



## SALES OF GOODS ACT, 1930

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### Introduction:<sup>1</sup>

We are living in a global village. Both the activities of trade and commerce cross the boundaries of the nations. We cannot adopt a single law that will be applicable on the terms of business. Though the principles relating to sale of goods are so connected with law of contract, law of negotiable instruments, law of insurance, law of carriage of goods (i.e., sea, air, land) do not covers all other aspects in this Act.

The Sales of Goods Act, 1930 governs the contracts relating to the sale of goods. It applies to the whole of India except the state of Jammu and Kashmir. This law was earlier dealt by the Indian Contract Act, 1872. It is a Mercantile Law, came into picture on 1st July, 1930. In 1930, sections 76-123 of Indian Contract Act was repealed and a separate Act known as Sales of Goods Act, 1930 was passed.

The term “contract for sale” includes:  
Sale and Agreement to Sale (Section 4)<sup>1</sup>

1. The 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.
2. A contract of sale may be absolute or conditional.

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 property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.
4. An agreement to sell becomes a sale when the time elapses; all the conditions are fulfilled subject to which the property in the goods is to be transferred.

### Examples:

1. A agrees to buy a haystack from B on B's land with liberty to come on B's land to take it away. This is a sale and B cannot revoke the license given to A to woo on his land. (**Wood Vs Manley 1839**)<sup>2</sup>

2. Agreement by A to buy 20 tonnes of oil from the seller's cisterns. The seller has many cisterns, with more than 20 tonnes in them. This is merely an agreement to sale. (**White Vs Wilks, 1813**)<sup>3</sup>

3. Agreement for sale of a quantity of nitrate of soda to arrive at a certain ship. This is an agreement to sell at a future date subject to the double condition of the arrival of the ship with the specified cargo on board. (**Johnson Vs Macdonald 1842**)<sup>4</sup>

4. A customer who picks up goods in a self-service shop is merely offering to buy them and the sale is not complete until they are paid for. (**Pharmaceutical Society Vs Boots, 1952**)<sup>5</sup>

### Agreement to sell and sell:

The Supreme Court distinguished these two classes of contract –An agreement to sell is a contract pure and simple whereas a sale is a

<sup>1</sup> Sales of Goods Act, 1930



contract plus conveyance. By an agreement to sale a jus in personance is caused by a sale a jus in rem also is transferred. Where goods have been sold and the buyer makes the fault, the seller may sue for the contract price on the count of 'goods bargained and sold' but when an agreement to buy is broken, the seller's normal remedy is an action for unliquidated damages.<sup>6</sup>

General Principles of Sales of Goods Act, 1930

- Meaning of Contract of Sale of Goods: According to this Act, is a contract in which the seller agrees to transfer the goods to the buyer for a price. The term "Contract of Sale"<sup>4</sup> is a general term and comprises of: (I) "Sale" and "Agreement to Sell"<sup>5</sup> where the seller transfers the property in the goods immediately to the Buyer there is a sale. (II) But where 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.
- Essential Elements of a Contract of Sale of Goods:<sup>2</sup>
  1. Two Parties: There must be two parties- a buyer and a seller to form a contract of sale. For example, a person buys goods from a shop who is run by them on a corporative basis, there is contract of sale between them.

2. Transfer of property: The object of contract must be the transfer of movable property. The term "general property" refers to the ownership of goods. A Latin maxim says: 'Nemo dat quod non habet' which means that "no one can give what he doesn't have".
3. Goods: As per section 2(7) of the sale of Goods Act, 1930<sup>7</sup>, goods means every kind of moveable property, apart from actionable claims and includes stocks, shares etc. Items included in the term "goods" as described by the Act are: Actionable claims, Money, Sale of immovable property. [Sale of immovable property is governed by Transfer of Property Act], Labor, Stocks, shares and securities.

