

INDIAN SALE OF GOODS ACT -1930

This act lays down special provisions governing the contract of sales of goods .The general law of contract is also applicable to the contracts for the sale of goods unless they are inconsistent with the express provisions of the Sale of Goods Act. In 1930, Sections 76 to 123 of the Contract Act was repealed and a separate Act known as the Sale of Goods Act, 1930 was passed. The law relating to sale and purchase of goods, prior to 1930 was dealt by the Indian Contract Act, 1872.

It extends to the whole of India except the State of Jammu and Kashmir. It does not affect rights, interests, obligations and titles acquired before the commencement of the Act. The Act deals with sale but not with mortgage or pledge of the goods.

Definition of Sale of goods

Section 4 of the Sales of Goods Act, 1930 defines a sale of goods as a “*contract of sale whereby the seller transfers or agrees to transfer the property in goods to the buyer for price*”.

The term ‘contract of sale’ includes both a sale and an agreement to sell.

- a) **Sale:** A contract of sale may be absolute or conditional. Where the right of ownership in the goods is transferred from the seller to the buyer, the contract is sale.
- b) **Agreement to sell:** Where under a contract of sale the transfer of property 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.

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer by the other party. The contract may be oral or in writing. A contract of sale may be absolute or conditional.

Essentials of a Valid Contract of Sale

- 1) **Contract:** All the essential elements of a contract must be present in a contract of sale.
- 2) **Two parties:** There must be two parties to constitute a contract of sale namely; a buyer and a seller. The same person cannot both be a seller and a buyer.
- 3) **Goods:** The subject matter of a contract of sale will always be goods. The goods may be either existing goods, future goods or contingent goods.

Definition: Goods

- **Goods:** According to section 2(7) of the Sale of Goods Act, 1930, Goods means every kind of movable property, other than actionable claims and money; and includes stocks, 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.

Types of goods

- Specific Goods: means goods identified and agreed upon at the time of a contract of sale is made. They are also called existing goods or ascertained goods.
 - Future goods: means goods to be manufactured or produced or acquired by the seller after making the contract of sale.
 - Generic Goods are unascertained goods that are not specifically identified at the time of a contract of sale is made. E.g. 50 kg of rice out of 500 kg of rice.
- 4) **Transfer of property:** In a contract of sale, the seller must transfer or agree to transfer property in the goods to the buyer.
- 5) **Price:** The consideration for a contract of sale must be money called the price.

BASIS FOR COMPARISON	SALE	AGREEMENT TO SELL
Meaning	When in a contract of sale, the exchange of goods for money consideration takes place immediately, it is known as Sale.	When in a contract of sale the parties to contract agree to exchange the goods for a price at a future specified date is known as an Agreement to Sell.
Nature	Absolute	Conditional
Type of Contract	Executed Contract	Executory Contract
Transfer of risk	Yes	No
Title	In sale, the title of goods transfers to the buyer with the transfer of goods.	In an agreement to sell, the title of goods remains with the seller as there is no transfer of goods.
Right to sell	Buyer	Seller

Consequences of subsequent loss or damage to the goods	Responsibility of buyer	Responsibility of seller
Tax	VAT is charged at the time of sale.	No tax is levied.
Suit for breach of contract by the seller	The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold.	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.

CONDITIONS AND WARRANTIES

At the time of selling of goods, the seller makes certain statements or representations with a view to induce the buyer to purchase the goods. These statements may form a part of contract of sale and the buyers rely upon them. These representations are called '**stipulation**' ('Stipulation' means a requirement or a specified item in an agreement). When these stipulations are become most important for the formation of a contract of sale is known as '**condition**'. Again if these are lesser important for the formation of a contract of sale is, known as '**warranty**'.

Definition

Condition: According to **Section 12 (2) of the Sale of Goods Act**, 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.

For example: B wanted to purchase a car, suitable for touring purpose and M suggested him a 'Brand X' car. B purchased the car from M, a car dealer. After some use, car was found unfit for the touring purpose. Held there was a breach of condition.

Warranty: According to **Section 12 (3)**, a warranty has a 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 repudiated.

For example: X purchased a car from a dealer with assured gifts and discount schemes. Dealer defaulted in delivery of these schemes as intended. There is a breach of warranty.

CONDITIONS

There are mainly three essentials of a condition, such as

- Condition is essential to the main purpose of the contract.
- The cause of non-fulfillment of condition is irreparable damage to the aggrieved party.
- As a result of breach of a condition the aggrieved party will get the right to rescind the contract and recover the damages for breach of condition.

