Introduction

The law relating to sale of goods is contained in the sale of goods act, 1930 which came in to force on 1st July, 1930. The act contains sixty-six sections and extends to whole of India except the state of J&K.A few amendments in the act were made by the sale of goods (amendments) act, 1963.

The general provisions of the Indian contract act continue to be applicable to the contract of sale of goods in so far as they are not inconsistent with the express provisions of the contract act relating to capacity of the parties, free consent, agreements in restraint of trade, wagering agreements and measure of damages continue to be applicable to the contract of sale of goods. But the definition of consideration stands modified to the extent that in a contract of sale of goods consideration must be by way of price i.e., only money consideration .[sections 2(10) and 4].

A contract of sale of goods results, like any other contract, by an offer by one party and its acceptance by the other. Thus, it is a consensual transaction. The parties to the contract enjoy unfettered discretion to agree to any terms they like relating to delivery and payment of price,etc. the sale of goods act does not seek to fetter this discretion. It simply lays down certain positive rules of general application for those cases where the parties have failed to contemplate expressly for contingencies which may interrupt the smooth performance of a contract of sale, such as the destruction of the thing sold, before it is delivered or the insolvency of the buyer, etc. the act leaves the parties free to modify the provisions of the law by express stipulations.

Definition and Essentials of a Contract of Sale

Section 4(1) of the sale of goods act defines a contract of sale of goods as, “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.

This definition reveals the following essential characteristics of a contract of sale of goods:

1. Two parties:

The first essential is that there must be two distinct parties to a contract of sale viz., a buyer and a seller, as a person cannot buy his own goods. Thus, for example, when students of a hostel take meals with a mess run by themselves on co-operative lines, there is no contract of sale. The students are undivided joint owners of the meals they are consuming. As a matter of fact every member of the mess is consuming his own goods on the basis of understanding that he must restore to the mess what he consumed so that the mess continues to provide meal for its members. An undivided joint owner must be distinguished from a part owner who is a joint owner with divisible share.

According to section 4(1), there may be a contract of sale between one part owner and another, e.g., if A and B jointly owns a typewriter, A may sell his own ownership in the typewriter to B, thereby making B sole owner of the goods.

Similarly, a partner may buy the goods from the firm in which he is a partner and vice-versa. There is, however, one exceptional case when a person may buy his own goods. Where a person's goods are sold in execution of a decree, he may himself buy them, so as to save them from a transfer of ownership to some one else [Moore Vs. Singer Manufacturing Co., 1904].

2. Transfer of property:

Property here means ownership. Transfer of property in the goods is another essential of a contract of sale of goods. A mere transfer of possession of the goods cannot be termed as sale. To constitute a contract of sale the seller must either transfer or agree to transfer the property in the goods to the buyer. Further, the term property as used in the sale of goods act, means general property in goods as distinguished from special property [section 2(11)]. If P who owns certain goods pledges them to R, he has general property in the goods, whereas R (the Pawnee) has special property or interest in the goods to the extent of the amount of advance he has made to the pawnor. Similarly, in the case of bailment of goods for the purpose of repair, the bailee has special interest in goods bailed to the extent of his labour charges.

3. Goods:

The subject matter of the contract of sale must be goods. According to section 2(7), "goods means every kind of movable property other than actionable claims and money; and includes stock and 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".

Thus, every kind of movable property except actionable claim and money is regarded as goods. Goodwill trade marks, copyrights, patent right, water , gas, electricity, decree of a court of law, are all regarded as goods. Shares and stocks are also included in goods. With regard to growing crops, grass and things attached to or forming part of the land, such things are regarded as goods as soon as they are agreed to be separated from the land. Thus, where trees were sold so that they would be cut out and separated from the land and then taken away by the buyer, it was held that there was a contract of sale of movable property or goods [Kursell Vs. Timber Operators & Contractors Ltd., 1927]. But contracts for sale of things, "forming part of the land itself are not contracts for sale of goods. For example, a contract for the sale of coal mine or building-stone quarry is not a contract of sale of goods.

Actionable claims means which can be enforced by a legal action or a suit, e.g., a debt. A debt is not good because it can only be assigned as per the transfer of property act but cannot be sold.

Money means current money. It is not regarded goods because it is the medium of exchange through which goods cane be bought. Old and rare coins, however, may be treated as goods and sold as such.

4. Price:

The consideration for a contract of sale must be money consideration called the price. If goods are sold or exchanged for other goods, the transaction is barter, governed by the transfer of property act and not a sale of goods under this act. But if goods are sold partly for goods and partly for money, the contract is one of sale [Aldridge V.Johnson, 1857].

