UNIT-III
THE SALE OF GOODS ACT 1930

1. What is Contract of Sale? Explain the essential elements of contract of sale.

Ans. According to Section 4(1) of the Sale of Goods Act 1930, 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. There may be a contract of sale between one part-owner and another. A contract of sale may be absolute or conditional.

Contract between Seller and Buyer is called 'Contract of Sale.

Essential Elements of Contract of Sale: To constitute a Contract of Sale, the following ingredients are to be satisfied:

(i) Two parties: To constitute a Contract of Sale, there must be at least two parties one Seller and another Buyer. Buyer and seller must be two different persons because a person cannot buy his own goods.

(ii) Agreement between them: To constitute a contract of sale there should be an agreement between seller and buyer. It can be express or implied.

(iii) Movable Goods: The Sale of Goods Act deals only with movable goods, excepting actionable claims and money - Sec. 2(7). This Act does not apply to immovable properties.

(iv)Movable Goods for Money: There must be a contract for the exchange of movable goods for money. Therefore in a sale there must be money-consideration. An exchange of goods for goods is not a sale. But it has been held that if an exchange is made partly for goods and partly for money, the contract is one of sale.

(v) There must be Transfer of goods from seller to buyer: There must be Transfer of goods from seller to buyer**.** Transfer of goods from seller to buyer is the most essential element of contract of sale.

(vi)Other essential elements: A contract for the sale of goods must satisfy all the essential elements necessary for the formation of a valid contract, e.g., the parties must be component to contract, there must be free consent, there must be consideration, the object must be lawful etc.

2. What is Sale and Agreement to Sell? Distinguish between Sale and Agreement to Sale.

Ans. Sale: Where under a contract of sale, the property in goods is immediately transferred from the seller to the buyer the contract is called a sale. Thus, it is an executed contract.

Agreement to Sell: Where under a contract of sale, the transfer of property in goods is to take place at a future time or subject to the fulfilment of certain conditions, the contract is called an agreement to sell. It is an executory contract. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods was to be transferred.

Distinguish between Sale and Agreement to Sale

Basis	Sale	Agreement to Sell
1.Meaning	When the vendor sells goods to the customer for a price, and the transfer of goods from the vendor to the customer takes place at the same time, then it is known as Sale.	When the seller agrees to sell the goods to the buyer at a future specified date or after the necessary conditions are fulfilled then it is known as Agreement to sell.
2. Nature	The nature of sale is absolute.	An agreement to sell is conditional.
3. Type of Contract	A contract of sale is an example of Executed Contract.	Agreement to Sell is an example of Executory Contract.
4. Transfer of Risk and Rewards	Risk and rewards are transferred with the transfer of goods to the buyer in Sale.	Risk and rewards are not transferred as the goods are still in possession of the seller.
5.Consequences of Subsequent loss or damage to the goods	If the goods are lost or damaged subsequently, then in the case of sale it is the liability of the buyer,	If the goods are lost or damaged subsequently, then in the case of an agreement to sell, it is the liability of the seller.
6. Right to Sell	In the case of a sale, the right to sell the goods is in the hands of the buyer.	In agreement to sell, the seller has the right to sell the goods.
7.Tax	Tax is imposed at the time of sale	No tax is levied at the time of agreement to sell.
8.Suit for breach of contract by the seller	The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold.	Here the buyer has the right to claim damages only.

3. Define Condition and Warranty. Distinguish between Condition and Warranty.

Ans. Condition: Certain terms, obligations, and provisions are imposed by the buyer and seller while entering into a contract of sale, which needs to be satisfied, which are commonly known as Conditions. The conditions are indispensable to the objective of the contract.
According to Section 12(2) “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”.

Warranty: A warranty is a guarantee given by the seller to the buyer about the quality, fitness and performance of the product. It is an assurance provided by the manufacturer to the customer that the said facts about the goods are true and at its best.
According to Section 12(3) “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”.