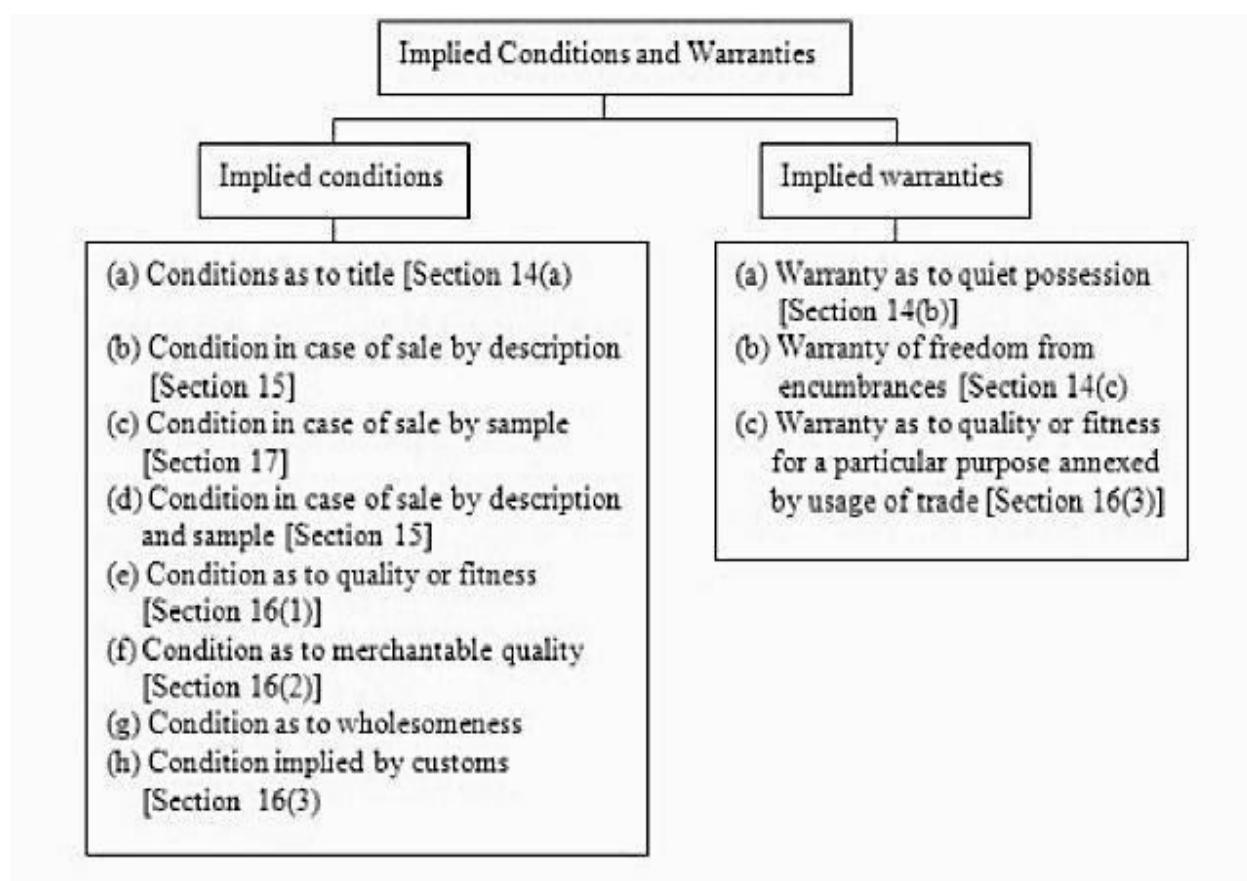
In a contract of sale of goods, conditions and warranties may be express or implied.

1. Express Conditions and Warranties:

These are expressly provided in the contract. For example, a buyer desires to buy a SONY TV Model No. 2062. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

2. Implied Conditions and Warranties:

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract.



Implied Conditions:**A) Conditions as to Title:**

There is an implied condition on the part of the seller that (i) in the case of a sale, he has a right to sell the goods, and (ii) in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

B) Sale by Description:

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

C) Sale by Sample:

A contract of sale is contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions.

- a)** The goods must correspond with the sample in quality.
- b)** The buyer must have a reasonable opportunity of comparing the bulk with the sample.
- c)** The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use. It may be noted that the seller cannot be held liable for apparent or visible defects which could be easily discovered by an ordinary prudent person.

D) Sale by sample as well as by Description:

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

E) Condition as to Quality or Fitness:

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware).

F) Condition as a Merchantable Quality:

Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. The expression ‘merchantable quality’ means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free any latent or hidden defects.