5. Includes both a sale and an agreement to sell:

The term contract of sale is a generic term and includes both a sale and an agreement to sell.

Sale:

Where under a contract of sale the property in the goods is immediately transferred at the time of making the contract from the seller to the buyer, the contract is called a sale [section 4(3)]. It refers to an absolute sale, e.g., an outright sale on a counter in a shop. There is immediate conveyance of the ownership and mostly of the subject-matter of the sale as well delivery may be given in future. It is an executed contract.

An 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"[section 4(3)]. It is an executory contract and refers to a conditional sale.

For example:

On 1st January, A agrees with B that he will sell B his scooter on 15 January for a sum of Rs.30; 000.It is an agreement to sell, since A agrees to transfer the ownership of the scooter to B at a future time.

An agreement to sell become a sale when the time clapes or the conditions are fulfilled subject to which the property in the goods is to be transferred [section 4(4)].

6. No formalities to be observed:

Section 5 provides that the sale of goods act, does not prescribe any particular form to constitute a valid contract of sale. A contract of sale of goods can be made by mere offer and acceptance. The offer may be made either by the seller or the buyer and the same must be accepted by the other. Neither payment nor delivery is necessary at the time of making

the contract of sale. Further, such a contract may be made either orally or in writing or partly orally and partly in writing or may be even implied from the conduct of the parties. Where articles are exhibited for sale and a customer picks up one and the sales assistant packs the same for him, there has resulted a contract of sale of goods by the conduct of the parties.

Distinguish between Sale and Agreement to Sell

The difference between sale and an agreement to sell depends upon the crucial point whether the property in goods has passed or is yet to pass from the seller to the buyer. Other points of difference between the two are as under:

1. **Transfer of property:**

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold.

In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled.

2. **Risk of loss:**

In a sale, if the goods are destroyed, the loss falls on the buyer even though they were in the possession of the seller. In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though they were in the possession of the buyer.

3. **Nature of contract:**

Sale is an executed contract while agreement to sell is an executory contract.

4. **Consequences of breach by buyer:**

In a sale, if the buyer fails to pay the price of the goods or if there is breach of contract by the buyer, the seller can sue for the price even though the goods are still in his possession. In agreement to sell, if there is a breach of contract by the buyer, the seller can only sue for damages and not for the price even though the goods are in the possession of the buyer.

5. **Right to re-sell:**

In a sale, the seller cannot re-sell the goods, except in certain cases, e.g., a sale by the seller in possession of goods after sale as provided under section 30, or a sale by an unpaid seller as provided under section 54. if he re-sells the goods, the subsequently buyer

will not acquire a title to the goods. In the agreement to sell, the buyer can only sue for damages.

6. **Insolvency of the seller:**

In a sale, if the seller is declared insolvent, the buyer is entitled to recover the goods from the official receiver or assignee as he (buyer) has the ownership of the goods sold. In an agreement to sell, the buyer who has paid the price cannot claim the title of goods from the seller, if he is declared insolvent. He can only claim a rateable dividend from the official receiver or assignee of the insolvent seller.

7. **Insolvency of the buyer:**

In a sale, if the buyer is declared insolvent before making the payment of the price for goods, the seller in the absence of lien over goods, will have to deliver the goods to the official receiver or assignee and can claim only the rateable dividend. The same will be the position, if the goods are in possession of the buyer. In an agreement to sell, if the buyer, who is declared insolvent, has not paid the price, the seller is not bound to deliver the goods, as the property in goods has not the passed to him.

8. **General or particular property:**

Sale gives the buyer jus-id-idem (right against a particular individual). The buyer becomes the absolute owner and can use the goods in the way he likes.

In the case of an agreement to sell, the buyer gets jus-in-personam (rights against a particular individual). In such a case, if default is committed, the aggrieved party may sue only for damages.

9. **Right to recover damages:**

In a sale, if the seller commits a breach, the buyer may compel the seller to deliver him the goods or pay the damages on the basis of difference the selling price and market price on the date of breach. In the case of an agreement to sell, the buyer, in case of breach committed by the seller, can sue for damages only; as the ownership in good has not been transferred to him, he cannot compel for delivery of goods.

10. **Performance:**

Performance of sale is absolute and without any condition; while in case of an agreement to sell, performance is conditional and is made in future.

GOODS AND THEIR CLASSIFICATION

Meaning of Goods

Section 6 of the sale of goods act states that goods are the subject matter of sale.

Section 2(7) of the said act defining the term "goods are that goods means every kind of movable property other than actionable claim and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of land which are agreed to be served before sale or under the contract of sale".

On classifying the above definitions of goods, it is clear that:

1. Actionable claims are not goods because such a claim can only be enforced by action in a court of law, e.g., a debt due by one person to another is an actionable claim, but it cannot be bought or sold as goods.

