

UNIT - V

Sale of Goods Act, 1930

Contract of Sale • Conditions & Warranties • Transfer of Title • Rights of Unpaid Seller • Remedies

Unit Structure

01

Contract of Sale – Definition & Essentials

S. 4 – Sale and agreement to sell

02

Conditions and Warranties

Ss. 11–17 – Express & implied conditions and warranties

03

Transfer of Property & Title

Ss. 18–30 – Passing of property, transfer by non-owners

04

Rights of Unpaid Seller & Remedies

Ss. 45–61 – Lien, stoppage in transit, resale, damages

Contract of Sale of Goods – Definition

Section 4(1): 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.

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

Section 4(3): Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a “sale”; but 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, the contract is called an “agreement to sell”.

Section 4(4): An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Sale vs Agreement to Sell

Point	Sale	Agreement to Sell
Transfer of property	Immediate	Future or conditional
Risk	Passes to buyer	Remains with seller
Breach by buyer	Seller can sue for price	Seller can sue for damages
Breach by seller	Buyer can sue for delivery / damages	Buyer can sue for damages
Insolvency of buyer	Seller must deliver; claim as creditor	Seller can refuse delivery

Conditions and Warranties

Section 12: A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

- Condition – a stipulation essential to the main purpose of the contract; breach gives right to repudiate the contract and claim damages.
- Warranty – a stipulation collateral to the main purpose; breach gives right only to claim damages, not to reject the goods.

Whether a stipulation is a condition or a warranty depends on the construction of the contract. A condition may be treated as a warranty by the buyer (S. 13).

Implied conditions and warranties are provided in Ss. 14–17 (title, description, quality, fitness, sample, etc.).

Important Implied Conditions

Condition as to Title (S. 14)

Seller has the right to sell the goods; in an agreement to sell, he will have the right when property is to pass.

Sale by Description (S. 15)

Goods must correspond with the description. If sale is by sample as well as description, correspondence with both is required.

Quality or Fitness (S. 16)

Where the buyer makes known the particular purpose and relies on the seller's skill/judgment, there is an implied condition that the goods are reasonably fit for that purpose (subject to exceptions).

Merchantable Quality (S. 16)

Where goods are bought by description from a seller who deals in such goods, there is an implied condition that they are of merchantable quality.

Transfer of Property in Goods

The general rule is that property passes when the parties intend it to pass (S. 19).

Rules for ascertaining intention (S. 20-24):

- Specific goods in a deliverable state – property passes when the contract is made (S. 20)
- Specific goods to be put into a deliverable state – property passes when the seller has done what is required and the buyer has notice (S. 21)
- Specific goods in a deliverable state but seller has to do something to ascertain price – property passes when the act is done and buyer has notice (S. 22)
- Goods sent on approval (sale or return) – property passes when the buyer signifies approval or retains without notice of rejection (S. 24)

Risk prima facie passes with property (S. 26).

Transfer of Title by Non-Owners

General rule (S. 27): Nemo dat quod non habet – no one can give a better title than he himself has. Subject to the Act and other laws, where goods are sold by a person who is not the owner and does not sell under the authority or with the consent of the owner, the buyer acquires no better title than the seller had.

Important exceptions:

- Sale under a voidable title (S. 29) – if the seller's title is voidable but not avoided at the time of sale, a buyer in good faith without notice obtains a good title
- Seller in possession after sale (S. 30(1))
- Buyer in possession after agreement to buy (S. 30(2))
- Estoppel, sale by mercantile agent, sale under statutory power, etc.

Rights of an Unpaid Seller

An unpaid seller is one to whom the whole of the price has not been paid or tendered, or who has received a negotiable instrument that has been dishonoured (S. 45).

Rights against the goods:

- Lien (S. 47-49) – right to retain possession until payment, while in possession
- Stoppage in transit (S. 50-52) – right to stop goods in transit and resume possession when the buyer becomes insolvent
- Right of resale (S. 54) – in certain circumstances the unpaid seller may resell the goods

Rights against the buyer personally: suit for price (S. 55), suit for damages for non-acceptance (S. 56).

Remedies for Breach of Contract of Sale

Seller's Remedies

- Suit for price (S. 55)
- Damages for non-acceptance (S. 56)
- Repudiation of contract before due date (S. 60)
- Interest by way of damages (S. 61)

Buyer's Remedies

- Damages for non-delivery (S. 57)
- Specific performance (S. 58)
- Remedy for breach of warranty (S. 59)
- Repudiation and interest (Ss. 60–61)

Landmark Judgments

Rowland v. Divall (1923)

Breach of condition as to title – buyer entitled to recover the full price even after using the goods.

Priest v. Last (1903)

Implied condition of fitness for purpose – hot-water bottle case.

Grant v. Australian Knitting Mills (1936)

Merchantable quality and fitness – defective undergarments causing dermatitis.

Cahn v. Pockett's Bristol Channel Steam Packet Co.

On transfer of title by a buyer in possession and the factors affecting good title.

Key Takeaways – Unit V

- A contract of sale transfers or agrees to transfer property in goods for a price (S. 4).
- Sale transfers property immediately; agreement to sell postpones the transfer.
- Condition is essential to the main purpose; warranty is collateral – different remedies for breach.
- Property passes according to the intention of the parties; risk generally passes with property.
- Nemo dat quod non habet is the general rule, subject to important statutory exceptions.
- An unpaid seller has rights of lien, stoppage in transit and resale against the goods, and personal remedies against the buyer.

Quick Reference – Important Sections

Definition of Contract of Sale	S. 4
Condition & Warranty	S. 12
Implied Condition as to Title	S. 14
Sale by Description	S. 15
Implied Conditions of Quality/Fitness	S. 16
Passing of Property – Rules	Ss. 18–24
Transfer of Title – Nemo Dat	S. 27
Unpaid Seller's Lien & Stoppage	Ss. 47–52
Remedies of Seller & Buyer	Ss. 55–61

End of Unit – V

Sale of Goods Act, 1930

All Five Units of Contract-II (Special Contracts) Completed

Indian Contract Act, 1872 (Ss. 124–238) + Partnership Act, 1932 + Sale of Goods Act, 1930