Basis	Condition	Warranty
1.Meaning	It is a stipulation which forms the very basis of the contract.	It is additional stipulation complementary to the main purpose of

		the contract.
2.Provision	Section 12(2) of the Sale of Goods Act, 1930 defines Condition.	Section 12(3) of the Sale of Goods Act, 1930 defines Warranty.
3.Purpose	Condition is basic for the formulation of the contract.	It is a written guarantee for assuring the party.
4.Result of Breach of Contract	The whole contract may be treated as repudiated.	Only damages can be claimed in case of a breach.
5.Remedies available to the aggrieved party	Repudiation, as well as damages, can be claimed.	Only damages can be claimed
6.Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.

4. When a condition can be treated as a warranty?

Ans. In the following circumstances, a Condition may be treated as a warranty:
(i)Voluntary waiver of a condition: The buyer may elect to treat a breach of condition as a breach of warranty, i.e., instead of repudiating the contract he may accept performance and sue for damages, if he has suffered any.—Sec. 13(1).
Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition.

(ii)Compulsory waiver of a condition: Where a contract of sale is not severable and the buyer has accepted the goods or a part thereof, he cannot repudiate the contract but can only sue for damages. In such a case, the breach of condition can only be treated as a breach of warranty, unless there is a contract to the contrary.—Sec. 13(2).
If a buyer prevents the fulfilment of a condition contained in the contract, the condition becomes invalid.

Example: Certain goods were promised to be delivered on 1st June, time being made the essence of the contract. The goods were delivered on the 2nd June. The buyer may accept the goods.

5. What are the implied conditions and implied warranties under the Sale of Goods Act?

Ans. Implied Conditions

Conditions and Warranties may be either express or implied. The implied conditions and warranties are those which are presumed by law to be present in the contract though they have not been put into it in expressed words. Implied conditions are dealt with in Sections 14 to 17 of the Sale of Goods Act, 1930. Unless otherwise agreed, the law incorporates into a contract of a sale of goods the following implied conditions:

(i)Condition as To Title: In every contract of sale, the first implied condition on the part of the seller is that:

(a) in case of a sale, he has a right to sell the goods, and
(b) in the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass. [Section 14(a)]

(ii)Condition as to Description: If there is a contract of sale of goods by description, a default implied condition is that these goods must correspond with this description. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. [Section 15]

(iii)Sale by Sample: In a contract of sale by sample, there is an implied condition that:

(a) The bulk shall correspond with the sample in the quality.

(b) The buyer shall have or shall be given a reasonable opportunity/chance of comparing the bulk with the sample, and

(c) The goods shall be free from any defect that may render them unmerchantable, which would not be apparent on a reasonable examination of the sample. [Section (17)]

(iv)Sale by Sample as well as by Description: Where the goods are sold by a sample as well as by description the implied condition is that the bulk of the goods supplied must correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with the description or vice versa, the buyer can repudiate the contract. [Section 15]

(v)Condition as To Quality or Fitness: Generally, there is no implied condition as to the quality or fitness of the goods that are sold for a particular purpose. However, the condition as to the reasonable fitness of goods for a particular purpose may be implied on the part of the seller for which the buyer wants them. Following are the conditions to be satisfied:

(a) If the buyer had made known to the seller the purpose of his purchase.

(b) The buyer relied on the seller's skill and judgment, and

(c) Seller's business to supply goods of that description. [Section 16]

(vi)Condition as to Merchantability: This is implied only where the sale is by description and the goods should be of 'merchantable quality' i.e. the goods must be such as are reasonably saleable under the description by which they are known in the market. [Section 16(2)]

(vii)Conditions as to Wholesomeness: In the case of eatables and provisions, there is another implied condition that the goods shall be wholesome, in addition to the implied condition as to merchantability.

(viii)Express Conditions: An express condition is any stipulation, essential to the main function of the contract, which is put in the contract at the will of the two parties.

