

Sale of Goods

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The law governing the sale of goods was at one time included in Chapter VII of the Contract Act, 1872. This was repealed and the law relating to the sales of goods is now a separate Act, the Sale of Goods Act, 1930, which was adopted by Pakistan in August 1947.

Definitions

In foreign trade, certain prices are quoted and there are certain terms which are used in this respect. Some of these terms are:

Loco Price

It indicates the price of the goods lying in the seller's warehouse.

Free alongside Ship (FAS) Price

This includes all the expenses till the goods reach alongside the ship. Expenses such as packing charges, transport charges to port, export duty and dock charges are added to the manufacturer's price to arrive at the FAS Price.

Free on Board Price (FOB)

This includes all expenses incurred till the goods are loaded on board the ship. By adding loading charges to the FAS price, we get the FOB price.

Cost and Freight Price (C&F)

This includes all expenses incurred in the despatch of goods till the payment of freight.

Cost, Insurance and Freight Price (CIF)

This includes all expenses incurred till the payment of insurance premium.

Franco Price

This includes all the possible expenses incurred till the goods reach the warehouse of the importer. It includes free delivery to the buyer's warehouse.

Ex-Ship Contract

This includes all the expenses incurred till the arrival of the goods at the port of destination.

Formation of the Contract

Kinds of Contract of Sale

A contract of sale of goods is a contract in accordance with which the seller either transfers or agrees to transfer the property in goods to the buyer for a price. The payment of price is very important.

A contract of sale is of two kinds:

- (a) Sale; and
- (b) Agreement to sell.

These two contracts are differentiated as under:

Sale	Agreement to Sell
(i) If the property in goods passes from the seller to a buyer as soon as a contract of sale is made, such a contract of sale shall be called a sale.	(i) Where the transfer of property in goods is to take place at some future date, or is subject to the fulfillment of certain conditions, the contract of sale is known as agreement to sell.
(ii) If the buyer fails to pay for the goods, the seller may sue for the price.	(ii) If the buyer fails to accept and pay for the goods the seller can only sue for damages.
(iii) If the goods are destroyed, the loss would fall on the buyer, although the goods may have never come into his possession.	(iii) If the goods are destroyed, unless otherwise agreed, the loss would fall on the seller.
(iv) If the seller commits a breach, the buyer has not only a personal remedy against the seller, but he can also recover the goods as owner, even from the third parties.	(iv) If the seller commits a breach, the buyer has only a personal remedy against the seller, i.e. a claim for damages.

Distinction between Hire Purchase Contract and Deferred Payment Sale

A contract of hire purchase is distinguished from a deferred payment sale as under:

Hire Purchase Contract	Deferred Payment Sale
It is an agreement for the bailment of goods under which the bailee may buy the goods and become the owner of the sale if certain conditions are fulfilled.	Under deferred payment sale contract, a person buys goods which are to be paid for by instalment and the property in goods passes to the buyer when the contract is made and this procedure has, therefore, no right to return the goods as is the case where a hirer breaches contract.
The property in goods does not pass to the hirer until all the conditions contained in the agreement have been duly fulfilled.	

Distinction between Barter and Sale

Barter is the exchange of goods for other goods, whereas sale is the exchange of goods for money or for instruments of credit representing money.

Formalities of the Contract

In a contract of sale, there is a **seller** who gives his goods and a **buyer** who pays a price for the same. Therefore, the seller means a person who sells or agrees to sell the goods and the buyer means a person who buys or agrees to buy goods. The conditions of a formality contract discussed in the previous chapter are also applicable to the contract of sale which may be made in writing or by word of mouth, or partly in writing and partly by word of mouth. It may also be implied from the conduct of the parties. It may be absolute and conditional.

Goods—the Subject Matter of Contract

The term 'goods' is the subject matter of a contract of sale. Goods means every kind of movable property other than actionable claims and money. Some examples of goods are shares, grass, growing crops, etc. Examples of actionable claims are cheques, bills of exchange, *hundies*, etc.

There are two types of goods—specific or future specific.

Goods which are specific are identified and agreed upon at the time a contract of sale is made.

Future goods means goods to be manufactured or acquired or produced by the seller after making contract of sale.

