



## **AN ANALYSIS OF SALE OF GOODS ACT, 1930**

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### **ABSTRACT**

When it comes to virtually any kind of business, the sale or purchase of products is the most often occurring transaction. Businesses become engaged in the selling and acquisition of products from time to time, and contracts of sale are entered into by businesspeople. These agreements are regulated by the Sale of Goods Act, which was passed in 1930. Thorough knowledge of the keywords in the Sale of Goods Act, 1930, is essential for everyone, whether they are legal professionals or just everyday people who deal with purchases on a daily basis. In this essay, we will go over some of the more common, but still essential, words found in the Sale of Goods Act, 1930. According to the Sale of Goods Act, 1930, “a contract for the sale of products is a contract in which the seller transfers or agrees to transfer the ownership of goods to the buyer in exchange for a fee. In legal terms, a contract of sale refers to both a sale and an agreement to sell, and it may refer to either.” This article gives a short read to get a better understanding of the terms and conditions associated with the selling of products.

**Keywords:** Sale, Goods, Conditions, Warranties.

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### **INTRODUCTION**

On 1<sup>st</sup> July 1930, the Sale of Goods Act of 1930<sup>1</sup> came into effect in India. The Sale of Goods Act is a specific contract which deals with the relation of a seller and buyer, who sell and buy goods respectively. The contract was originally present in chapter 7 under section 76 to section 123 of the Indian Contract Act 1872<sup>2</sup>. As in the contemporary world, the contracts of selling and buying goods have become a lot more complex and complicated thus there was a need for a separate act which was finally released in the year 1930.

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<sup>1</sup> The Sale of Goods Act, 1930 (Act 3 of 1930).

<sup>2</sup> The Indian Contract Act, 1872 (Act 9 of 1872).

The Sale of Goods is a very crucial affair which we do in our everyday life. From buying essential commodities to properties all come under the scope of sales. It plays a significant role in our lives. The Sale of Goods Act deals with only movable property for example cars, grains, fridge television, or any other thing which comes under the scope of section 7 of the Sale of Goods Act, provided they are of Merchantable quality and in a deliverable state. To deal with immovable property we have the Transfer of Property Act.<sup>3</sup>

When we talk about the meaning of sale then it is given under section 4 of the Sale of Goods Act which implies, it is a contract where there is a seller who with his free consent agrees to transfer the ownership and possession of his good to the buyer who is willing to pay a price (this acts as the consideration) for the same goods. The crucial element to notice here is that there must be a minimum of 2 parties to the contract which comprises a seller and buyer. This impliedly means a person who is the owner of the good even though does not have possession cannot buy his goods. Now, these goods can be either be goods that are in existence or goods which have yet not been produced (also called future goods).

The Sale of Goods is a very regular affair which everyone goes through and since it plays such a decisive role in our lives then there is always a need to protect buyers or sellers who deal in good faith with the other party. In this paper, the author will be covering the critical point on what is the stipulation that when breached causes repudiation and when only damages are granted. Another crucial aspect that will be covered is who can transfer a good title, what rights are granted to an unpaid seller, and finally what suits can be brought when a breach is committed against the buyer or a seller.

## **CONDITIONS AND WARRANTIES**

When there is a contract of Sale of Goods then there must be two kinds of stipulations one is Condition and the other one is warranty. Whenever a good is bought there is a basic purpose for the same. Some people buy goods because of their colour, some people buy for a specific purpose and that special reason which makes a buyer buy the goods from that seller makes “the reason” a condition. For instance, if a person goes and buys bathroom tiles of a specific colour and later on there is a breach of the same, as the tiles turn out to be of a different colour then it is a breach of condition. This breach of condition leads to repudiation or cancellation of that contract. But here there is a condition that if the buyer accepts the goods under section 42 of the Sale of Goods Act,

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<sup>3</sup> The Transfer of Property Act, 1882 (Act 4 of 1882).

then the contract cannot be repudiated only damages can be claimed for the same. This will turn the condition into a warranty.

Warranty is also a stipulation that comes additionally with the condition. The warranty does not include the basic purpose for buying the goods like “condition” but it includes the additional purpose for which the goods are bought. This means if a buyer wants to buy a fridge of blue colour, then the blue colour is the condition whereas the cooling effect of the fridge comes under warranty. Thus, warranty is something though essential yet not the main purpose for the Sale of Goods. The breach of warranty only makes the seller liable for damages and there is no right to repudiate the contract.

Now for a contract, there can be express conditions and warranties which are written in the contract directly but on the other hand, we also have some implied conditions under Sale of Goods which mean that even though they are not directly written in the contract but they are still applied by law. This is done so because there can be times when the Sale of Goods is done haphazardly and hastily thus all the crucial elements which include condition and warranty of the contract are missed or not covered thus these are those statutory stipulations that always apply until and unless the contract has anything contrary.