Implied Warranties:

In the absence of an agreement to the contrary, the following warranties are implied in every contract of sale:

(i)Implied Warranty of Quiet Possession: In every contract of sale, unless there is a contrary intention, there are implied warranties that the buyer's shall have and enjoy quiet possession of the goods. If the buyer's right to possession and enjoyment of the goods is in any way disturbed as consequences of the seller's defective title, the buyer may sue the seller for damages for breach of this warranty.

(ii)Implied Warranty of Freedom from Encumbrances -- The buyer is entitled to a further warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to buyer before or at the time when the contract is made. If the buyer is required to discharge the amount of the encumbrance it shall be a breach of this warranty and the buyer shall be entitled to damages for the same.

(iii)Warranty as to Qualify or Fitness by Usage of Trade: An implied warranty as to the quality or the fitness for a particular purpose may be annexed by the usage of the trade.

6. What is Caveat Emptor? What are the exceptions to this rule?

Ans. The doctrine of 'Caveat Emptor' means **"**let the buyer beware**".**
In other words, the buyer must take care of his own interest while purchasing the goods. While purchasing the goods the buyer should check the goods carefully.

If a buyer purchases the goods and after it, he comes to know that these are defective. In this case, the seller will not be responsible for this defect.

The object of this principle is to make the buyer more careful in purchasing. It is his duty that he should check the quality and fitness of the commodity which he needs.

Exceptions of Doctrine of Caveat Emptor
However, in the following exceptions, the Doctrine of caveat emptor is not applicable.
(i)Fitness for buyer's purpose: When the seller is aware of the purpose for which the buyer requires the product and when the buyer relies on the judgement and skill of the seller, there is an implied condition that the product purchased serves the purpose for which it was bought. When the goods are sold under a trade name or patent mark, this condition does not apply.

(ii)Sale under a trade or patent name: When the buyer purchases products from the seller who sells goods of trade or patent mark, there is an implied condition that the product is of merchantable quality.

(iii)Merchantable Quality: There is a custom or tradition where a seller has been dealing in goods which are according to the accepted description. For instance, a bicycle would be one that is technically made for transport by peddling and that is in condition corresponding to its product description. It is a reasonably good product and the buyer may well assume it to be so.

(iv)Usage of Trade: An implied warranty or condition as to its quality and fitness for a particular purpose may be annexed by the usage of trade.

(v)Consent by Fraud: It happens when the seller knowingly conceals the defects which could not be discovered by the buyer with the reasonable application of skill and judgement at the time of purchase. The consent is obtained by fraud and, hence, the seller cannot charge the buyer for his negligence to examine.

7. When does property pass from the seller to the buyer?

Ans. Rules, Sections 18 to 25 of the Sale of Goods Act lay down the rules which determine when ownership of property passes from the seller to the buyer. These rules may be summarised as follows:

(i)Unascertained Goods: When there is a contract for the sale of unascertained goods, property in the goods is not transferred to the buyer unless and until the goods are ascertained. (Section -18)

(ii)The Intention of the Parties: In a contract for the sale of specific or ascertained goods, the property passes at such time as the parties to the contract intend it to pass. (Section -19)

(iii)Specific goods: 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. (Section -20)

(iv)When seller has something to do: Where there is a 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. (Section -21)

(v)When goods are to be measured, tested, etc: Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act of thing is done and the buyer has notice thereof. (Section -22)

(vi)Unconditional appropriation: Unconditional appropriation means doing something which identifies and determines the actual goods to be delivered. Property passes when such unconditional appropriation is made by one party with the consent of the other.

(vii)Delivery to the carrier: Where in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer) and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. [Section -22(2)]

The general rule is that when the seller delivers the goods to a carrier for being taken to the buyer, there is unconditional appropriation on his part and the property passes to the buyer.

