

  (b) Specific

  (c) Movable

  (d) All of the above

Source: ICAI Question Bank

- **Q. Goods that are identified at the time of contract of sale are called _____ good.**

(a) Specific Goods

(b) Ascertained Goods

(c) Clear Goods

(d) Both A & B

Source: ICAI Question Bank

- **Which of the following is not a subject matter for sale of goods?**

(a) Trade Mark

(b) Good Will

(c) Money

(d) Water

Source: ICAI Question Bank

- **Q. The rule of Caveat Emptor shall not be applicable where-**

  (a) The buyer relies on seller's skill or judgment

  (b) Goods are not of merchantable quality

  (c) Both (a) & (b)

  (d) None of the above

Source: ICAI Question Bank

- **Q. In which form of contract, ownership in goods passes to buyer immediately:**

  (a) Sale

  (b) Agreement to sell

  (c) Pledge

  (d) Mortgage

Source: ICAI Question Bank

- **Sale of Goods Act, 1930 is based on the principle of-**

  (a) Caveat Emptor

  (b) Caveat Venditor

  (c) Consensus ad idem

  (d) All of the Above

Source: ICAI Question Bank

- **Which of the following statement is correct with respect to Unpaid seller's rights?**

A. Unpaid seller has a lien on the goods for the period while he is in possession of them

B. In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them

C. A right of re-sale as limited by this Act

D. All of the above.

Source: ICAI Question Bank

- **As per the Sale of Goods Act, 1930, where there is an unconditional contract for the sale of specific goods in a deliverable state, when shall the property in the goods pass to the buyer?**

(a) When the contract is made

(b) When the buyer wants

(c) When the seller wants

(d) When the price is ascertained

Source: ICAI Question Bank

- **Under the Sale of Goods Act the seller has a duty to deliver the goods to the buyer. What is the legal meaning of 'delivery'?**

A. Where the seller physically transports the goods to the buyer.

B. The voluntary transfer of ownership from one person to another.

C. The voluntary transfer of possession from one person to another.

D. The voluntary transfer of ownership and possession from one person to another.

Source: ICAI Question Bank

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Disclaimer: The Presentation merely deals with certain aspects of the Sales of Goods Act and does not cover all the provisions and conditions stipulated in the Act. The readers are advised to kindly refer to the Act or a textbook for detailed understanding of law.