2. In the same way, money is not goods as money means current money and not old coins or paper money which can be sold or bought for collection purposes.

3. Growing crops and grass are goods because they can be served from land and can be sold and bought.

4. Forests are not goods, but forestry is goods as they are severed from the forests and can be sold and purchased. In the same way, trees are also goods.

Classification of Goods

Goods which form the subject-matter of contract of sale may be divided into three types namely:

1. Existing Goods:

Goods owned and possessed by the seller at the time of the making of the contract of sale are called existing goods. Sometimes, the seller may be in possession but may not be the owner of the goods. For example, in the case of sale by a mercantile agent or a pledge the goods are possessed but not owned by the seller. Where the existing goods are the subject –matter of a contract, it is essential that they must be in actual existence, for a present sale can be made only of a subject matter having actual or possible existence. Thus, for example: A sells his horse to B, believing it to be in existence but in fact the horse is dead, no contract will arise.

The existing goods can be further classified as under:

(I) Specific Goods.

(II) Ascertained Goods.

(III) Uncertainty Goods.

(I) Specific Goods:

"Specific goods are those goods which are identified and agreed upon at the time of contract of sale is made. It is essential that the goods are identified and separated from the other goods at the time of contract of sale is made and the goods merely in an identifiable position does not make the goods specific.

For Example:

In the case of sale of one horse out of 25 horses, goods shall be specific if the horse is selected before the contract of sale is made. Here it is important to note all the horses are horses but they cannot be exactly similar to each other. Therefore, it is essential to select the horse out of the lot as specific goods.

(II) Ascertained Goods:

Sometimes the terms specific goods and ascertained goods are used interchangeably. But actually they are not same and different in the sense that specific goods are identified at the time of contract of sale whereas ascertained goods are identified after the contract of sale as per the terms decided. It is important to note here that the goods are almost of exactly the same type and quality and the buyer is to select keeping in mind the defective prices only.

For Example:

If there is going to be sale of 25 chairs for an office out of a lot of 100 such chairs of the same design and quality, the goods are unascertained till 25 particular chairs are selected so that they are not defective in any way and are considered to be the best of the lot for the satisfaction of the buyer, though they are all best and equal in quality, from the point of view of the seller. When the required 25 chairs are selected out of the lot, the goods are said to be ascertained goods for the contract of sale.

(III) Unascertained Goods:

When the goods are not separately identified or ascertained at the time of making a contract of sale, are known as unascertained goods. When the buyer does not select the goods for him from a lot of goods, but are defined or indicated only by description, we call them unascertained goods. As soon as particular goods are separated from the lot they become ascertained goods.

In the example quoted in ascertained goods, the lot of 100 chairs is unascertained goods. When 25 chairs are selected or identified for purchase they become ascertained goods.

2. Future Goods:

Under section 2 (6), the goods which a seller does not possess at the time of the contract of sale, but will be manufactured, produced or acquired by him after making the contract of sale, is known as future goods. Under section 6(1) future goods may also be the subject matter of contract of sale.

Under section 6 (3), a contract of sale for future goods, though expressed as an actual sale, purports to operate as an agreement to sell the goods and not a sale. This provision corroborates the fact that the ownership of a thing cannot be transferred before it comes into existence, e.g., contract of sale to sell the crop in advance is a contract to sell and not a sale and, if A agrees to sell a sofa to B, the sofa is yet to be manufactured, it is a contract to sell.

3. Contingent Goods:

Under section 2, contingent goods are future goods. These are the goods, the acquisition of which by the seller depends upon a contingent even, which may or may not happen. Such goods may also be the subject matter of sale.

For Example:

X agrees with Y to sell him 100 quintals of wheat @ Rs.500 per quintal, provided there would be good rains and he would have a good crop. It is a contract to sell contingent goods.

Effect of Destruction of Goods:

Section 7 and 8 down the rules applicable to cases where the subject matter of a contract of sale is destroyed before and after the contract.

Goods perishing before making of contract:

Where there is a contract of sale of specific goods, the contract is void, if the goods, without the knowledge of the seller have at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract. If at the time of the contract, the goods agreed to be sold have ceased to exist, the agreement of sale is void and there is no sale.

For Example:

A agrees to sell to B, a specific cargo supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship carrying the cargo has been cast way and the goods lost. Neither party was aware of the facts. The agreement is void.

Goods perishing before Sale but after Agreement to sell:

Section 8 deals with the effect of perishing of specific goods before sale but after agreement to sell. Unlike section 7, it deals with a case where the goods are in existence at the time of making the contract but perish without the fault of either party before the risk has passed to the buyer. While under section 7, the contract is void ab initio, under the present section it not so, but performance on either side is excused as from the time of the perishing of the goods.