Price

Price has been defined as 'the money consideration for a sale of goods'. Generally, in a contract of sale the price is fixed by the contract. However, in certain situations, it is left to be fixed in an agreed manner or may be determined from the dealings between the parties. In a situation, where the price cannot be determined, the buyer must pay a reasonable price. In case the price is to be determined or fixed by a third party, the agreement becomes void if the third party does not make such valuation.

Conditions and Warranties

Doctrine of *Caveat Emptor*

Caveat Emptor is a Latin maxim which literally means that it is the duty of the buyer to be on his guard and examine the goods and ascertain their quality, fitness, etc. The seller is not bound to disclose the quality or fitness. The buyer must satisfy himself that the goods which he purchases are of the quality which he requires, or, if he is buying them for a particular purpose, they are fit for that purpose. The presumption of the rule is that the buyer relies on his own skill and judgment when he makes a purchase.

The exceptions to this general rule are as under:

- (a) If the goods are bought by description from a seller who deals in such class of goods, there is an implied condition that the goods are of merchantable quality.
- (b) If the goods are required for a particular purpose, which is made known to the seller and the buyer relies on the seller's skill and judgment and it is the seller's business to supply such goods, there is an implied condition that the goods must be reasonably fit for the intended purpose.
- (c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

The following are implied warranties in a contract of sales for goods:

- (a) No one can interfere with the buyer possession of the goods.
- (b) The goods are free from any charge or encumbrance in favour of a third party.
- (c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Distinction between Condition and Warranty

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as a repudiated.

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 a right to reject the goods and treat the contract as repudiated. When a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or he may elect to treat the breach of condition as a breach of warranty. However, once the buyer accepts the goods or the ownership of specific goods has passed to him, he must treat the breach of any condition to be fulfilled by the seller as a breach of warranty.

Conditions in a Sale of Goods

The word 'implied' means that these conditions and warranties need not be expressed but are understood to be present and are applicable to the contract. In a contract of sale, unless a different intention appears, there is:

- (a) An implied condition on the part of seller that he has a right to sell the goods.
- (b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- (c) An implied warranty that the goods shall be free from any undeclared charge or encumbrance in favour of any third party.
- (d) An implied condition that where the goods have been sold by description, they will correspond with the description and if the sale is by sample as well as by description, they shall correspond to the description as well as the sample.
- (e) An implied condition that the goods shall be fit for particular purpose if the buyer makes it known to the seller the purpose for which the goods are required and his dependence on seller's judgment and prudence.
- (f) Where goods are bought by description, and without examination, there is an implied warranty that the goods shall be of merchantable quality. The goods must be, as is generally said, GMQ, i.e. Good Merchantable Quality.
- (g) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- (h) In the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Effects of the Contract

Transfer of Property

Property must be distinguished from possession. A buyer may purchase the goods but leave them with the seller for the time being. In such a case the property in goods has been transferred to him but not the possession. The transfer of property in goods from the seller to the buyer is subject to the following principles:

- (a) Where there is a contract for the sale of unascertained goods, no property in goods is transferred to the buyer unless and until the goods are ascertained.
- (b) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in goods passes to the buyer when the contract is made, whether the time of payment of the price or the time of delivery of the goods, or both, be postponed or not.
- (c) Where there is an unconditional contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.
- (d) Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh or measure or test the goods for the purpose of ascertaining price, the property does not pass until the same is done and the buyer has notice thereof.

- (e) When there is a contract for the sale of unascertained or future goods by description, the property in them passes on to the buyer when the goods of that description and in a deliverable state are unconditionally appropriated to the contract, i.e. have been delivered to a common carrier for transmission to the buyer without reserving the right of disposal. When the goods are delivered to a railway company or a shipping company for carriage to the buyer and the R/R or B/L has been taken in the name of the buyer, the seller does not reserve the right of disposal. But should he take the R/R or the B/L in his own name, he reserves the right of disposal.
- (f) When the goods are delivered to the buyer on approval or on sale or return, the property therein passes to the buyer when he signifies his approval or acceptance to the seller; or when a time has been fixed for the return of the goods, then on the expiration of such time and if no such time has been fixed, then on the expiration of a reasonable time.