As per section 3(36) of the General Clauses Act 1897,<sup>8</sup> "movable property" is defined as "property of every description except immovable property." Section 3(26) of the same Act reads as, "Immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."<sup>9</sup>

**Case Law: Tata Consultancy Services vs State of Andhra Pradesh (271 UTR 401)**<sup>10</sup>

**Held:** It was held that software, which is incorporated on a media, would be goods and therefore, liable to sales tax. Karnataka HC in Samsung held that TCS decision was in the context of Andhra Pradesh Sales Tax and

<sup>2</sup>Wood Vs Manley (1839)

<sup>3</sup>White Vs Wilks (1813)

<sup>4</sup>Johnson Vs Macdonald 1842

<sup>5</sup>Pharmaceutical Society Vs Boots, 1952

<sup>6</sup>Sales of Goods Act, 1930

<sup>7</sup>section 2(7) of the sale of Goods Act, 1930

<sup>8</sup>section 3(36) of the General Clauses Act 1897

<sup>9</sup>Section 3(26) of the same Act

<sup>10</sup>Tata Consultancy Services vs State of Andhra Pradesh (271 ITR 401)

<sup>11</sup>Tata Consultancy Services vs State of Andhra Pradesh (271 ITR 401)

<sup>12</sup>Section 2(14) of the Act

<sup>13</sup>section 2(6) of the act

<sup>14</sup>Case of Associated Power Co. v. R.T. Roy



could not be relied upon to determine whether payment for software amounts to 'royalty' under the Income-tax Act or DTAA. Delhi HC on the other hand in Ericsson referred to TCS judgement and observed that **"A fortiorari when the assessee supplies the software which is incorporated on a CD, it has supplied tangible property and the payment made by the cellular operator for acquiring such property cannot be regarded as a payment by way of royalty."**<sup>11</sup>

The goods that are present at the time of contract are termed as existing goods. In section 6 of the Act, those goods which are in legal possession of the seller at the time of formulation of the contract of sale. The existing goods are further of the following types:

- Specific Goods: As per Section 2(14) of the Act, those goods that are "identified and agreed upon"<sup>12</sup> when contract is formed. For example: I want to sell a jug. I have put an advertisement with its picture and information. The jug in this case is a specific good.
- Ascertained Goods: This term is used for specific goods, selected from a larger set. For example, you have 50 dozens of banana. You want to sell 20 dozens out of the total, thus you need to separate them from 50 (larger set). Thus to specify the 20 dozens from a larger set. Now these 20 dozens are now ascertained goods.

In section 2(6) of the act,<sup>13</sup> future goods can be have been defined as the goods that will either be manufactured or produced or

acquired by the seller at the time the contract of sale is made.

Contingent goods are a subtype of future goods in the sense that in contingent goods the actual sale is to be done in the future. These goods are part of a sale contract that has some contingency clause in it. For example, if you sell your apples from your orchard when the trees are yet to produce apples, the apples are a contingent good. This sale is dependent on the condition that the trees are able to produce apples, which may not happen.

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.

5. Formation of the Contract of Sale: The contract may provide for the immediate delivery of the goods or immediate payment of the price or both or for the delivery and payment by installments or that the delivery or payment or both shall be postponed. Electricity does not come under the definition of "goods" as per English law. In India however, the situation is quite different. In the Calcutta High Court, **Case of Associated Power Co. v. R.T. Roy**<sup>14, 3</sup>

It was held that electricity comes under the ambit of 'goods' under the article 366 (12) of the Constitution<sup>15</sup> as well as Sec 2(7) of the 'Act'<sup>16</sup>. This proposition was affirmed in a Madras High Court case where the learned judge held that electricity was under the definition of 'goods' since it is capable

<sup>15</sup> article 366 (12) of the Constitution

<sup>16</sup> Sec 2(7) of the 'Act'

<sup>17</sup> Section 5: Contract of Sale

<sup>18</sup> Transfer of Property as Between Seller and Buyer: Section 18



of delivery, and it does not matter whether it is a tangible or intangible form of energy.

**Formalities of a contract of sale:** Section 5: Contract of Sale - how made<sup>17</sup>

1. A contract of sale is made by an offer to buy or sell goods for a specified price. It may provide for the immediate delivery and payment of the price or both.
2. A contract of sale may be in writing or by the words of mouth or may be implied by the conduct of the parties.

Sub-section 1 emphasis that a sale is complete if there is no immediate delivery and payment. In a contract of sale, the title of goods passes immediately after the payment of price. While for an agreement to sell, the title of goods does not pass immediately after the payment but passes on after the fulfilment of certain conditions prescribed in the deal.

**Transfer of Property as Between Seller and Buyer: Section 18<sup>18</sup>**

**Goods must be ascertained:** No property in the goods can be transferred unless it is ascertained.

Synopsis

1. Transfer of property
2. Property cannot pass until the goods are identified
3. Part of a specific whole
4. Property and risk
5. Identification of goods

**Transfer of Property:**

The five following sections of the Act deal with the question foreshadowed by section 4<sup>19</sup> of the Act and lay down rules which assist in deciding the question when the object of the contract of sale, namely, the transfer of the property in the goods to the buyer has been affected.