## **IMPLIED CONDITIONS**

One of the most important purposes to buy a good is to get its ownership and thus it acts as one of the most important implied conditions which means that the seller has to give a good title to the buyer.<sup>4</sup> And this right should apply to the world, this implies that no limitations or boundaries are attached to it. When we move forward, another important implied condition may come into the picture, when the seller sells the goods based on his words or description or by showing a sample of the bulk of goods to be sold. For example, if the seller sells the mixer grinder on the description that the good is efficient for grinding all spices but it turns unfit for turmeric then the buyer has the right to reject the goods and subsequently reject the contract. Also, if the sample matches with the bulk but the bulk do not match with the description then also the buyer has the right to repudiate the contract.

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<sup>4</sup> Anubhav Pandey, 'Implied Conditions And Warranties Under The Sale Of Goods Act - Ipleaders' (*iPleaders*, 2021) <https://blog.ipleaders.in/implied-conditions-and-warranties-under-the-sale-of-goods-act/> accessed 1 August 2021.

Now coming on to the last implied condition which is based on the concept of caveat emptor<sup>5</sup> where we see that there are certain exceptions to the general rule which acts as the implied condition. As a part of the general rule caveat emptor (which means the buyer should know what he is buying) holds valid everywhere and there are no conditions or warranties attached to the fitness or quality of goods but there are certain exceptions to the rule. This is done to save the buyer from losses when he acts innocently and depends on the advice of the seller. The 2 exceptions are first if the buyer has told his prominent motive behind buying the good and he believes on the skills of the seller who sells those goods as a regular course of business then if there is any problem found in the goods as to the condition which makes the seller unable to use that commodity, then the contract can be repudiated. The second exception is attached to it when the goods are bought based on recommendations and praises (description) of the good which the seller is selling regularly and the goods are found defective or of unmerchantable quality then also the contract can be set aside in the case of any breach.

### **IMPLIED WARRANTY**

These are the stipulations that are brought directly by law and even if they are not mentioned directly in the contract, they still hold valid until there is something contrary in the contract. One of the essential conditions in the Sale of Goods Act is to have ownership of goods. Along with ownership, another thing which is crucial in the sale is to get possession of goods. This comes under implied warranty and if the buyer does not get the possession, then the seller will have to pay for all the damages incurred to the buyer because of the delay. Now when a buyer buys a good, he would always want it free from any burden of loan or debt thus another implied warranty comes into the picture that the goods should be ideally free from any load and even if there is any burden on the movable property then it is the responsibility of the seller to make the buyer aware about the same fully. Thus, this also acts as a major implied warranty.

### **TRANSFER OF TITLE BY A PERSON OTHER THAN THE OWNER**

As a general rule is based on the maxim "*Nemo Dat Quad Non-Habet*" holds valid this means only a true owner can pass a good title to the buyer and no one else. But what happens when the goods are sold by the non-owner to an innocent buyer. Because this kind of sale is allowed then it is unfair for the real owners and if not allowed then it would be an injustice for the buyer. Thus, there are certain exceptions given to relax this strict rule. The first exception comes into the picture

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<sup>5</sup> 'Caveat Emptor (Buyer Beware) - Definition, Examples, Uses' (*Corporate Finance Institute*, 2021) <https://corporatefinanceinstitute.com/resources/knowledge/other/caveat-emptor-buyer-beware/> accessed 1 August 2021.

when the owner himself does not deny the authority of the seller at the time of the contract. For instance, if Mr. X is the real owner and Mr. Y in his presence only sells Mr. X's car to Ms. Z and Mr. X doesn't show any objection of any kind then, later on, he cannot repudiate the contract. Another area when the sale of a movable good is held valid is when it is done by a Mercantile Agent<sup>6</sup> of the seller but there are certain conditions attached to the exceptions which are firstly the agent should have the possession of the goods with the owner's consent and he should have sold the goods in the capacity of a mercantile agent and finally on the part of the buyer should buy the goods in good faith and he should have no knowledge that the seller is not the real owner of the goods or he has no authority to sell the goods. Another exception comes into light when there are many owners of one commodity and one of the owners sells it without the consent of all joint owners thus then in this if the buyer acts in good faith and has no notice of non-ownership then the contract of sale is held valid.