An agreement to sell specific goods becomes void if subsequently the goods without the fault of the seller or buyer have perished or become damaged as no longer to answer their description in the agreement, provided this happens before the risk has passed to the buyer.

3.3 THE PRICE

Price is an essential element of sale. Price means the money consideration for a sale of goods. No valid sale can take place without a price. If no consideration is given, then it will be a gift. It may be noted that old and rare coins are not included in the definition of the term money. The price constitutes the essence of a contract of sale as no sale can take place without a price. The price may be money actual paid or promised to be paid depending on whether the agreement is for cash or credit sale. However, where goods are sold for a fixed sum and the price is paid partly in terms of cash and partly in terms of valued goods it is a sale.

Modes of Fixing the Price

According to section 9, the price may be fixed by one or the other of the following modes:

It may be expressly fixed by the contract itself:

This is the most usual mode of fixing the price. The parties are free to fix any price they like and the court will not question as to the adequacy of price. But the sum should be definite. Where an alternative price is fixed, the agreement is void ab initio as it involves an element of wager [Broke V.Short, 1856].

It may be fixed in accordance with an agreed manner provided by the contract :
For example:
It may be agreed that the buyer would pay the market price prevailing on a particular day, or that the price is to be fixed by a third party (i.e., valuer) appointed by the consent of the parties. But in the following cases, where the agreement of the parties as to price is uncertain, price is deemed as not capable of being fixed and hence the agreement is void ab initio for uncertainty:

(a) If the price is agreed to be whatever sum the seller be offered by any third party; or

(b) If the price is left to be fixed by one of the contracting parties, expressly.

Remember that if no price is fixed then the contract is not void for uncertainty because in that case law usually allows market price prevailing on the date of supply of goods as the price bargained for.

It may be determined by the course of dealings between the parties:
For example:
If the buyer has been previously paying to a particular seller the price prevailing on the date of placing the order, the course of dealings suggest that in subsequent transactions also the price as on the date of order will be paid.

4. If the price is not capable of being determined in accordance with any of the above modes, the buyer is bound to pay to the seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case. Ordinarily, the market price of the goods prevailing on the date of supply is taken as reasonable price.

3.4 CONDITIONS AND WARRANTIES

Introduction

A contract of sale of goods contains various terms of stipulation regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place. But all of them are not of equal importance. Some of these stipulations may be major terms which go to the very root of the contract and their breach may frustrate the very purpose of the contract, while others may be minor terms which are not so vital that their breach may seem to be a breach of the contract as such. In law of sales major terms are called conditions and minor terms are called warranties.

From the terms of the contract it is necessary to distinguish mere statements of consideration or praise or expression of opinion made by the seller in reference to his goods. Such commendatory statements are neither conditions nor warranties. They do not form a part of the contract and as a result give no right of action. For example, where a horse dealer, while praising his horse, states that the horse is very lucky and one whosoever shall purchase it must very soon become a millionaire, his statement, being mere commendatory in nature, does not form a part of the contract and its breach (i.e., if the buyer of the horse does not actually become a millionaire later) does not give rise to any legal consequences.

Condition- Definition

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself [section 12(2)]. In addition, he may maintain an action for damages for loss suffered, if any, on the footing

that the whole contract is broken and the seller is guilty of non-delivery. [Millers Machinery Co. Ltd. Vs. David Way & Son, 1934].

Warranty-Definition

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved parity a right to sue for damages only, and not to void the contract itself[section 12(3)].

It will be seen that the above definition explain both the meaning and the legal effect of a condition and warranty. Accordingly, a condition forms the very basis of a contract of sale, the breach of which causes irreparable damage to the aggrieved party so as to entitle him even to repudiate the contract, whereas a warranty is only of secondary importance , the breach of which causes only such damage as can be compensated for the damages. In fact, a breach of condition is followed by the same consequence as the breach of a condition precedent in other contracts; namely, the innocent party has a right to rescind the contract, and claim damages.

There is no hard and fast rule as to which stipulation is a condition and which one is a warranty. Section 12(4) lays down to the same effect thus, "whether a stipulation in a contract of sale is a condition or warranty depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in a contract". Thus, the court is not to be guided by the terminology of the parties but has to look to the intention of the parties by referring to the terms of the contract, its construction and the surrounding circumstances to judge whether a stipulation was a condition or a warranty. The most suitable test to distinguish between the two terms is that if the stipulation is such that its breach would be fatal to the rights of the aggrieved party, then such a stipulation is only a warranty.

