



UNIT VIII

21

CHAPTER

THE SALE OF GOODS ACT 1930 AND THE NEGOTIABLE INSTRUMENTS ACT 1881



THE SALE OF GOODS ACT 1930

அழிவதூஉம் ஆவதூஉம் ஆகி வழிபயக்கும்
ஊதியமும் சூழ்ந்து செயல்.

—குறள் 461

COUPLET

Let a man reflect on what will be lost, what will be acquired
and (from these) what will be his ultimate gain, and (then, let
him) act.



Learning Objectives

To enable the students to understand the

- Contract of sale
- Differentiate the sale and agreement to sell
- Knows the types of Goods
- Transfer of ownership
- Conditions and warranties
- Knows the rights of unpaid seller



Sale of Goods is one of the most important Acts coming under special contract. This Act was passed in the year 1930. Prior to this Act, it was governed by Chapter 7 of the Indian Contract Act 1872. Contracts for the sale of Goods are subjected to general legal principles applicable to all contracts. Hence the general provisions of Indian Contract Act continue to apply to the Contract for the sale of goods.

21.01 Formation of Contract of Sale

Contract of Sale of Goods

Contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property (ownership) of the goods

Chapter Synopsis

- 21.01 Formation of Contract of Sale
- 21.02 Difference between Sale and Agreement to Sell
- 21.03 Types of Goods
- 21.04 Transfer of Ownership
- 21.05 Conditions and Warranties
- 21.06 Rights of an Unpaid Seller

to the buyer for a price. The term 'ownership' is utmost importance in the sale of goods. Students have to understand that sale means selling the ownership of the goods to the buyer for a price besides transferring the physical possession of the goods. Mere possession of the goods does not entitle a person to ownership. Similarly purchase means buying the ownership of the goods from the seller for a price. The term ownership or property confers on the buyer an absolute freedom to dispose of the assets in any way as they like. Buyer has unlimited rights of the property purchased against the whole world. In this context, it is essential to learn the essential elements of a contract of sale.

Essential Elements of a Contract of Sale

Following essential elements are necessary for a contract of sale.

(1) Two Parties

A contract of sale involves two parties – the seller and the buyer. The buyer and the seller should be two different persons. If a person buys his own goods, there is no sale. On the dissolution of partnership when the surplus assets including goods were distributed among the partners, the court held that it was not a sale attracting sales tax. The partners were themselves joint owners of the goods and they could not be both sellers and buyers. However, there is one exception. When the goods of a person are sold in

execution of a decree, he himself may buy the goods to retain their ownership.

(2) Transfer of Property

To constitute sale, the seller must transfer or agree to transfer the ownership in the good to the buyer. A mere transfer of possession does not amount to sale.

(3) Goods

The subject matter of contract of sale must be goods. It excludes money, actionable claims and immovable property. The term 'goods' includes every kind of movable property, stocks and shares, growing crops etc. Goodwill, trademarks, copy rights, patent rights etc., are all also regarded as goods.

(4) Price

The monetary consideration for the goods sold is called price. If goods are exchanged for goods, it is only barter and not a sale. But if goods are sold partly for goods and partly for money, the contract is one of sale.

(5) Includes both 'Sale' and 'Agreement to Sell'

The term contract of sale includes both sale and agreement to sell. If the property in goods is transferred immediately to the buyer it is called a sale. On the other hand, if the transfer of property takes place at a future date or on fulfilment of certain conditions, it is called 'an agreement to sell'.

21.02 Difference between Sale and Agreement to Sell

Sl. No.	Particulars	Sale	Agreement to Sell
1.	Ownership Transference	The property (ownership or title) in the goods passes from the seller to the buyer immediately so that the seller is no more owner.	The property (ownership or title) in the goods has to pass at a future time or after the fulfilment of certain conditions specified in the contract.