The next exception comes when there is a voidable contract.<sup>7</sup> This means it is on the party other than the person who committed a wrongful act to decide whether they want to continue the contract or repudiate it. These include a contract that is made without free consent such as coercion, fraud, misrepresentations, etc. If the sale is made from the good which is brought into possession by these voidable contracts, then the sale is held valid only if by the time the sale is made the wrongful act has not been detected or questioned and the buyer has no notice of the same. Next comes the situation when the seller has sold the goods yet he has the possession then if he sells to an innocent purchaser, it is held valid just like it is given to the real owner. The final and last exception is when though the sale has not been completed the buyer gets possession of the goods thus when this good is sold to a purchaser who buys it in good faith then the new buyer in this case gets the ownership without any hindrance from the real owner this means that the seller cannot exercise his rights or lien on the goods.

## **UNPAID SELLER**

The general rule in any contract of sale of goods is that the seller must sell his goods when he has freely consented to do so and the buyer has the role to accept the goods and give the amount for the delivered goods. Now if anyone fails to adhere to this general duty then he can be made liable for the consequences. Now the question arises, who is an "unpaid seller"? This is defined under section 45 of the Sale of Goods Act, an unpaid seller is anyone who has not been paid for the

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<sup>6</sup> 'Mercantile Agent' (*Oxford Reference*, 2021)

<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100150837> accessed 1 August 2021.

<sup>7</sup> Avtar Singh, *Law of Contract & Specific Relief* (12<sup>th</sup> edn, EBC Explorer 2017).

goods he sold whether it is the whole amount or partial amount and if there is a conditional payment then it has not been satisfied.

## **RIGHTS OF THE UNPAID SELLER**

Under the Sales of Goods Act, if the seller is unpaid then irrespective of the fact that whether the goods are received by the seller or not the buyer has few rights like the right of lien ( this means he can restrict the goods until he gets paid provided he has the possession of the goods) another right which the unpaid seller gets is of stoppage in transit (this means that if the possession is with the carrier or agent then the seller can ask them to bring his goods back this generally happens in case of the insolvent buyer) and last right awarded to the seller is right to resell, this means after a proper reasonable time, the seller can again sell his goods with proper notice to the buyer.

## **REMEDIES FOR BREACH**

### **a. When the buyer defaults in doing his general duty –**

As the general duty, the buyer must accept the contracted goods and pay the amount for the delivered goods.<sup>8</sup> This may happen in two ways, firstly when the buyer refuses to give the price for the delivered goods and secondly when the buyer refuses to take the goods which were contracted to sell to him. Thus, we have two remedies for the above two circumstances. Firstly, suit for price when the seller is unpaid and the other, damages for non-performance that is when the buyer refuses to take the goods and subsequently because of buyer and seller faces several losses because of that.

### **b. When the seller defaults in doing his general duty –**

As the general duty of the seller is to sell the goods which he has contracted for. But now if he refuses to sell his goods after making the contract and then the buyer may suffer from losses. In that case, there are certain remedies given to the buyer to restore his position which was before the contract. So, these include 3 rights, under 3 different circumstances, firstly, when the seller does not deliver the goods on time then the buyer can ask for damages for non-delivery. Another remedy is when the buyer wants the goods instead of damages then he can ask for specific performance. Finally, the last remedy for the breach is a breach of warranty.<sup>9</sup>

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<sup>8</sup> 'Sale Of Goods Act' (Nslegislature.ca, 2021) <https://nslegislature.ca/sites/default/files/legc/statutes/salegood.htm> accessed 1 August 2021.

<sup>9</sup> (Law.uok.edu.in, 2021) [http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/unpaid\\_seller\\_and\\_his\\_rights.pdf](http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/unpaid_seller_and_his_rights.pdf) accessed 1 August 2021.

## **ADVANTAGES OF SALE OF GOODS ACT**

This is an efficient way to develop a well-coordinated bilateral relation between the seller and the buyer. This act has a clear demarcation about the rights and liabilities of a seller or a buyer. The main goal is to have a well-established and proper method to have a transaction without any chaos and confusion. This helps the seller and the buyer in times when they act innocently but the other party has wrongfully cheated. It is an efficient tool to have a legally binding contract of sale with the interested party.

## **CONCLUSION**

The sale of goods, in my perspective, plays an extremely important role in our daily life activities. We enter into this kind of contract regularly, even from bringing the minutest commodity it is considered under sale because someone sell's it and the other receives it for some consideration in the form of price. This is a major activity that becomes successful when the parties to the contract complete their roles efficiently. This clarity makes the job of selling and buying goods a lot easier. Therefore, in today's contemporary world, the Sale of Goods plays a significant role and it is one of the major factors which enable us to have cordial relations with each other.<sup>10</sup>

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<sup>10</sup> (Ncert.nic.in, 2021) <https://ncert.nic.in/ncerts/1/lebs211.pdf> accessed 2 August 2021.