For example:

1. A man buys a particular horse which is warranted quiet to ride and drive. If the horse turns out to be vicious, the buyer's only remedy is to claim damages. But if instead of buying a particular horse, a man asks a dealer to supply him with a quiet horse and the dealer supplies him with a vicious one, the stipulation is a condition, and the buyer can return the horse and can also claim damages for the breach of contract [Hartley V. Hyman, 1920].

2. P goes to R, a horse dealer and says, "I want a horse which can runs at a speed of 30 miles per hour". The horse dealer points out a particular horse and says, "This will suit you". P buys the horse. Later on P finds that the horse can run only at a speed of 20 miles per hour. There is a breach of condition, P can repudiate the contract, return the horse to R and get back the price.

But if P says to R, "I want to good horse". R shows him a horse and says, "This is a good horse and finds later on that it can run at a speed of 20 miles per hour only, there is a breach of warranty because the stipulation made by the seller did not form the very basis of the contract and was only subsidiary one. Seller gave the assurance about the running speed of the horse of his own without being asked by the buyer. Hence, it is only of secondary importance.

The above illustrations are a clear proof of the fact that an exactly similar term may be a condition in one contract and a warranty in another depending upon the construction of the contract as a whole.

Condition and Warranties Distinguished

The difference between a condition and a warranty may be given below:

1. A condition is a stipulation which is essential to the main purpose of the contract whereas a warranty is a stipulation which is collateral to the main purpose of the contract [section 12(2) (3)].

2. The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages whereas the breach of warranty gives the aggrieved party a right to claim damages only.

3. A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

Express and Implied Condition and Warranties

In a contract of sale conditions and warranties may be express or implied. Express conditions and warranties are those which are entered in clear words in the contract. They are expressly provided in the contract of sale. Implied conditions and warranties are those, which the law incorporates into the contract unless the parties agree to the contrary. Implied conditions and warranties are enforced on the ground that the law presumes that the parties have incorporated them into their contract though they have not put them into it in express words. Thus, stipulations relating to title, merchantability, etc. are considered to be so important that they are treated as implied conditions and the stipulations relating to quiet possession and freedom from charges and encumbrances are treated as implied warranties. But, even though a condition or warranty may be implied by law, the implication may be negativated by an express agreement of the parties or by the usage of trade.

Implied Conditions

The implied conditions laid down under the act are as follows:

1. Condition as to title [Section 14(a)]:

In every contract of sale, the first implied condition on the part of the seller is that, in the case of a sale, he has the right to sell the goods and that, 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. Ordinarily, the seller has the right to sell the goods if either he is the owner of the goods or he is owner's agent. As a result of this condition, if the seller's title turns out to be defective the buyer is entitled to reject the goods and to recover his price. Notice that in the case of breach of condition as to title the buyer has no option to treat the breach of condition as breach of warranty and accept the goods and sue the seller for damages. In this case, he must return the goods to the true owner. He can of course recover the price from the seller because to total failure of condition.

For Example:

R purchased a motorcar from D and used the same for several months. D had no title to the car and therefore, R was compelled to return the car to the true owner. R sued D to recover back the price which he had already paid. He was held entitled to recover the whole of the price paid by him despite the fact that he had used the car for some months [Rowland V.Divall, 1923].

It may be noted that implied conditions as to title makes it obligatory upon the seller that he must not only be the owner but also must be able to uphold the validity of the contract. Thus, if the goods sold bear labels infringing the trade mark of another, the seller is guilty of breach of this condition although he had full ownership of the goods.

It may further be noted that where a seller having not title to the goods at the time of sale, subsequently acquires the tile (e.g., by paying off the true owner) before the buyer seeks to repudiate the contract, that title feeds the defective titles of both the original and subsequent buyers and it will then be too late for the buyer to repudiate the contract [Patten V.Thomas Motors, 1965].

2. In a 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" (section 15). Lord Blackburn pointed out that, "If you contract to sell peas, you cannot oblige a party to take beans. If the description of the article tendered is different in any respect, if is not the article bargained for and the other party is not bound to take it". It is important that the goods must correspond with the description whether it is a sale of specific goods or of unascertained goods. Further, the fact that the buyer has examined the goods will not affect his right to reject the goods, if the deviation of the goods from the description is such which could not have been discovered by casual examination, i.e., if the goods show any latent defects.

The description may be in terms of the qualities or characteristics of the goods .e .g. long staple cotton, kalian wheat, sugar C-30, basmati rice or may simply mention the trade mark, brand name or the type of packing, etc.

For Example:

Where there was a contract for the supply of new singer cars and one of the cars supplied having already run a consideration mileage was not new, there was a breach of condition on the part of the seller and the buyer was held entitled to reject the car[Andrews Bros.V.Singer & Co.,1934].