G) Conditions as to Wholesomeness:

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

Implied Warranties:**A) Warranty as to Quiet Possession:**

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The breach of this warranty gives buyer a right to claim damages from the seller.

B) Warranty of Freedom from Encumbrances:

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

C) Warranty as to Quality or Fitness for Particular Purpose which may be annexed by the Usage of Trade**D) Warranty to Disclose Dangerous Nature of Goods:**

In case of goods of dangerous nature the seller must disclose or warn the buyer of the probably danger. If the seller fails to do so, the buyer may make him liable for breach of implied warranty.

Conditions	Warranty
<ul style="list-style-type: none"> • Stipulations that are essential for main purpose of contract. Non-fulfillment of such will mean loss of foundation of contract. These are termed as 'Conditions'. • A contract of sale cannot be fulfilled unless the condition to it, is fulfilled. • In case of breach of condition, the aggrieved party can reject the contract • Breach of condition can be treated as breach of warranty if the aggrieved party is happy with compensation. 	<ul style="list-style-type: none"> • Warranty is collateral to the main purpose of contract. • The main contract can be fulfilled even if the warranty is not fulfilled. • In case of breach of warranty, the aggrieved party can only claim for damages. • Breach of warranty can not be treated as breach of condition.

RIGHTS AND DUTIES OF BUYER

RIGHTS		DUTIES
1.	To have delivery of the goods as per contract. (secs. 31 & 32)	To accept the delivery of goods, when the seller is willing to make the delivery as per the contract (Sec. 31)
2.	To reject the goods when they are not of the description, quality or quantity as specified in the contract (Sec 37).	To pay the price in exchange for possession of the goods
3.	To repudiate the contract when goods are delivered in installments without any agreement to that effects [Sec. 38 (1)]	To apply for delivery of the goods. (Sec. 35)
4.	To be informed by the seller, when the goods are to be sent by sea route, so that he may arrange for their insurance [Sec 39 (30)]	To demand delivery of the goods at a reasonable hour (sec 36 (4))
5	To have a reasonable opportunity to examine the goods for ascertaining whether they are in conformity with the contract. (sec. 41)	To accept delivery of the goods in installments and pay for them, in accordance with the contract. (Sec. 38 (2))
6	To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods.	To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold (sec 40)
7	To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (sec 57)	To inform the seller in case the buyer refuses to accept or rejects the goods (sec 43)
8	To sue the seller for specific performance	To take the delivery of the goods within a reasonable time after the seller tenders the delivery (Sec. 44)
9	To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59)	To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract (Sec 55)
10	To sue the seller the damages for anticipatory breach of contract (Sec 60)	To pay damages for non-acceptance of goods (Sec 56)
11	To sue the seller for interest where there is a breach of contract on the part of the seller and price has to be refunded to the buyer (sec 61)	

UNPAID SELLER

According to Sec. 45 of the Sale of Goods Act, the seller of goods is deemed to be an unpaid seller:

- (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, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Rights of an Unpaid Seller

An unpaid seller has two-fold rights, viz:

- Right of an Unpaid Seller against the goods; and
- Rights of an Unpaid Seller against the buyer personally

1. Rights of unpaid seller against the goods

An unpaid seller has the following rights against the goods notwithstanding the fact that the property in the goods has passed to the buyer:

1. Right of lien;
2. Right of stoppage of goods in transit;
3. Right of resale.

• Right of lien

Right to retain goods by unpaid seller till amount is recovered is called right of lien. If unpaid 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.

At times the transport company may refuse to deliver the goods to buyer due to any reason. Then the goods are said to be in transit. At times, the buyer may retain the goods at the transport company. Then the goods are said to be not in transit.

- **Right of resale**

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.

2. Rights of an Unpaid Seller against the buyer personally

- **Suit for price [Sec. 55]:** When the property has passed to the buyer, and the buyer wrongfully neglects or refuses to pay, the seller can sue him for the price.
- **Suit for damages [Sec. 56]:** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
- **Suit for repudiation [Sec. 60]:** The repudiation of the contract of sale by the seller before the date of delivery entitles the buyer to treat the contract as rescinded and sue the seller for damages for the breach.
- **Suit for interest [Sec. 61(2)]:** In case of breach of contract on the part of the buyer, while filing a suit for the price, the seller may sue the buyer for interest from the date of the tender of the goods or from the date on which the price was payable.