Transfer of Title of Goods

When a buyer purchases goods, does he get a good title to them, i.e. does he become the real owner? This question is best answered by the legal maxim, '*Nemo dat quod non habet*', i.e. no one can give that which he has not got. The general rule is that nobody can sell goods and give good title to them unless he himself is the real owner of the goods and has good title to them or is the agent of the person having good title to them. Section 27 of the Sale of Goods Act lays down that where goods are sold by a person who is not owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.

If the goods are wrongfully sold by a seller to a buyer, the real owner of the goods can compel the buyer to transfer them to him. The following are certain recognised exceptions to this general rule:

(a) Estoppel

The sale by mere possessor under certain circumstances in which the real owner is precluded from denying the seller's authority to sell them, confers good title.

For example: where a real owner may have given the buyer to understand that he can buy the goods.

(b) Sale by a Mercantile Agent

The sale of goods by a mercantile agent, in possession of the goods or of a document of title to the goods, when acting in the ordinary course of business of a mercantile agent and with the consent of the owner, shall pass valid title, provided the buyer acts in good faith and does not know at the time of contract the seller's want of authority.

(c) Sale by one of Joint Owners

Where one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority.

(d) Sale by Person under Voidable Contract

When the seller obtains possession of the goods under a voidable contract a contract that can be avoided on the ground of misrepresentation, fraud, coercion or undue influence he can confer a good title to the buyer, provided (i) the contract under which he acquires the possession of the goods has not been rescinded at the time of the contract of sale, (ii) the buyer acts in good faith, and (iii) the buyer has no knowledge of the defect of the seller's title.

(e) Seller in Possession after Sale

Where a person, having sold goods continues or is in possession of the documents or of title of the goods, resells them to a third party, he confers a valid title to the buyer provided the buyer acts in good faith and without notice of the previous sale.

(f) Buyer in Possession of Goods

Similarly, a buyer of his mercantile agent obtaining possession of goods or documents of title to them under an agreement of sale and with the consent of the seller may confer a valid title to goods or documents of title thereto to a third party receiving them in good faith and without notice of this circumstance.

Document to Title of Goods

Certain documents are used as proof of the possession of good and of the right to dispose of them. They stand in place of goods which may be sold simply by transferring to a buyer for the value of documents of title. These documents are known as documents of title to goods. They may be transferred either by delivery alone or by endorsement and delivery. The examples in this respect are a bill of lading, railway receipts, dock warrant, warehouse, keeper's certificate and wharfinger's certificate.

Performance of the Contract

A contract of sale is said to be performed when each party to it fulfils his promise or does his duty. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay them in accordance with the terms of the contract of sale. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, i.e. they must take place at the same time.

Buyer's Rights (or Seller's Duties)

The most important duty of the seller is to deliver the goods to the buyer according to the terms of the contract of sale. Delivery simply means voluntary transfer of possession from one person to another. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or any of his representatives.

(a) Part Delivery

A delivery of part of goods, in progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

(b) Time of Delivery

In the absence of any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. Where under the contract of sale the seller is bound to send goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time. The demand for delivery by the buyer and the tender of delivery by the seller must be made at a reasonable hour. Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(c) Place of Delivery

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the terms of the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of

sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or, if not then in existence, at the place at which they are manufactured or produced.

(d) Delivery to Carrier

When it is agreed that the seller shall send the goods to the buyer, the delivery of the goods to a carrier for the purpose of transmission to the buyer or delivery of the goods to a wharfinger for safe custody is *prima facie* deemed to be a delivery of the goods to the buyer. Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger (an owner or keeper of a wharf) on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may refuse to treat the delivery to the carrier or wharfinger as a delivery to himself or may hold the seller responsible for damages. Unless otherwise agreed, in case of any sea transit, the seller must give reasonable notice to the buyer for enabling him to insure the goods during sea voyage. If the seller fails to do so, he may be held liable for the risk during such transit.

Seller's Rights (or Buyer's Duties)

The buyer must accept the goods delivered to him at the proper place and at a reasonable hour and pay for them in accordance with the terms of the contract. Unless otherwise agreed, he must apply for the delivery of the goods at the reasonable hour.

(a) Delivery of Wrong Quantity

Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them; but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate. Again, where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If the buyer accepts the whole of the goods, so delivered, he shall pay for them at the contract rate.

(b) Delivery of Goods of Wrong Description

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole. The above provisions are subject to any usage of trade, special agreement or course of delivery between the parties.