2. In a sale by sample[section 17]:

When under a contract of sale, goods are to be supplied according to a sample agreed upon, the implied conditions are:

(i) That the bulk shall correspond with the sample in quality;

(ii) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(iii) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. In other words, there should not be any defect in the goods. If the defect is patent one, that is, easily discoverable by the ordinary care, and the buyer takes delivery after inspection, there is no breach of implied condition and the buyer has no remedy.

For Example:

Two parcels of wheat were sold by sample. The buyer went to examine the bulk a week after. One parcel was shown to him but the seller refused to show the other parcel which are not there in the warehouse. Held, the buyer was entitled to rescind the contract [Lorymer V.Smith, 1822].

3. In a sale by sample as well as by description[section 15]:

When goods are sold by sample as well as by description, there is no implied condition that the bulk of the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description or vice-versa, the buyer is entitled to reject the goods. The bulk of the goods must correspond with both.

For Example:

W agreed to sell G some oil described as ‘foreign refined oil’ warranted only equal to sample. The oil supplied, though corresponds with the sample, and was adulterated with

hemp oil. Held, that since the oil supplied was not in correspondence with the description the buyer was entitled to reject the sample [Nichol Vs. Gods, 1854].

4. Condition as to fitness or quality [section 16(1)]:

Ordinarily, in a contract of sale, there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied; the rule of law being 'caveat emptor', which is, let the buyer, be aware. But an implied condition is deemed to exist on the part of the seller that the goods supplied shall reasonably fit for the purpose for which the buyer wants them, if the following conditions are satisfied:

(i) The buyer, expressly or impliedly, should make known to the seller the particular purpose for which the goods are required; and

(ii) The buyer should rely on the seller's skill or judgement; and

(iii) The goods sold must be of a description which the seller deals in the ordinary course of his business, whether, he is the manufacturer or not.

The purpose must be made known expressly if the goods to be supplied can be used for several purposes, otherwise the condition as to fitness will not be implied and the buyer will have no right to reject the goods merely because they are unfit for the specific purpose he had in mind.

For Example:

A buyer ordered for the Hessian cloth, which is generally used for packing purposes, without specifying the purpose for which he wanted the same. The cloth was supplied accordingly. On receiving the cloth the buyer found that it was not suitable for packing food products as it had an unusual smell. Held, that the buyer had no right to reject the cloth as it was suitable for packing purposes alright. The buyer ought to have disclosed his particular purpose to the seller in order to make him liable for the breach of implied condition as to fitness.

The purpose need not be told expressly if the goods are fit for one particular purpose only or if the nature of the goods itself tells the purpose by implication. In such cases, the purpose is deemed to be made known to the seller impliedly.

For Example:

Where a buyer demands tinned fruit juice, it is implied from the nature of the product itself that he wants it for consumption and if later on it is found to contain poisonous matter, there is a breach of implied condition as to fitness and the seller is liable in damages.

Sometimes the implied purpose may also be gathered from usage of the trade e.g., Mobil oil for scooter implies 'two T's Mobil oil'.

It is important that the implied condition as to fitness applies only in the case of sale of goods to a normal buyer. If the buyer is suffering from abnormality, and it is not made known to the seller at the time of sale, this condition does not apply.

6. Condition as to merchantability [section 16(2)]:

This condition is implied only where the sale is by description. We have already seen that there is an implied condition in such cases, as per section 15, that the goods should correspond with the description. This sub-section lays down another implied condition in such cases, that is, that the goods should be of 'merchantable quality'. But for making this condition applicable, not only that the sale must be by description, but the following conditions must also be satisfied:

(i) The seller should be a dealer in goods of that description, whether he be the manufacturer or not; and

(ii) The buyer must not have any opportunity of examining the goods; there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.

If the buyer had an opportunity of making the examination but he avoids to examine, or if he has examined the goods, there is no implied condition as to merchantability as regards defects which such examination ought to have revealed [Proviso to section 16(2)].

The phrase 'merchantability quality' means that the goods are of such quality and in such condition that a reasonable man, acting reasonably, would accept them under the circumstances of the case in performance of his offer to buy those goods, whether he buys them for his own use or to sell again.

For Example:

Where the underwear supplied contained certain chemicals which could cause skin disease to a person wearing them next to skin it was held that because of such a defect the underwear's were not of merchantable quality and buyer was entitled to reject the goods.

7. Condition as to wholesomeness:

This condition is implied only in a contract of sale of eatables and provisions. In such cases the goods supplied must not only answer to description and he merchantable but must also be wholesome.

