

D.N.R.COLLEGE, (AUTONOMOUS): BHIMAVARAM
DEPARTMENT OF MANAGEMENT STUDIES



CORPORATE LEGAL FRAMEWORK
III SEMESTER

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CP - 303, CORPORATE LEGAL FRAMEWORK MBA III SEMESTER eNOTES

UNIT-II: The Sale of Goods Act, 1930: Meaning and Essentials of contract of sale— Sale and Agreement to sell—Conditions and Warranties—Transfer of property-- Performance of a contract of sale—Unpaid seller.

Introduction:

Contract of Sale of goods

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 can be a contract of sale between one part- owner and another.

In other words, under a contract of sale, a seller (or vendor) in the capacity of the owner, or part-owner of the goods, transfers or agrees to transfer the ownership in goods to the buyer (or purchaser) for an agreed upon value in money (or money equivalent), called the price, paid or the promise to pay same.

A contract of sale may be absolute or conditional depending upon the desire of contracting parties.

Essentials elements of a Contract of Sale

The following **six features** are essential elements of any contract of sale of goods.

- Two parties
- Goods
- Price
- Transfer of ownership
- All Essentials of a Valid Contract of Sale
- Includes both a “sale” and “an agreement to sell”

1. **Two Parties:** A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one's own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the

stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between partowners.

Suppose A and B jointly own a television set, A may transfer his ownership in the television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from the firm in which he is a partner, and vice-versa.

However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her money, the pawnor may buy them in execution of a decree.

2. **Goods:** The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as 'goods'. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, '**Transfer of Property Act**'.

3. **Transfer of Ownership:** Transfer of property in goods is also integral to a contract of sale. The term 'property in goods' means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership.

4. **Price:** The buyer must pay some price for goods. The term 'price' is 'the money consideration for a sale of goods'. Accordingly, consideration in a contract of sale has necessarily to be in money. Where goods are offered as consideration for goods, it

will not amount to sale, but it will be called barter or exchange, which was prevalent in ancient times. Similarly, if a person offers the goods to somebody else without consideration, it amounts to a gift or charity and not sale. In explicit terms, goods must be sold for a definite amount of money, called the price. However, the consideration can be partly in money and partly in valued up goods. Furthermore, payment is not necessary at the time of making the contract of sale.

5. **All essentials of a Valid Contract:** A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing. **For example**, if agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

6. **Includes both a 'Sale' and 'An Agreement to Sell':** The 'contract of sale' is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas 'an agreement to sell' is an executory contract and implies a conditional sale.

A contract of sale can be made merely by an offer, to buy or sell goods for a price, followed by acceptance of such an offer. Interestingly, neither the payment of price nor the delivery of goods is essential at the time of making the contract of sale unless otherwise agreed. Subject to the provisions of the law for time being in force, a contract of sale may be made either orally or in writing, or partly orally and partly in writing, or may even be implied from the conduct of the parties.

Differences between SALE and AGREEMENT TO SELL

The following are the major differences between a Sale and Agreement to Sell

Sale	Agreement to Sell
1. The ownership rights are transferred to the buyer immediately.	Here, the ownership rights are transferred to the buyer only in future.
2. If the goods are destroyed, the loss will fall on the buyer even if the goods are in the possession of the seller.	If the goods are destroyed, the loss will fall on the seller even if the goods are in the possession of the buyer.
3. If the buyer fails to pay the price, the seller can sue him for the price.	In a similar case, the seller can only sue the buyer for damages.
4. The seller cannot re-sell the goods (if he is keeping possession). If he does so, the second buyer does not get a good title.	In case of re-sale by the seller, the second buyer gets a good title provided he buys in good faith. The first buyer can only sue the seller for damages.
5. It creates 'jus in rem' (right against the world) i.e., right to enjoy the goods against the whole world.	It creates 'jus in personam' (right against a person) i.e., right to the buyer to sue the seller for damages.
6. If the buyer becomes insolvent before paying the price, the seller can get only a rateable dividend from the buyer's estate towards the price.	If the buyer becomes insolvent before paying the price, the seller is not bound to part with the goods.
7. If the seller becomes insolvent, the buyer can recover the goods from the Official Receiver.	If the buyer has already paid the price and the seller has become insolvent, the former can claim only a rateable dividend from the latter's estate and not the goods.