(c) Neglect or Refusal of Delivery

Where the seller is ready and willing to deliver the goods and request the buyer to take delivery and the buyer does not, within a reasonable time after such request, take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(d) Acceptance of Goods

The buyer is deemed to have accepted the goods

- (i) when he intimates to the seller that he has accepted them;
- (ii) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller; or
- (iii) when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Rights of Unpaid Seller against the Goods

The seller of the goods is deemed to be an unpaid seller:

- (i) when the whole of price has not been paid or tendered; or
- (ii) when a bill of exchange, cheque, etc. has been received and is dishonoured.

Even though the property in goods may have passed to the buyer, the unpaid seller of goods has the following rights against the goods:

(a) Unpaid Seller's Lien

The unpaid seller of goods, who is in possession of them, is entitled to retain possession of them until payment or tender of the price. This is known as seller's lien. The unpaid seller is entitled to retain the goods in the following cases:

- (i) Where the goods have been sold without any stipulation as to credit;
- (ii) Where the goods have been sold on credit, but the term of credit has expired;
- (iii) Where the buyer becomes insolvent.

The unpaid seller of goods loses his lien thereon:

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission by the buyer without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;
- (iii) When the seller waives his lien.

(b) Stoppage in Transit

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit; that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment of the price. The right of stoppage may be exercised either by taking actual possession of the goods or by giving notice of this claim to the carrier or other bailee in whose possession the goods are.

The unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto. But if the seller issues a document of title to goods to the buyer and he transfers the document to a person who takes the document in good faith and for consideration by way of sale, the unpaid seller's right of lien or stoppage in transit is lost. But if the transfer of documents of titles is by way of pledge, the unpaid seller can exercise his right of lien or stoppage in transit subject to the right of the transferee.

(c) Right of Resale

Where the goods are of perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit given notice to the buyer of his intention to resell, the unpaid seller may, if the buyer does not within a reasonable time pay the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract. But the buyer shall not be entitled to any profit which may occur on resale. If such notice is not given the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the resale.

Sale by Auction

In the case of a sale by auction:

- (a) Where the goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
- (b) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid.
- (c) A right to bid may be reserved expressly by or on behalf of the seller and where such right is expressly so reserved, but not otherwise, the seller or any person on his behalf may bid at the auction.
- (d) Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) The sale may be notified to be subject to a reserved or upset price below which the article will not be sold.
- (f) If the seller makes use of pretended bidding to raise price, the sale is voidable at the option of the buyer.

Breach of Contract

Where under a contract of sale the property in goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the goods. If the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

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 such price, the seller may sue him for the price although the property in goods has not passed and the goods have not been appropriated to the contract. If the seller wrongfully neglect or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance or delivery of goods are not usefully granted by the Court except in the case of goods having some peculiar value. Where there is a breach of warranty by the seller, the buyer may deduct the damages from the price of the goods and pay the balance to the seller, or he may pay the full price and bring a suit for damages against the seller. The damages that can be claimed are only those which are directly and naturally caused by the breach, and are usually measured by the excess of the contract price over the market price of the goods at the time of the delivery or acceptance of goods.

TEST QUESTIONS

1. What is a warranty? Distinguish a warranty from a condition.
2. What condition or warranty is implied in a sale of goods by sample?
3. A farmer, X, simply exhibits oats in his farm. Y buys the oats in the belief that they are old oats, when in fact they are not old oats. Is the contract enforceable?
4. In a contract for the sale of goods when does
(a) the property, and (b) the risk of goods pass from the seller to the buyer?
5. What is a seller's lien? When does it arise? Explain with an example.
6. What do you understand by the right of resale? What is stoppage in transit?
7. Distinguish between a vendor's lien and stoppage in transit.
8. What are the rights of the seller against the buyer?
9. A sells to B a quantity of sugar in A's warehouse. It is agreed that B shall get two month's credit. B allows the sugar to remain in A's warehouse. B becomes insolvent before the expiry of the two months and the official assignee demands delivery of the sugar without offering to pay. What are the rights of A?
10. 'No seller of goods can give the buyer of goods a better title to those goods than he himself has'. Discuss. Are there any exceptions to this rule?
11. Differentiate between sale and agreement to sell.
12. Explain the salient features underlying the doctrine of *Caveat Emptor*.