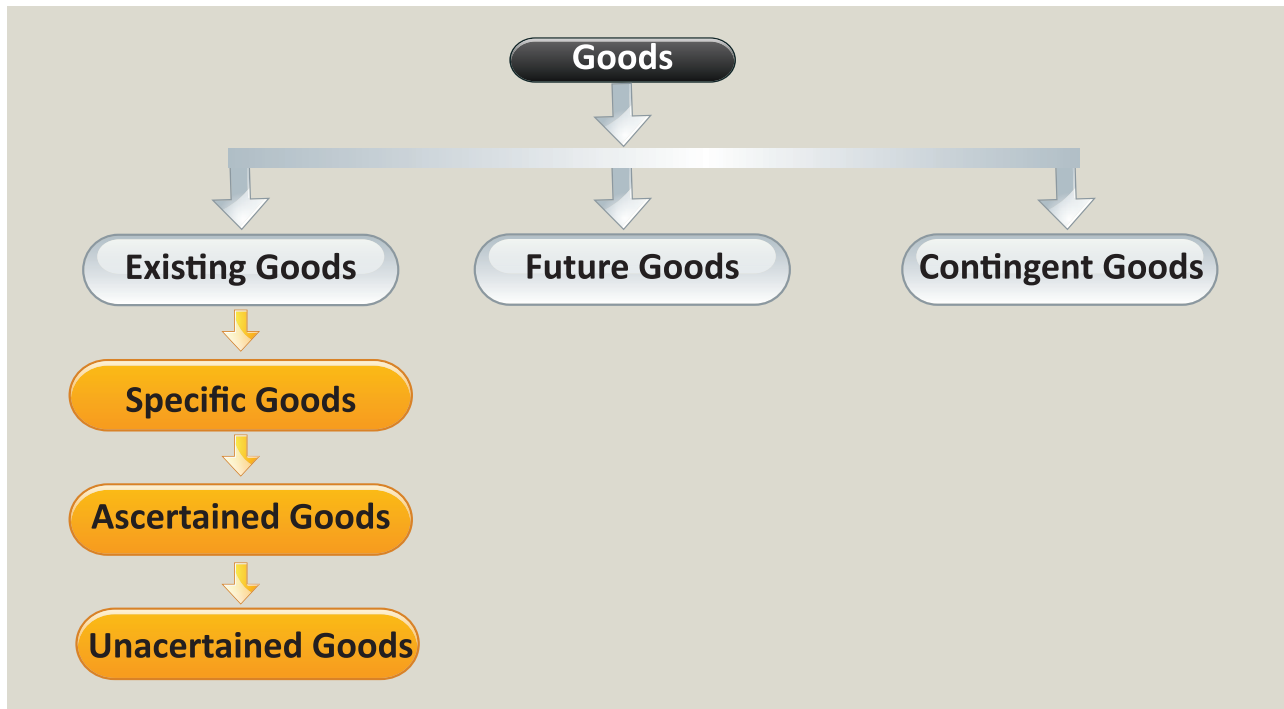
2.	Risk of Loss	Where the goods sold under the contract of sale are destroyed, the loss falls squarely on the buyer as the ownership in the goods has already passed on to the latter. Even though the goods are in the possession of seller.	Where the goods under the agreement to sell are destroyed, the loss falls squarely on the seller as the ownership is still vested with the seller even though the possession of the goods is with the buyer.
3.	Consequences of violating the contract	Where the buyer fails to pay the price, the seller cannot seize the goods. The seller can only file a case against the buyer for violating the contract.	Where the buyer violates the contract, the seller can repossess the goods from the former. He can sue for damages for violation of the contract.
4.	Nature of contract	It is an executed contract i.e. completed contract	It is an executory contract, i.e. contract yet to be performed by the party to the contract.
5.	Insolvency of the Buyer	In a sale, if a buyer becomes insolvent before he pays for the goods even though the goods sold are under the possession of the seller, the latter has to return them to the Official Receiver or Assignee as the ownership of goods has already been transferred to the buyer. The seller can claim only rateable dividend. The seller has to inevitably part with the possession of the goods under his custody.	If the buyer becomes insolvent before the payment of the price, the seller can retain the goods if they are under his possession or even he can repossess the goods even if the possession of the goods is transferred to the buyer. In other words, the seller is not bound to lose possession of the goods.
6.	Insolvency of the Seller	If the seller become insolvent before delivering the goods to the buyer, the buyer can claim the delivery of the goods from the Official Receiver or Assignee as the ownership is already passed on to the buyer.	The buyer cannot do so. Further if the buyer has already paid the price of the goods or made any advance, he can claim only rateable dividend and not the goods because the ownership in the goods is not yet passed to him.

21.03 Types of Goods

The term goods mean every kind of movable property other than actionable claim and money. The term actionable claim means debt secured by a mortgage of immovable property, Fixed Deposit Receipt, Dividend Due on Shares, Amount due under LIC policy, Claim for rent which falls due in future etc., The term

good includes shares, stocks, growing crops, grass, things attached to the land or forming part of the land agreed to be cut off from the land before sale (eg. trees grown on the land agreed to be sold after harvest), goodwill, copyright, trade mark, patents, water, gas, electricity, power etc., under the contract of sale.