(viii) Goods sent on Approval or "on Sale or Return" (Section -24): When goods are delivered to the buyer on approval or on sale or return" or other similar terms, the property therein passes to the buyer:

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

(b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection.

8. Explain the provision/circumstances under which titleship of goods can be transferred from by a non-owner.

Ans. A Latin maxim says: 'Nemo dat quod non habet' which means that no one can give what he doesn't have. This rule applies to both movable and immovable property. But as regards movable goods it is subject to certain exceptions. Section 27-30 deals with the sale by a person who is not the owner can give to the transferee a valid title to the goods.

In the following scenarios a non-owner of goods can transfer a better title to the buyer:

(i)Sale by a mercantile agent: Consider a mercantile agent, who is in possession of the goods or a document to the title of the goods, with the consent of the owner. Such an agent can sell the goods when acting in the ordinary course of business of a mercantile agent. The sale shall be valid provided the buyer acts in good faith and has no reason to believe that the seller doesn't have any right to sell the goods. The transfer of title is valid in such a case.

(ii)Sale by one of the Joint Owners: Many times goods are purchased in joint ownership. In many cases, the goods are kept in the possession of one of these joint owners by the permission of the co-owners. If this person (who has the sole possession of the goods) sells the goods, the property in the goods is transferred to the buyer. This is provided the buyer acts in good faith and has no reason to believe that the seller does not have a right to sell the goods.

(iii)Sale by a Person in Possession of Goods under a Voidable Contract: Consider a person who acquires possession of certain goods under a contract voidable on grounds of coercion, misrepresentation, fraud or undue influence. If this person sells the goods before the contract is terminated by the original owner of the goods, then the buyer acquires a good title to the goods.

(iv)Sale by a Person who has already sold the Goods but Continues to have Possession: Consider a person who has sold goods but continues to be in possession of them or of the documents of title to them. This person might sell the goods to another buyer.

If this buyer acts in good faith and is unaware of the earlier sale, then he will have a good title to the goods even though the property in the goods was passed to the first buyer. A pledge or other disposition of the goods or documents of title by the seller in possession are valid too.

(v)Sale by Buyer obtaining possession before the Property in the Goods has Vested in him:
Consider a buyer who obtains possession of the goods before the property in them is passed to him, with the permission of the seller. He may sell, pledge or dispose of the goods to another person.
If the second buyer obtains delivery of the goods in good faith and without notice of the lien or any other right of the original seller, he gets a good title to them.

This rule does not hold true for a hire-purchase agreement which allows a person the possession of the goods and an option to buy unless the sale is agreed upon.

(vi)Estoppel: If an owner of goods is stopped by the conduct from denying the seller's authority to sell, the buyer gets a good title. However, to get a good title by estoppel, it needs to be proved that the original owner had actively suffered or held out the seller in question as a person authorized to sell the goods.

(vi)Sale by an Unpaid Seller: If an unpaid seller exercises his right of lien or stoppage in transit and sells the goods to another buyer, then the second buyer gets a good title to the goods as against the original buyer. So in such a case transfer of title will occur.

(viii) Sale under the Provisions of other Acts:
(a) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
(b)Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872].
(c) A sale by a Pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

9. Explain the rules regarding delivery and performance of contract of sale.

Ans. According to Section 2 (2) of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. Hence, if a person takes possession of goods by unfair means, then there is no delivery of goods.

Rules Pertaining to the Delivery of Goods

The Sale of Goods Act, 1930 prescribes the following rules regarding delivery and other matters concerning the performance of contract of sale:

(i)Delivery (Section 33): The delivery of goods can be made either by putting the goods in the possession of the buyer or any person authorized by him to hold them on his behalf or by doing anything else that the parties agree to.

(ii)Effect of part-delivery (Section 34): If a part-delivery of the goods is made in progress of the delivery of the whole, then it has the same effect for the purpose of passing the property in such goods as the delivery of the whole. However, a part-delivery with an intention of severing it from the whole does not operate as a delivery of the remainder.