Definition of Condition

Certain terms, obligations, and provisions are imposed by the buyer and seller while entering into a contract of sale, which needs to be satisfied, which are commonly known as Conditions. The conditions are indispensable to the objective of the contract. There are two types of conditions, in a contract of sale which are:

- **Expressed Condition:** The conditions which are clearly defined and agreed upon by the parties while entering into the contract.
- **Implied Condition:** The conditions which are not expressly provided, but as per law, some conditions are supposed to be present at the time making the contract. However, these conditions can be waived off through express agreement. Some examples of implied conditions are:
 - The condition relating to the title of goods.
 - Condition concerning the quality and fitness of the goods.
 - Condition as to wholesomeness.
 - Sale by sample
 - Sale by description.

Definition of Warranty

A warranty is a guarantee given by the seller to the buyer about the quality, fitness and performance of the product. It is an assurance provided by the manufacturer to the customer that the said facts about the goods are true and at its best. Many times, if the warranty was given, proves false, and the product does not function as described by the seller then remedies as a return or exchange are also available to the buyer i.e. as stated in the contract.

A warranty can be for the lifetime or a limited period. It may be either expressed, i.e., which is specifically defined or implied, which is not explicitly provided but arises according to the nature of sale like:

- Warranty related to undisturbed possession of the buyer.
- The warranty that the goods are free of any charge.
- Disclosure of harmful nature of goods.

- Warranty as to quality and fitness.

The Transfer of Property Act 1882 is an Indian legislation which regulates the transfer of property in India. It contains specific provisions regarding what constitutes transfer and the conditions attached to it. It came into force on 1 July 1882.

According to the Act, 'transfer of property' means an act by which a person conveys property to one or more persons, or himself and one or more other persons. The act of transfer may be done in the present or for the future. The person may include an individual, company or association or body of individuals, and any kind of property may be transferred, including the transfer of immovable property.

Interpretation of "property".

Property is broadly classified into the following categories:

1. Immovable Property (excluding standing timber, growing crops, and grass)

2. Movable Property

The Interpretation of the Act, says "Immovable property does not include standing timber, growing crops or grass". [Section 3\(26\)](#), [The General Clauses Act, 1897](#), defines, "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. Also, [The Registration Act, 1908, 2\(6\)](#) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

A transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, unless a different intention is expressed or implied.

According to [Section 43 of the Transfer of Property Act 1882](#), in case a person either fraudulently or erroneously represents that he is authorized to transfer certain immovable property and does some acts to transfer such property for consideration, then such a transfer will continue to operate in future. It will operate on any interest which the transferor may acquire in such property.

This will be at the option of the transferee and can be done during the time during which the contract of transfer exists. As per this rule, the rights of bona fide

transferee, who has no notice of the earlier transfer or of the option, are protected. This rule embodies a rule of estoppel i.e. a person who makes a representation cannot later on go against it.

Every person, who is competent to contract, is competent to transfer property, which can be transferred in whole or in part. He should be entitled to the transferable property, or authorized to dispose of transferable property which is not his own. The right may be either absolute or conditional, and the property may be movable or immovable, present or future. Such a transfer can be made orally, unless a transfer in writing is specifically required under any law.

According to **Section 6** of the **Transfer of Property Act**, property of any kind may be transferred. The person insisting non-transferability must prove the existence of some law or custom which restricts the right of transfer. Unless there is some legal restriction preventing the transfer, the owner of the property may transfer it. However, in some cases there may be transfer of property by unauthorized person who subsequently acquires interest in such property.

In case the property is transferred subject to the condition which absolutely restrains the transferee from parting with or disposing of his interest in the property, the condition is void. The only exception is in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Generally, only the person having interest in the property is authorized to transfer his interest in the property and can pass on the proper title to any other person.

The rights of the transferees will not be adversely affected, provided: they acted in good faith; the property was acquired for consideration; and the transferees had acted without notice of the defect in title of the transferor.