1. Existing Goods

Existing goods are those owned or possessed by the seller at the time of contract of sale. Goods possessed even refer to sale by agents or by pledgers.

The diagram given below exhibits the type of goods covered under the sale of goods act.



Existing goods may be either

- (i) Specific Goods
- (ii) Ascertained Goods
- (iii) Generic or Unascertained Goods

(i) Specific Goods

Specific goods denote goods identified and agreed upon at the time of contract of sale. For eg. if a buyer selects a particular variety of saree after examining several other sarees, the selected one denotes specific goods.



(ii) Ascertained Goods

The term 'ascertained goods' is also used as similar in meaning to specific goods. But this term may even refer to goods which become ascertained subsequent to the formation of the contract.



(iii) Unascertained or Generic Goods

These are goods which are not identified and agreed upon at the time of contract of sale. For eg. A wants to buy a car from a showroom where different models at different prices have been displayed. All these displayed models represents unascertained goods.



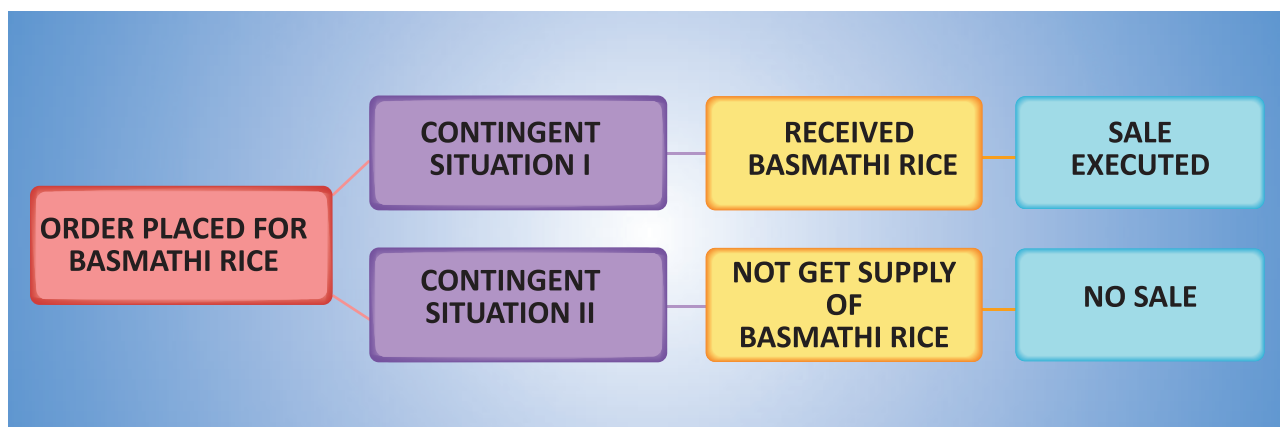
2. Future Goods

These are goods which a seller does not possess at the time of contract of sale but which will be manufactured or produced or acquired by him after entering into the contract of sale agreement. Eg. 'A' contractor agrees to supply 100 bags of rice to 'B' for giving marriage feast. It is a case of future goods. Similarly where the bus company agrees to buy spare parts from a particular supplier, it is an example of future contract. Future goods represents unascertained goods.

3. Contingent Goods

Contingent goods are the goods, the acquisition of which by the seller depends upon a contingency (an event which may or may not happen). Contingent goods are a part of future goods. Eg. 'A' agrees to sell a particular painting work, provided he gets from 'C'. In this case, the painting work represents contingent goods. Similarly a rice merchant agrees to supply 10 bags of basmathi rice from Pakistan if he get supplies. In this case, basmathi rice representing contingent goods may or may not be available to the rice merchant.

CONTINGENT GOODS (Eg. Basumathi Rice)



21.04 Transfer of Ownership

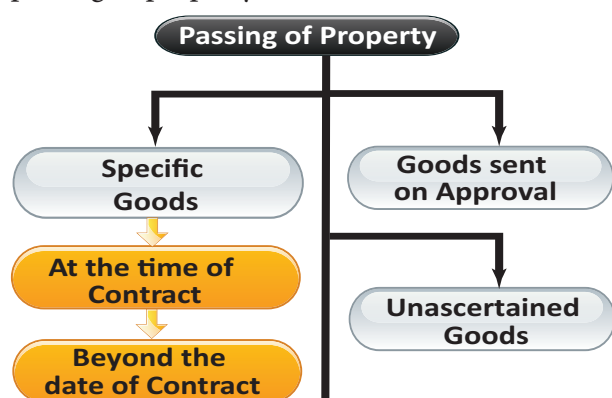


Transfer of property (ownership) in goods from the seller to the buyer is the main object of a contract of sale. The term property in goods must be distinguished from possession of goods. Property in goods means the ownership of goods while possession of goods refers to the custody of goods or control over the goods.