**Property cannot pass until the goods are identified:**

It is a condition precedent to the passing of the property that, the “individuality of the thing to be delivered” should be established. Where according to the terms of the contract, the seller was to supply waste coal ash as and when it was discharged from the bunkers of the powerhouse, it was held that the contract was for the sale of unascertained goods and, therefore no property passed to the buyer till the goods were ascertained. (**Tej Singh Vs State of Uttar Pradesh and others 1981**).<sup>20</sup>

**Part of a specific whole:**

It is obvious that if the contract is merely for the sale of goods by description, such as a contract for sale of a certain quantity of malting barley, or future goods, the necessary condition is not fulfilled. Nor is it fulfilled even if the goods are so far ascertained that the parties have agreed that they shall be taken from some specified larger stock. “The parties did not intend to transfer the property in one portion of the stock more than in another, and the law which only gives effect to their intention does not transfer the property in any individual portion”(White Vs. Wilks 1813).<sup>21</sup>

Where the ascertainment of the goods depends upon their being separated from the bulk by the seller or a third party or the buyer, by their being severed, weighed or measured or some other process, no property can pass until this is done (**National Coal Board Vs. Gamble 1959**).<sup>22</sup>

**Property and Risk:**

In this class of case, it is necessary to distinguish the passing of the property from the transfer of the risk; the risk usually passes



with the property, but may pass independently of it. Thus, acceptance of the delivery warrant for a certain quantity of spirit out of a larger bulk which was liable to deteriorate in storage was held to put the risk of deterioration on <sup>4</sup>the buyer, although he had acquired, not property but only undivided interest in the whole bulk. Equally, it would seem that there can be none in an individual part of a chattel, such as a tree which has been felled, of which a marked portion was sold, and of which the other portion is to be retained by the seller.

#### Identification of the goods:

In **State of Karnataka Vs. The West Coast Paper Mills Ltd. AIR 1986**<sup>23</sup> it was held that where under a contract a company was permitted to remove bamboos from the forest area at Rs.10 /- per ton, and the government by a subsequent order enhanced the price to Rs.20/- per ton, it was held that the enhanced rate was no applicable to the bamboos cut although not removed prior to the date of the government order, because on the bamboos being cut and extricated, the goods being ascertained and in a deliverable state, the property had passed to the company.

#### Section 20 (Specific goods in a deliverable state)

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of or the time of delivery of goods, or both, is postponed.

#### Examples

This section may be illustrated by the following examples:

- Sale on the 4th January of a haystack on the seller's land at the price of £145 to be paid on the 4th February, the hay to be allowed to remain on the seller's land until the 1st May: no hay to be cut until the price was paid. The property in the haystack passed on the making of the contract and on the stack being destroyed by fire, the buyer must bear the loss. **Tarling Vs. Baxter (1827)**<sup>24</sup>
- Sale of a specified number of bushels of oats, the contents of a bin in a warehouse. The seller gives a delivery order to the buyer, addressed to the warehouseman, authorizing delivery of the oats to the buyer, and asking the warehouseman to weigh them. The warehouseman accepts the order and enters it in his books. The property has passed to the buyer, as the weighing was not necessary to identify the oats or to ascertain the price, but was merely for the satisfaction of the buyer. **Swanwick Vs. Sothorn (1839)**.<sup>25</sup>

#### Deliverable State

Section 20 and 21 of the Sale of Goods Act 1930 elaborate on the concept of 'Specific goods in a deliverable state' and 'Specific goods to be put into a deliverable state' respectively.

'Deliverable state' refers to the condition of the goods such that the buyer under the

<sup>19</sup> Section 4 of Sales of Goods Act

<sup>20</sup> Tej Singh Vs State of Uttar Pradesh and others (1981)

<sup>21</sup> White Vs. Wilks (1813)

<sup>22</sup> National Coal Board Vs. Gamble 1959

<sup>23</sup> State of Karnataka Vs. The West Coast Paper Mills Ltd. AIR 1986

<sup>24</sup> Tarling Vs. Baxter (1827)



contract is bound to accept the goods delivered to him by the seller according to the contract. ‘Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed’.