It should be noted that these conditions must be satisfied:

There must be a representation by the transferor that he has authority to transfer the immovable property. The representation should be either fraudulent or erroneous. The transferee must act on the representation in good faith. The transfer should be done for a consideration. The transferor should subsequently acquire some interest in the property he had agreed to transfer.

PERFORMANCE OF A CONTRACT OF SALE

Introduction

The term 'performance of the contract of sale' may be defined as the performance of the respective duties of the seller and the buyer as per the terms of the contract. Thus, the performance of the contract of sale comprises two parts, namely:

- Seller's duty to deliver the goods.
- Buyer's duty to accept the goods and pay the price.

It is important to note that the delivery of the goods and the payment of their price are concurrent conditions, i.e., both these conditions should be performed at the same time. This provision is included in **Section 32 of the Sale of Goods Act**, which provides that the seller should be ready and willing to deliver the goods to the buyer, in exchange for the actual possession of the goods. However, the parties may also agree otherwise, i.e., they may enter into an agreement as to when the goods

What are the Rights of Unpaid Seller

The seller who has not received price of goods sold or the seller who has got his negotiable instrument dishonored will become Unpaid Seller. **Sale of Goods Act, 1930 Section 45 to 55** read about the rights of Unpaid Seller. Those rights can be classified into two groups. They are as follows.

Rights against Goods

Rights against Buyer

The Rights of Unpaid Seller against Goods

When goods are in existence and title has not gone to buyer, Unpaid Seller can exercise the rights against goods. These rights are categorized into three types. They are as follows.

1. Right of lien
2. Right of stoppage in transit
3. Right to Re-Sell

Right of lien

Right to retain goods by unpaid seller till amount is recovered is called right of lien. If unpaid seller want seller wants to exercise right of lien, he has to fulfill the following conditions.

- He must be unpaid seller
- There should be no credit terms in the Contract of Sale.
- After completion of credit period, right of lien can be exercised.
- The unpaid seller should have obtained those goods lawfully.
- Amount must be due on those goods only against which right of lien is decided.

Right of stoppage in transit

Unpaid Seller has right to stop the goods in the transit itself. To exercise this right the following conditions are to be fulfilled.

- He must be unpaid seller.
- Buyer must be insolvent.
- There should be no credit terms in the Contract of Sale. After expiry of Credit period, this right can be exercised.

Amount must be due on those goods only against which this right is desired.

Right to re-sale

The unpaid seller can re-sell the goods for non-payment of price by buyer. He can exercise this right when the goods are of perishable nature while doing so it is beneficiary to the seller to give a notice to buyer with regard to resale. If such notice is given seller can claim loss. If any on resale from the buyer. On the other hand, if there is profit on resale the former buyer cannot claim that profit. If notice is not given the seller has to face adverse consequence. If there is any loss on re-sale, that loss cannot be recovered from buyer. But in case of profit, seller has responsibility to pay that amount of profit to buyer.

Rights of Unpaid Seller against Buyer

At times it becomes inevitable choice to exercise rights on buyer for non-payment of price. The unpaid seller can file suits against the buyer as explained below.

Right to sue for price

It is fundamental right of buyer to file a suit for recovery of unpaid price. In the case of sale. Suit will be made for price balance, but not for compensation.

Right to sue to interest

If the buyer makes unreasonable delay for making payment, the seller has right to claim interest also.

Right to sue for compensation

When an agreement to sell is breached, the seller can sue only for compensation for the breach of Contract. Under such circumstances he cannot sue for price.

Right to Sue for anticipatory contract

When an agreement to sell is breached by buyer before date of performance. It is called anticipatory breach.

Model Questions from UNIT -II

I. Short Notes

1. Define Contract of Sale of Goods
2. Agreement to Sell
3. Implied Condition
4. Warranty
5. Unpaid Seller
6. Right of Lien

II. Essays

1. What is contract of sale? How can contract of sales be formed?
2. Explain the Sale and Agreement to Sell and also differentiate between Sale and Agreement to Sell.
3. Explain in detail about Conditions and Warranties.
4. Elucidate rules of Transfer of Ownership.
5. What are the Rights of an Unpaid Seller?