For eg. 'A' may possess a watch. Just because 'A' possesses the watch, he cannot be owner. He might have borrowed the watch from his friend or stolen the watch from somebody or found it on the highways. In this case, he cannot be called owner. It is important to know the precise movement of time at which the ownership in goods passes from seller to buyer.

Passing of Property

Transfer of title of a property is called as passing of property.



I. Specific Goods

(i) At the Time of Contract

Where there is an unconditional contract for the sale of specific goods in a deliverable state, ownership in the goods passes to the buyer when

the contract is made. The time of payment of price or time of delivery of goods is immaterial in the matter of transferring the ownership of the goods.

eg. 'B' selects certain books in a bookshop. The price is settled. 'B' arranges to take delivery of books next day through his servant and agrees to pay for the books on the 1st of next month. The books were destroyed by fire in the same evening. In this case, 'B' has to bear the loss and pay for the books selected since the ownership has already passed on to 'B'.

(ii) Beyond the Date of Contract

(a). Goods not in a Deliverable condition

Where there is a contract for sale of specific goods not in a deliverable condition i.e. the seller has to do certain activities to bring the goods into deliverable condition like painting, quality checking, weighing etc., then the ownership does not pass till such activities bringing them into deliverable condition are completed. eg. There was a contract for a sale of machine weighing 30 tonnes and installed in a concrete floor. Some parts of the machine were damaged during the process of removal. In this case, buyer is entitled to refuse to buy the machine as it is not in a deliverable condition.

(b) When the Price of Goods is to be Ascertained by Weighing or Testing or Doing Something

Where there is a contract for the sale of specific goods in a deliverable condition, but the seller is yet to weigh, measure, test or do some other act or think with reference to the goods for the purpose of fixing the price, then the ownership in the goods passes to the buyer only after such activities are carried out and completed and the buyer has a knowledge of it.

eg. 'A' sold some quantity of wheat to 'B' at the rate of Rs. 10 per kg. However, 'A' had to weigh the wheat in order to know the price of the entire quantity of wheat sold to 'B'. In this case, the ownership of the wheat shall transfer to 'B' as soon as 'A' weighs the wheat 'B' comes

to know about the completion of the weighing activity.

II. Unascertained Goods

As already we studied that the unascertained goods are those which are not specifically identified at the time of contract of sale. The ownership in the case of unascertained goods, is transferred to the buyer subject to the fulfilment of following conditions:

a. When the Goods are Ascertained

Ascertainment is a process by which the goods to be delivered under the contract of sale are identified and set apart. It is a unilateral act of the seller alone to identify and isolate the goods.

b. When the Goods are Appropriated to the Contract

Appropriation is a process by which the goods to be delivered under the contract of sale are identified and isolated with the consent of the seller as well as the buyer. It is a bilateral act of the seller and the buyer to identify and isolate

the goods. In other words, where the goods identified and isolated are put into boxes or any container with the consent of the buyer, it is called appropriation. eg. 'A' agrees to sell 'B' the oil to be produced by him. The oil was filled by 'A' into the bottles supplied by 'B'. It is an effective appropriation and the ownership of oil goods passes to the buyer when the oil is filled into the bottles. In this case, the buyer gave his consent to the appropriation by supplying the bottles.

c. Delivery to the Carrier

Where the seller delivers the goods to a carrier for the purpose of transmission to the buyer, he is deemed to have unconditionally appropriated the goods to the contract. But the only condition is that the seller should not have reserved the right of disposal of the goods. Where the railway receipt or the bill of lading is made out in the name of the buyer, the presumption is that the seller has not reserved the right of disposal of the goods. The property in such goods passes to the buyer immediately on delivering them to the carrier.

III. Goods Sent 'On Approval' or 'On Sale or Return' Basis

Goods sent on approval or on sale or return basis mean those goods in respect of which the buyer has option either to return or retain.