Doctrine of Caveat Emptor

The term ‘caveat emptor’ is a Latin word which means ‘let the buyer beware’ i.e., a buyer purchases the goods at his own risk. The doctrine of caveat emptor means that the seller is not bound to disclose the defects in the goods, which he is selling. It is the duty of the buyer to satisfy him before buying the goods that the goods will serve the purpose for which they are being bought.

Section 16 of the Sale of Goods Act has enunciated the rule of caveat emptor as follows:

“Subject to the provisions of this Act and of any other law for the time being in force, 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”.

BREACH OF CONTRACT OF SALE**Remedies available to the seller**

In case of breach of the contract of sale of goods where the seller is the aggrieved party he has the following remedies:

- **Suit for price:**

1) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

2) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. In short, section 55 gives right to the seller to sue the buyer for the price. Now a seller can institute suit for the price when:

(i) The property in the goods has passed to the buyer, for example, goods have been sold and delivered.

(ii) Where the goods have not been delivered and the property in the goods has not passed to the buyer.

The seller can sue for the price under clause (2), if the price is payable on a certain day and the buyer wrongfully neglects or refuses to pay such price. He may also exercise right of lien and stoppage in transit as discussed.

- **Suit for damages:**

For non-acceptance: Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The measure of damages is according to the provisions of section 73 of The Indian Contract Act, depending upon the available market for the goods. In action for damages for breach of contract to buy goods, plaintiff can only recover difference between contract price and market price and not between contract price and actual price.

For repudiation of the contract –

Anticipatory breach: Where the buyer repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. This remedy is in anticipation of the breach of contract popularly known as anticipatory breach of contract.

The words repudiates the contract occurring in section 60, demonstrate that the repudiation must be of the contract in its entirety and that it is only in that event, that there is anticipatory breach which can create the right to rescind the contract.

Remedies available to the buyer

In case of breach of the contract of sale, where the buyer is the aggrieved party he has the following remedies:

- **Suit for damages for non-delivery of the goods (Sec 57):**

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This remedy of the buyer is similar to that of the seller under section 56, discussed above under suit for damages by the seller.

- **Suit for specific performance:**

In any suit by the buyer for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on application of the buyer, by its decree, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The decree, may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise as the court may deem just. Specific performance is subject to the provisions of The Specific Relief Act 1877. It should be noted that this section applies only to specific or ascertained goods. The Court has discretion to order specific performance whenever damages would not be an adequate remedy.

Remedies available to both seller and buyer

1. Suit for Repudiation of Contract before the Date or Anticipatory Breach: Section 60 of the Act states that if any party renounces the contract before the delivery of the goods, the other party may wait till the date of delivery of the goods or may treat the contract as annulled and claim for damages. This provision is not a part of the English Law on which the Indian Law is based. The party not in default can choose to keep the contract alive by not accepting the repudiation of the defaulting party. In such a scenario, if at the time of performance of the contract, he refuses to perform his part or is unable to perform his part, the defaulter party would be discharged, and the position will be as it would have been as if there was no repudiation of the contract before the date of the contract.

For example: P is a seller and Q is a buyer. Q repudiates the contract before date, but P does not accept the repudiation and keeps the contract alive. On the date of performance, P delivers the products. But these are not according to the specification of Q. in this case Q may reject the goods. P will not be able to avail any remedy. Or Q may accept the goods and treat the breach of condition as a breach of warranty and recover damages from P.

2. Interest by way of Damages and Special Damages: Section 62 of the Act states that the buyer or seller can recover special damages where by law special damages or interest may be recoverable. There is a limitation to this remedy. The parties should have contemplated that a particular loss may occur if the contract is breached in any manner. And also, the particular loss must have taken place after the violation of the contract.

The Interest Act,[7] which was introduced in 1839, states that interest also shall be paid by way of damages in certain cases.

The point which is to be noted here that the seller can only claim interest when he is entitled to recover the price. When the seller is suing only for damages for breach of contract, he cannot claim any interest. The same principle applies in the case of the buyer also. He cannot claim an interest if he is suing the buyer for breach of warranty.

DELIVERY OF GOODS

Section 2 (2) of the Act defines, delivery to mean “voluntary transfer of possession from one person to another.” Such voluntary transfer can, as Sec. 33 states, be made by doing anything which has the effect of putting the goods in the possession of the buyer or his authorized agent.

Modes of Delivery

Delivery of goods may be made in any of the following ways:

- a) Actual delivery: Where the goods are physically handed over by the seller to the buyer, the delivery is said to be actual.
- b) Symbolic delivery: Where the goods are bulky and incapable of actual delivery, there are other means of obtaining possession of goods are delivered by the seller to the buyer.
- c) Constructive or Delivery by attornment: Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.”