### Condition

**‘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’.**<sup>25(1)</sup>

A condition is referred to as, an essential element attached to the subject matter of an agreement which is mentioned by the buyer to the seller and is either expressed or implied while entering into the contract. The buyer can refuse to accept the goods delivered by the seller, in case of non-compliance with the condition mentioned by the seller in the contract. The condition may be express or implied.

If while entering into a contract, the buyer mentions (in words or writing) that the goods are to be delivered to him before a given date, the date is taken as a condition to the contract since the buyer expressed it. Whereas, if a buyer contracts to buy a red-colored saree for her ‘wedding’ which is to be held on a date mentioned to the seller, then the time is the implied condition for the contract. Even if the buyer doesn’t mention the date of delivery (but has mentioned the date of the wedding or occasion), it is implied on the part of the

seller that the garment is to be delivered before the mentioned date of the wedding.<sup>5</sup>

### Warranty

**‘A warranty is 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 as repudiated’.**<sup>26</sup>

A warranty is referred to as extra information given with respect to the desired good or its condition. The warranty is of secondary importance to the contract for its fulfilment. Non-compliance of the seller to the warranty of the contract does not render the contract repudiated and hence, the buyer cannot refuse to buy the good but can only claim compensation from the buyer.

### Implied Condition

**Condition as to Title [Section 14(a)]<sup>27</sup>**

Section 14(a) of the Sale of Goods Act 1930 explains the implied condition as to title as ‘in the case of a sale, he has a 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’.

This means that the seller has the right to sell a good only if he is the true owner and holds the title of the goods or is an agent of the title holder. When a good is sold the implied condition for the good is its title, i.e. the ownership of the good. If the seller does not own the title of the said good himself and sells it to the buyer, it is a breach of condition.

<sup>25</sup> Swanvik Vs. Sothorn (1839)

<sup>25(1)</sup> Condition defined

<sup>26</sup> Warranty defined

<sup>27</sup> Condition as to Title [Section 14(a)]

<sup>28</sup> Rowland v Divall, 192210

**CASE LAW: Rowland v Divall, 1922**<sup>28</sup> –

The plaintiff had purchased a car from the defendant and was compelled to return it to the true owner after having used it for a while. The plaintiff then sued the defendant for the purchase money, since the defendant didn't receive the consideration as per the condition of the title of ownership.

**Sale by Description (Section 15)**

Section 15 of the Sale of Goods Act, 1930<sup>29</sup> explains that when a buyer intends to buy goods by description, the goods must correspond with the description given by the buyer at the time of formation of the contract, failure in which the buyer can refuse to accept the goods.

**Sale by Sample (Section 17)**<sup>30</sup>

When the goods are to be supplied on the basis of a sample provided to the seller by the buyer while the formation of a contract the following conditions are implied:

- Bulk supplied should correspond with the sample in quality
- Buyer shall have a reasonable opportunity to compare the goods with the sample
- The good shall be free from any apparent defect on reasonable examination by the buyer.

**Sale by sample as well as Description (Section 15)**<sup>31</sup>

When the sale of goods is by a sample as well as a description the bulk of the goods should correspond with both, i.e. description and sample provided to the seller in the contract and not only sample or description.

**Implied Warranty****Enjoy Possession of the Goods [Section 14(b)]**

Section 14(b) of the Act mentions 'an implied warranty that the buyer shall have and enjoy quiet possession of the goods' which means a buyer is entitled to the quiet possession of the goods purchased as an implied warranty which means the buyer after receiving the title of ownership from the true owner should not be disturbed either by the seller or any other person claiming superior title of the goods.<sup>7</sup>

**Goods are free from any charge or encumbrance in favor of any third party [Section 14(c)]**

Any charge or encumbrance pending in favor of the third party which was not declared to the buyer while entering into a contract shall be considered as a breach of warranty, and the buyer is be entitled to compensation and claim damages from the seller for the same.

**Conclusion**

Through this course of this research paper I tried to identify the major arguments surrounding certain commodities and their inclusion in the definition of "goods" as per Section 2(7) of the Act.<sup>32</sup> This paper helped me understand and prove that "electricity" comes under the ambit of goods.

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<sup>29</sup> Section 15 of the Sale of Goods Act, 1930

<sup>30</sup> Sale by Sample (Section 17)

<sup>31</sup> Sale by sample as well as Description (Section 15)

<sup>32</sup> Section 7 of Sales of Goods Act



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