Sl. No	Rule	Time of Transfer of Ownership	Examples
1.	Where the buyer communicates his approval or acceptance	Ownership passes right from the time of communication of the approval	'A' offer to sell his scooter to 'B' and delivers it to 'B' for trial run for 2 days. 'B' communicates his acceptance after 2 days. In this case, ownership passes right from the time of his communication of his approval.
2.	Where the buyer does some act adopting the transaction	When the act of adoption is done	'A' delivered some jewellery to 'B' on sale or return basis. 'B' pledged the jewellery with 'C'. It was held that ownership of the jewellery had transferred to 'B' as he had adopted the transaction by pledging the jewellery with 'C'. In this case, A has no right against 'C'. He can only recover the price of the jewellery from 'B'.



3.	Where the buyer fails to return the goods		
(i)	After the time fixed for return	On the expiry of the fixed term	'X' delivers some goods to 'Y' on sale or return for 7 days. 'Y' neither returns nor gives notice of rejection of goods even after the expiry of 7 days. The goods were destroyed by fire on 8th day. In this case, 'Y' has to bear the loss as the ownership has passed on 8th day after the lapse of stipulated period i.e. 7 days.
(ii)	Where no time has been fixed for return	On the expiry of the reasonable time	S Ltd. Agreed to sell a Tractor to Municipality on the condition that if the latter was not satisfied with the tractor, it could reject it. The municipality used the tractor for a month and a half and then wanted to reject. In this case the property in the tractor is deemed to have passed to the municipality as reasonable time elapsed.

21.05 Conditions and Warranties

A stipulation in a contract of sale with reference to goods may be a condition or a warranty.

(i) **Condition:** A condition is a stipulation which is essential to the main purpose of the contract. It is core to the contract. The non-fulfilment of the condition cancels the very contract. In other words, if a condition is broken, it leads to cancellation of contract. eg. 'A' intends to buy a motorbike from 'B'. 'A' insists that the bike should give him a mileage of 50 kms per litter. He prefers to have red colour bike. 'B', a mechanic gets a bike which gives him 55 kms per litter. But the colour is green. In this case, 'A' cannot cancel the contract. Since 'A' is very particular about the mileage, it is a condition to the contract. That part of contract is fulfilled by 'B'. However, 'A' can ask the mechanic 'B' to bear the cost of repainting it with red colour.

(ii) **Warranty:** Warranty represents a stipulation which is collateral to the main purpose of the contract. It is of secondary importance to the contract. The violation of warranty entitles the affected party to claim damages or compensation from the other party. But he cannot cancel the contract altogether. In the above example, preference of red colour represents warranty. Mechanic 'B' breaks the warranty in the above contract by acquiring a green colour bike. Hence, 'A' is entitled merely to demand just change of colour by instructing 'B' to repaint it with red colour and making him bear the cost of repainting.

In short, the stipulation or condition is contract specific. In other words, it can be determined with reference to the terms and conditions of the contract. Let us further examine the difference between conditions and warranties:



Sl. No	Basic of Difference	Condition	Warranty
1.	Meaning	It is a stipulation which is essential to the main purpose of the contract of sale.	It is a stipulation which is collateral to the main purpose of contract.
2.	Significance	Condition is so essential to the contract that the breaking of which cancels out the contract.	It is of subsidiary or inferior character. The violation of warranty will not revoke the contract.
3.	Transfer of Ownership	Ownership on goods cannot be transferred without fulfilling the conditions.	Ownership on goods can be transferred on the buyer without fulfilling the warranty.
4.	Remedy	In case of breach of contract, the affected party can cancel the contract and claim damages.	In the case of breach of warranty, the affected party cannot cancel the contract but can claim damages only.
5.	Treatment	Breach of condition may be treated as breach of warranty	Breach of warranty cannot be treated as breach of condition.

Implied Conditions and Warranties

In every contract of sale, there are certain expressed and implied conditions and warranties. The term implied conditions means conditions which can be inferred from or guessed from the context of the contract. Following are the implied conditions:

Implied Conditions

1. Conditions as to Title

In the case of sale, seller has a right to sell the goods. The buyer can assume that the seller has a right to sell the goods. eg. 'R' purchased a motorcar from 'D' and used it for 4 months. Later after six months, true owner came and proved that he is a true owner. In this case, 'R' has to return the car to the true owner and claim the full price paid by him from 'D'.