(iii)Buyer to apply for delivery (Section 35): A seller is not bound to deliver the goods until the buyer applies for delivery unless the parties have agreed to other terms in the contract.

(iv)Place of delivery [Section 36 (1)]: When a sale contract is made, the parties might agree to certain terms for delivery, express or implied. Depending on the agreement, the buyer might take possession of the goods from the seller or the seller might send them to the buyer.

(v)Time of Delivery [Section 36 (2)]: Consider a contract of sale where the seller agrees to send the goods to the buyer, but not time of delivery is specified. In such cases, the seller is expected to deliver the goods within a reasonable time.

(vi) Goods in possession of a third party [Section 36 (3)]: If at the time of sale, the goods are in possession of a third party. Then there is no delivery unless the third party acknowledges to the buyer that the goods are being held on his behalf. It is important to note that nothing in this section shall affect the operation of the issue or transfer of any document of title to the goods.

(vii) Time for tender of delivery [Section 36 (4)]: It is important that the demand or tender of delivery is made at a reasonable hour. If not, then it is rendered ineffectual. The reasonable hour will depend on the case.

(viii)Expenses for delivery [Section 36 (5)]: The seller will bear all expenses pertaining to putting the goods in a deliverable state unless the parties agree to some other terms in the contract.

(ix) Instalment deliveries (Section 38): The buyer does not have to accept delivery in instalments unless he has agreed to do so in the contract. If such an agreement exists, then the parties are required to determine the rights and liabilities and payments themselves.

(x)Delivery to carrier [Section 36 (1)]: The delivery of goods to the carrier for transmission to the buyer is prima facie deemed to be 'delivery to the buyer' unless contrary terms exist in the contract.

(xi)Deterioration during transit (Section 40): If the goods are to be delivered at a distant place, then the liability of deterioration incidental to the course of the transit lies with the buyer even though the seller agrees to deliver at his own risk.

10. Who is unpaid seller? Explain the rights of unpaid seller against the goods and the buyer.

The Sale of Goods Act, 1930 defines an unpaid seller as a seller that has not been paid the full price of the goods that have been sold or that have received a bill of exchange or other negotiable instrument as conditional payment, and the condition on which it was received has not been fulfilled.[1]

Rights of an unpaid seller against the goods:
If the property in the goods has already been passed on to the buyer, the unpaid seller has the following rights against the goods:

(i)Right of Lien: The right of lien is the right to retain possession of the goods until payment for the same is made. Such a right is available to the unpaid seller having possession of the goods if the goods have been sold without any stipulation as to credit or they have been sold on credit, but the term of credit has expired. Such a right is also available in case the buyer has become insolvent.

(ii)Right of stoppage in transit: It is a right of stopping the goods while in transit after the unpaid seller has lost possession of the goods. This right enables the seller to regain possession. Such a right is available to the unpaid seller when the buyer becomes insolvent and when the goods are in transit. Goods are deemed to be in course of transit if they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.

(iii)Right of Re-Sale: The unpaid seller can re-sell the goods if the goods are of a perishable nature. He can also make a resale of the goods if he has given notice to the buyer of his intention to re-sell and the buyer has not within a reasonable time paid the price. If on resale, the seller incurs loss, he can claim the same from the buyer as damages for breach of contract. If there is a profit on resale, he is not bound to hand it over to the buyer.

Rights of an unpaid seller against the goods:

The right of unpaid seller against the buyer is also known as seller's remedies for breach of contract of sale. The rights of seller against the buyer personally are called rights in personam and are in addition to his rights against the goods. The right in personam are as follows:

(i) A Suit for the Price: Where under a contract of sale the property in the 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 price of the goods.

(ii) Suit for Damages: Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

(iii) Claim for Interest and Special Damages: The seller may recover interest or special damages in any case where by law interest or special damages may be recoverable. He may also recover the money paid where the consideration for the payment of it has failed.