For Example:

W bought a bottle of beer from H, a dealer in wines. The beer was contaminated with arsenic. W, on taking the beer, fell ill. H was held liable to W from the consequent illness [Wren Vs.Halt, 1903].

Implied Warranties

Unless otherwise agreed, the law incorporates into a contract of sale of goods the following implied warranties:

1. Warranty of quiet possession [section 14(b)] :

In every contract of sale, the first implied warranty on the part of the seller is that "the buyer shall have and enjoy quiet possession of the goods". If the quiet possession of the buyer is in any way disturbed by a person having a superior right than that of the seller, the buyer can claim damages from the seller. Since disturbance of quiet possession is likely to arise only where the seller's title to goods is defective, this warranty may be regarded as an extension of the implied condition of title provided for by section 14(a). Infact, the two clauses of the section 14(a) & (b) are overlapping and it is not easy to see what additional rights this warranty confers on the buyer over and above those conferred by the implied condition as to title contained in section 14(a).

For Example:

The plaintiff, a lady, purchased a second hand typewriter from the defendant. She thereafter spent some money on its repair and used it for some months. Unknown to the parties the typewriter was a stolen one and the plaintiff was compelled to return the same to the true owner. She was held entitled to recover from the sellers for the breach of this warranty damages reflecting not merely the price paid but also the cost of repair [Mason Vs. Burmingham, 1949].

2. Warranty of freedom from encumbrances [section 14(c)]:

The second implied warranty on the part of the seller is that "the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made". If the goods are afterwards found to be subject to a charge and the buyer has to discharge the same, there is breach of warranty and the buyer is entitled to damages. It is to be emphasized that the breach of this warranty occurs only when the buyer in fact discharges the amount of the encumbrances, and he had no notice of that at the time of the contract of sale. If the buyer knows about the encumbrances on the goods at the time of entering into the contract, he becomes bound by the same and he is not entitled to claim compensation from the seller for discharging the same.

For Example:

A, the owner of the watch, pledges it with B.After a week, A obtains possession of the watch from B for some limited purpose and sells it to C. B approaches C and tells him about the pledge affair. C has to make payment of the pledge amount to B. There is a breach of this warranty and C is entitled to claim compensation from A.

3. Warranty of disclosing the dangerous nature of the goods to the ignorant buyer:

The third implied warranty on the part of the seller is that in case the goods sold are of dangerous nature he will warn the ignorant buyer of the probable danger. If there is breach of this warranty this buyer is entitled to claim compensation for the injury caused to him. Romar L.J. observed, "I think that, apart from any question of warranty, there is a duty cast upon a vendor, who knows of the dangerous character of the goods which he is supplying, and also knows that the purchaser is not, or may not be, aware of it, not to supply the goods without giving some warning to the purchaser of that danger".

For Example:

C purchases a tin of disinfectant powder from A. A knows that the lid of the tin is defective and if it is opened without special care, it may be dangerous. But tells nothing to C, C opens the tin in the normal way whereupon the disinfectant powder flies into her eyes and causes injury. A is liable in damages to C as he should have warned C of the probable danger

UNPAID SELLER AND HIS RIGHTS

Unpaid seller – Definition

Section 45 lays down that a seller is unpaid –

(i) When the whole of the price has not been paid or tendered.

(ii) When a negotiable instrument or a bill of exchange has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of dishonour of the instrument or otherwise.

The seller remains an unpaid seller so long as any portion of the price however small, remains unpaid. Where the whole of the price has been tendered, and the seller refused to accept such a tender, seller ceases to be an unpaid seller. In such a case the seller loses all his rights against the goods.

If there is period of credit, then the seller is not unpaid until the price becomes due. Again, if there is a condition attached to payment it must be fulfilled.

Rights of an Unpaid Seller

The sale of goods act has expressly given two kinds of rights to an unpaid seller of goods, namely:

1. Against the goods:

a) When the property in the goods has passed

i) Right of lien

ii) Right of stoppage of goods in transit

iii) Right of re-sale

These rights of an unpaid seller do not depend upon any agreement, express or implied between the parties. They arise by the implication of law.

b) When property in goods has not passed

i) Right of with holding delivery.

2. Right against the buyer personally

i) Right to sue for price.

ii) Right to sue for damages

iii) Right to sue for interest.

Rights of Unpaid Seller Against the Goods

Right of lien [section 47-49]:

Lien is the right to retain possession of goods until payment in respect of them is paid. Section 47 (1) describes the circumstances in which an unpaid seller may exercise his

right of lien. The unpaid seller of goods, who is in possession of them, can retain possession until payment or tender of the price in the following cases, namely:

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

The right of lien is linked with possession and not with title. It is essentially a right over the property of another person. The unpaid seller's lien can be exercised only so long as the goods are in the actual possession of the seller or his agent. Once the possession is lost, the lien is also lost.