2. Conditions as to Description

In a contract of sale by description, there is an implied condition that goods supplied

should agree with the descriptions made by the seller. eg. 'A' has bought a machinery from 'B' who described it to be just one year old. After buying the machinery and using it for a month, 'A' came to know that it is very old machinery. In this case, 'A' can return the machinery to 'B' on the ground that machinery is not as per the description i.e. not recent one.

3. Sale by Sample

Where goods are sold by showing samples by the seller eg. foodgrains, cloth, medicine, chemicals etc., the bulk of goods supplied by the seller should be similar to the sample shown by the seller. In other words, where the goods supplied do not match with the samples; the buyer can very well return the goods subject to the following conditions:

1. The bulk of the goods must correspond with the sample in quality
2. The buyer should have a reasonable opportunity of comparing the bulk with the sample and



3. The good must be free from any defect rendering them unsalable.

4. Conditions as to Quality or Fitness

There is no implied condition as to the quality or fitness for any particular purpose of goods. But goods must be fit for a particular purpose if

- (i) The buyer has made known to the seller the particular purpose for which he needs the goods
- (ii) The buyer relies on the seller's skill or judgement and
- (iii) The goods are of a description which is in course of the seller's business to supply
eg. 'A' bought set of false teeth from a dentist. The set did not fit into A's mouth. Held that he could reject the set as the purpose for which it was bought was known to the dentist.

5. Conditions as to Merchantability

If goods are bought by description and the seller is a dealer in goods of that description, the implied condition is that goods must be of merchantable quality. It only means that the goods must be saleable in the market under that denomination. "A watch that will not keep time, a pen that will not write and tobacco which will not smoke, cannot be regarded as merchantable under such names."

6. Condition as to Wholesomeness

In the case of eatables, the goods must be wholesome besides being merchantable.

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

7. Condition Implied by Trade Usage

An implied condition as to quality or fitness for a particular purpose can also be fixed by the usage of trade.

Eg. 'X' sold certain drugs by auction to 'Y'. In the auction sale, there is a trade custom

to declare any defect in the goods. But 'X' sold the goods without such declaration. Later, such goods were found to be defective. In this case, 'Y' can claim refund of the price on the ground of breach of custom.

Implied Warranties

(i) Quiet Possession

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer's possession is disturbed by a person having a superior right to that of the seller, the buyer is entitled to claim the damages.

eg. 'X' sold a second hand radio to 'Y' who spends Rs. 100 on the repairs of the radio. This radio was seized by the police as it was a stolen one. 'Y' filed a suit against 'X' for the recovery of damages for breach of warranty of quiet possession including the cost of repair. 'Y' won the case. In other words, he was held entitled to recover the damages.

(ii) Free from Any Encumbrances

The goods bought must not have been subject to any charge or right in favour of a third party. If the buyer's possession is disturbed by reason of the existence of any encumbrance, he is entitled to claim damages for breach of warranty. eg. 'X' borrowed Rs. 50,000 from 'Y' and hypothecated his autorickshaw with 'Y' as security. Later on, 'X' sold the autorickshaw to 'Z' who bought it in good faith. In this case, 'Z' can claim damages from 'X' because his possession is disturbed by 'Y' having an encumbrance on the auto.

(iii) Warranty in the case of Dangerous Goods

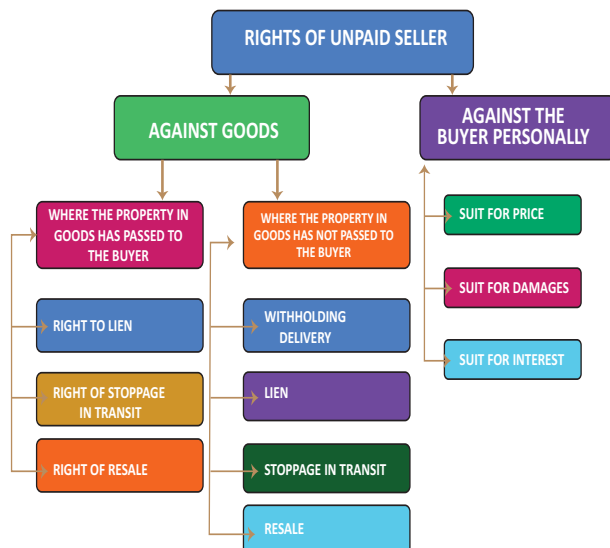
Where the seller knows that the goods he is selling are dangerous or likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller should warn the buyer of the probable danger, otherwise he will be liable to compensate the buyer in case of any injury. eg. 'C' bought

from 'A' a tin of disinfectant powder. 'A' knew that the lid of the tin was defective and that if it was opened without special care, it might be dangerous. Yet 'A' did not warn 'C'. 'C' opened the tin in the usual way whereupon the powder flew into her eyes, causing injury. Held that 'A' was liable in damage to 'C' as he should have warned 'C' of the probable danger.

