

Department of Commerce (CA)

Semester : 3

BUSINESS LAW

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II B.Com. (CA)

UNIT V

Law of sale of goods - Distinction between sale and agreement to sell - Conditions and Warranties to sell - Express and Implied conditions and warranties - Transfer of ownership - Transfer of title by non-owners - Performance of contract of sale - Rights and duties of buyer - Rights of an unpaid seller.

REFERENCE BOOK

BUSINESS LAW

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UNIT 5

SALE OF GOODS, 1930

Meaning of Sale of goods

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

Essentials of Contract of Sale

1. Two Parties - Buyer and Seller
2. Goods
3. Price
4. Transfer of general property
5. Essential elements of a valid contract

Types of goods

1. Existing goods
 - a) specific goods
 - b) Ascertained goods
 - c) Unascertained goods
2. Future goods
3. Contingent goods

Earnest

It is the tangible thing or money paid in advance to the seller for the due performance of the contract. If the contract is performed the earnest is returned or if it is in the form of money it is adjusted against purchase price.

Sale and agreement to sell—distinction

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. In this sense, a sale is an executed contract and an agreement to sell is an executory contract.

2. Type of goods. A sale can only be in case of existing and specific goods only. An agreement to sell is mostly in case of future and contingent goods although in some cases it may refer to unascertained existing goods.

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

4. Consequences of breach. In a sale, if the buyer fails to pay the price of the goods or if there is a breach of contract by the buyer, the seller can sue for the price even though the goods are still in his possession. In an 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, as for example, a sale by a seller in possession after sale under Sec. 30, or a sale by an unpaid seller under Sec. 54). If he does so the subsequent buyer does not acquire title to the goods. In an agreement to sell, in case of re-sale, the buyer, who takes the goods for consideration and without notice of the prior agreement, gets a good title. In such a case, the original buyer can only sue the seller for damages.

6. General and particular property. A sale is a contract plus conveyance, and creates *jus in rem*, i.e., gives right to the buyer to enjoy the goods as against the world at large including the seller. An agreement to sell is merely a contract, pure and simple, and creates *jus in personam*, i.e., gives a right to the buyer against the seller to sue for damages.

7. Insolvency of buyer. In a sale, if the buyer becomes insolvent before he pays for the goods, the seller, in the absence of a lien over the goods, must return them to the Official Receiver or Assignee. He can only claim a rateable dividend for the price of the goods. In an agreement to sell, if the buyer becomes insolvent and has not yet paid the price, the seller is not bound to part with the goods until he is paid for.

8. Insolvency of seller. In a sale, if the seller becomes insolvent, the buyer, being the owner, is entitled to recover the goods from the Official Receiver or Assignee. In an agreement to sell, if the buyer, who has paid the price, finds that the seller has become insolvent, he can only claim a rateable dividend and not the goods because property in them has not yet passed to him.

CONDITIONS AND WARRANTIES

Condition

It is a stipulation which is essential to the main purpose of the contract

Warranty

It is a stipulation which is collateral to the main purpose of the contract

Differences between conditions and warranties

1. Difference as to value
2. Difference as to price
3. Difference as to treatment

Express and Implied Condition and Warranty

Express conditions

It the stipulations are given orally or in written form that is express condition

Implied Condition

1. Condition as to title
2. Sale by description
 - a) where the buyer has not seen the goods
 - b) where the buyer has seen the goods but relies on description
 - c) Packing of the goods
3. Conditions as to quality or fitness
4. Conditions as to merchantability

5. Conditions implied by Custom
6. Sale by Sample
7. Condition as to wholesomeness

Implied Warranties

1. Warranty of quiet possession
2. Warranty of freedom from encumbrances
3. Warranty as to quality by usage of trade
4. Warranty to disclose dangerous nature of goods

CAVEAT EMPTOR

Meaning : Let the buyer beware

It means when the buyer buys goods, he must examine them thoroughly

Exceptions to the rule of Caveat Emptor

1. Fitness for buyer's purpose
2. Sale under a patent or trade name
3. Merchantable Quality
4. Usage of trade
5. Consent by fraud

Transfer of Property

It means transfer of ownership from seller to buyer

When property is transferred

- 1) Risk follows ownership
- 2) Action against third parties
- 3) Insolvency of the seller or the buyer
- 4) Suit for price

Sale by non-owners

1. Sale by a person not the owner or title by estoppel
2. Sale by a mercantile agent
3. Sale by one of several joint owners
4. Sale by a person in possession under a voidable contract
5. Sale by a seller in possession after sale
6. Sale by a buyer in possession after having bought or agreed to buy goods
7. Sale by an unpaid seller

PERFORMANCE OF CONTRACT

Meaning

As regards seller - delivery of goods to the buyer

As regards buyer - acceptance of the delivery of goods

Types of delivery

a) Actual delivery - where the goods are physically handed over by the seller to buyer

b) Symbolic delivery - where the key of the warehouse is handed over by the seller to the buyer where goods are bulky.

c) Constructive delivery or delivery by attornment where a third party who is in possession of the goods of the seller at the time of the sale acknowledges that he holds the goods on his behalf is known as constructive delivery.

Rules as to delivery of goods

1. Mode of delivery
2. Delivery and payment concurrent condition
3. Effect of part delivery
4. Buyer to apply for delivery
5. Place of delivery
6. Time of delivery

7. Goods in possession of a third party
8. Cost of delivery
9. Delivery of wrong quantity [less or excess]
10. Delivery of goods mixed with other goods
11. Instalment delivery
12. Delivery to a carrier

Rights of buyer

1. Right to have delivery as per Contract
2. Right to reject the goods
3. Right to cancel the order
4. Right to examine
5. Right against breach of Contract
 - a) Suit for damages
 - b) Suit for price
 - c) Suit for specific performance
 - d) Suit for breach of warranty
 - e) cancel the contract before due date
 - b) Suit for interest

Duties of buyer

1. Duty to accept the goods
2. Duty to pay
3. Duty to apply for delivery

4. Duty to accept instalment delivery
5. Duty to take risk of deterioration in the course of transit.
6. Duty to intimate the seller where he rejects the goods
7. Duty to take delivery
8. Duty to pay price
9. Duty to pay damages for non-acceptance



'Seller' here means not only the actual seller, but also any person who is in the position of a seller, e.g., an agent of the seller to whom a bill of lading has been endorsed, or a consignee or agent who has himself paid for the goods or is directly responsible for the price [Sec. 45 (2)].

RIGHTS OF AN UNPAID SELLER