For example:

A sold certain shares to B. The relative share certificates' and transfer forms duly signed were handed over by the seller to the buyer against payment of price by cheque. The buyer became insolvent. It was held by the Privy Council that the seller had no lien on shares because his lien ceased when he parted with possession [Bharuchs Vs.Wadihah].

The right of lien is indivisible in nature and so the buyer is not entitled to claim delivery of a portion of the goods on payment of a proportionate price. Further, this right is available even after part delivery of the goods has been made, unless such part delivery is made under such circumstances as to show an agreement to waive the lien [section 48].

For Example:

A sells to B a certain quantity of sugar. It is agreed that three months credit shall be given. B allows the sugar to retain in A's warehouse till the expiry of the three months and then does not pay for them. A may retain the goods for price.

Right of stoppage in transit [section 50-52]

The second important right which is available to an unpaid seller is the right of stoppage is transit. The right of stoppage means the right to stop further transit of the goods, to resume possession thereof and to retain the same till the price is paid. The right can be exercised under the following circumstances:

a) The seller must be unpaid.
b) The seller must have parted with the possession of the goods and the buyer must not have acquired it.

c) The buyer must be insolvent.

d) The property must have passed from the seller to the buyer

The right of stoppage in transit arises only after the seller has parted with possession of the goods and the buyer has become insolvent. This right is only available when the goods are neither in the possession of the seller nor that of the buyer, but are in the possession of a middleman for the purpose of transmission to the buyer.

For Example:

B, who had bought goods from M/s Clark & Co. of Glasgow, instructed the seller to send the goods by a certain named ship to Melbourne. Goods were first railed to London and then shipped to Melbourne, a mate's receipt being sent to buyers, but it was too late. They then gave fresh notice to the ship owners claiming back the goods before the ship arrived at Melbourne. One arrival there, the receiver in bankruptcy of B demanded the bills of lading from the master. Held, that goods having been effectively stopped in transit, the trustee could not claim them [Bahell Vs. Clark].

Duration of transit:

Since the right of stoppage in transit can be validity exercised only during transit, the question of duration of transit is of great importance. Goods are deemed to be in transit from the time they are delivered to be a carrier or other bailee for the purpose of transmission to have buyer until the buyer or his agent takes delivery thereof.

The transit comes to an end in the following cases:

a) If the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.

b) If after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds them on his behalf.

c) In case, the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.

How right of stoppage in transit is exercised:

The unpaid seller may exercise the right of stoppage in transit:

(1) by actually taking possession of the goods; or

(2) by giving notice of his claim to the carrier or other bailee in whose possession are the goods

Right of re-sale [section 54]

In addition to the right of lien and stoppage in transit, the unpaid seller has got the valuable right of re-sale of the goods, which are the subject – matter of the contract. This limited right of re-sale is conferred by the section 54 which also enumerates the circumstances under which the right of re-sale may be exercised. The right may be exercised in the following cases:

a) Where the goods are of a perishable nature. In this case, the unpaid seller need not give a notice to the buyer of his intention to resell the goods.

b) Where the unpaid seller has exercised his right of lien or stoppage in transit, he can give notice to the buyer of his intention to resell the goods.

c) Where the seller has expressly reserved a right of resale, in case the buyer makes default. In such a case, on resale though the original contract of sale is thereby rescinded, the unpaid seller does not lose his right to claim damages for breach of the contract.

Right of withholding delivery:

Where the property in the goods has not passed to the buyer, the unpaid seller has in addition to other remedies against the buyer personally, a right of withholding delivery of goods which are the subject – matter of the contract. This right is similar to and co-existence with his right of lien and stoppage in transit. This right can be exercised even if the sale was on credit or that the goods were specific or unascertained.

Right of unpaid seller against the buyer personally

In addition to his rights against the goods, an unpaid seller has the following rights against the buyer personally.

(i) Suit for Price (section 55):

Where under a contract of sale, the property in the goods has passed to the buyer and the goods have actually come into his possession, the unpaid seller's only remedy is a suit for the price.

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 the price, the seller may institute a suit for the recovery of the same, although the property in the goods may not have passed.

(ii) Suit for damages for non-acceptance [section 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. The measure of damage is determined by the rules contained in sections 73 and 74 of the Indian contract act.

(iii) Suit for interest (section 61):

Where under a contract of sale, the seller tenders the goods to the buyer and the buyer wrongfully refuses to accept and pay for them, the court may award interest on the price from the date of the tender of the goods or from the date when the price is payable.