Unpaid Seller - Meaning

A seller is deemed to be an unpaid seller (a) when the whole of the price has not been paid or (b) a bill of exchange or other negotiable instrument given to him has been dishonoured. Thus it would be obvious that a seller who has received only a part of the price is also an unpaid seller. Seller includes not only the actual seller but also an agent of a seller or a consignee.

21.06 Rights of an Unpaid Seller



Rights of an Unpaid Seller

I. (a). Rights of an Unpaid Seller against the Goods

(i) Where the Property in the Goods has Passed to the Buyer

a. Right of Lien: An unpaid seller has a right to retain the goods till he receives the price. But to exercise this lien

- He must be in possession of goods
- The goods must have been sold without any stipulation as to credit or where goods have

been sold on credit, the terms of credit must have expired. He can also exercise the right of lien when the seller becomes insolvent.

- It must be remembered that the right of lien depends on actual possession. Thus where the seller has transferred to the buyer the documents of title to the goods, his lien is not affected so long as he continues to be in possession of the goods.

For eg. 'A' has sold the 10 TV sets to 'B' and transferred the documents of title to the goods to 'B' by courier service. But goods are under the custody of 'A' ready for despatching to booking office. Meantime, 'B' became insolvent. In this case, 'A' can retain the goods.

Where an unpaid seller has made a part delivery of the goods, he has lien on the remainder. However, if delivery of a part is intended as a delivery of the whole, then this lien is lost.

Right of Lien is Lost

(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. eg. 'X' of Delhi sold some goods to 'Y' of Bombay and took the railway receipt in the name of 'Y' and sent the railway receipt to 'Y'. In this case, 'X' has not reserved the right of disposal of goods. (or)

(b) When the buyer or his agent lawfully obtains possession of them. In other words, buyer took delivery from booking office (or)

(c) When the seller waives his right of lien

(b). Right of Stoppage in Transit

Where the seller has delivered the goods to a carrier or other bailee for the purpose of transmission to the buyer, but the buyer has not acquired them, then the seller can stop the goods and regain the possession. In other words, goods must be neither with the seller nor with the buyer but should be in the hands of a carrier. Further, the buyer must have become an insolvent.

Termination of Right of Stoppage

This right to stop the goods comes to an end:

(a) When the goods are delivered to the buyer or his agent or

(b) When, on arrival of the goods at the appointed destination, the carrier communicates to the buyer or his agent that he is holding the goods on his behalf

c. Right of Resale

The unpaid seller can resell the goods

- (i) Where they are of a perishable nature or
- (ii) After exercising his right of lien or stoppage in transit, even though he has given intimation to the buyer of his intention to resell, buyer has not tendered the price within a reasonable time.
- (iii) Where the seller has expressly reserved the right of resale in the contract itself

I. (b). Where the Property in the Goods does not pass to the Buyer

Right of an Unpaid Seller against the Buyer Personally

(i) Suit for price: Where the ownership in the goods has passed to the buyer and the buyer refuses to pay for the goods, the seller can file case against the buyer for the price

(ii) Suit for Damages for Non-acceptance: Where the buyer wrongfully refuses to accept the goods, the seller can sue him for damages for non-acceptance of the goods.

(iii) Suit for Cancellation of the Contract before the Due Date: Where the buyer cancels the contract before the date of delivery, the seller may either treat the contract as continuing or wait till the due date or he can file a case against buyer immediately.

(iv) Suit for Interest: Where there is a specific agreement between buyer and seller regarding charging interest on the price, the seller can recover interest from the buyer

from the due date of contract till the date of payment of purchase price. If there is no specific agreement, the seller can charge interest from such day as he may notify to the buyer.



For Own Thinking

(a) Find out whether the following transactions can be included under the Contract of Sale:

- i. X agreed to sell 100 shares to Y for Rs. 10,000.
- ii. X agreed to sell his building for Rs. 1,00,000 to Y
- iii. X agreed to exchange with Y 100 kg of rice valued at Rs. 20 per kg for 200 Kg of wheat valued at Rs. 12 per kg. and pay the difference in cash.
- iv. X agreed to transfer some jewellery to his prospective wife out of love and affection.
- v. X agree to buy a painting from an artist
- vi. X supplied a piece of cloth to a tailor to stitch a suit for him. The tailor agreed to supply lining materials and buttons.
- vii. X agreed to pledge his goods valued at Rs. 1,00,000 with Y

Clues: Students are advised to understand the meaning for goods and the essential elements of contract of sale.

(b) Find out whether the following contracts of sale amount to sale or agreement to sell:

- i. X entered into a contract for sale entire crop of rice cultivated in his farm.
- ii. A railway administration agreed to sell coal-ash that might accumulated during the period of the contract.
- iii. X entered into a contract for sale of some goods in a particular ship to be delivered on the arrival of the ship
- iv. X entered into a contract for sale of a painting only if Z, its present owner sells it to him.



For Own Thinking

(c) State whether the seller is an unpaid seller or not in the following cases:

- X sold some goods to Y for Rs. 10,000. Y paid Rs. 9,900 but failed to pay the balance
- X sold some goods to Y for Rs. 10,000 and received a cheque for the full price as conditional payment. On presentment, the cheque was dishonoured by the bank.
- X sold some goods to Y for Rs. 10,000 on a credit of one month. One month has not yet expired.
- X sold some goods to Y for Rs. 10,000 on a credit of one month and one month has expired and the price remains unpaid.
- X sold some goods to Y for Rs. 10,000 on a credit of one month. Y became insolvent during the period of credit.

broke due to the fact that the materials used in its manufacture were unsuitable. As a result, the boy who was using it, blinded in one of his eyes. State whether the seller is liable or not.

- X bought from Y a heap of wheat the weight of which is 1000 kg at the rate of Rs. 8 per kg. and agrees to pay the price on the first day of the next month and the wheat is to be delivered at X's godown on the following day. A fire broke out and the entire quantity of wheat was destroyed. State whether X is liable to pay the price or not. Why?
- X bought from Y a heap of wheat (weight 100 kg) at the rate of Rs. 8 per kg. and Y had to put the wheat in bags to deliver it to X. Y filled some bags in X's presence, but before the remainder could be filled, a fire broke out and the entire quantity of wheat was destroyed. State whether X is liable to pay the price or not. Why?
- X bought from Y a heap of wheat at a rate of Rs. 8 per kg and Y had to weigh the wheat. Before weighing was completed, the wheat was destroyed by fire. State whether X is liable to pay the price or not. Why?

Clues: Students are advised to read thoroughly the implied warranties and conditions for the cases 1 to 3 and rules relating to transfer of ownership for cases 4 to 6.



Case Study

- X purchased a hot water bottle from Y, retail chemist. X asked Y if it would stand boiling water. The chemist told him that the bottle was meant to hold hot water. The bottle burst when water was poured into it and injured his wife. State whether seller is liable for the injury suffered by the buyer and the consequent compensation, give your reasons.
- X asked a car dealer to suggest him car suitable for touring purposes. The dealer suggested a 'Buggati Car'. Accordingly, X purchased it but found it unsuitable for touring purpose. State whether the car dealer is liable for breach of condition?
- X, a dealer sold a plastic catapult to B. While using the catapult in the usual manner, it

Key Words

Sale	Ownership	Property
Conditions	Warranties	Insolvency
Contingent	Lien	Suit



Exercise



I. Choose the Correct Answers:

1. **Sale of Goods Act was passed in the year**
a) 1940 b) 1997
c) 1930 d) 1960
2. **Which of the below constitutes the essential element of contract of sale?**
a) Two parties b) Transfer of property
c) Price d) All of the above
3. **Which of the below is not a good?**
a) Stocks b) Dividend due
c) Crops d) Water
4. **In case of the sale, the ____ has the right to sell**
a) Buyer b) Seller
c) Hirer d) Consignee
5. **The property in the goods means the**
a) Possession of goods
b) Custody of goods
c) Ownership of goods
d) Both (a) and (b)

Answers:

1	c	2	d	3	b	4	b	5	c
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II. Very Short Answer Questions:

1. What is a contract of sale of goods?
2. List down the essential elements of a contract of sale.
3. What is meant by goods?
4. What is a Contingent Goods?

III. Short Answer Questions:

1. Discuss in detail about existing goods.
2. Discuss the implied conditions and warranties in sale of goods contract.

IV. Long Answer Questions:

1. Explain in detail the elements of Contract of sale.
2. Distinguish between Conditions and Warranty.