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1) INTRODUCTION

The sale of Goods Act. 1930 a part of Indian Contract Act. 1872 & it got separated from 1st July 1930

This is applicable to whole of India prior the Jammu and Kashmir recognition act 2019. It is not applicable to Jammu & Kashmir after this act it is applicable to Whole India also Jammu and Kashmir. Earlier the Sale of Goods Act was known as the Indian Sale of Goods Act. later 1963 it was amended and name as "The Sale of Goods Act 1930".

Sale of Goods Act specifically deals with transfer of Movable property only. Immovable property cannot deal under this act. The act Contains provisions of what are the goods, types of goods, essential requirement for transfer of goods, performance of contract of Sale Comes under chapter IV. Transfer of possession from one person to another person voluntarily. There are two parties for the agreement Called Seller and buyer.

There are some criteria on the basis of Selling and buying takes place, we are going to discuss in this Article also the risk Contained during the transfer along with rights & duties of seller & buyer under this Act.

where there Contract for the Sale of unascertain or future goods, the property does not pass at the time of formation of Contract, The property in unascertain goods cannot pass until the goods are ascertained. Similarly if the future goods is the Subject matter of sale then it is an agreement to sell i.e. the buyer does not become the owner at the time of formation of Contract. For the Transfer of ownership in case of future goods, the goods must be ascertained & appropriate and then delivered with the Consent of both the parties.

(2) DEFINITION of GOODS And TYPES OF GOODS.

Section 2. (7) of Sale of Goods Act 1930 define Goods- It is defined- Goods means Movable property of every description excluding Money or actionable claim but Includes share, stock, things attached to earth which is agreed to be severed before sale Goods May be Existing goods or future goods.

Lottery tickets are Movable property and it Comes under the "Goods" Under the sale of Goods Act 1930¹ but it was overruled². It should be noted that money does not come under the definition of goods. under the legislation as Money is a legal tender. Though old & rare coins are goods as they cease to be a legal tender.³

in the Case- In Association power Co Ltd v Ram Toran Roy⁴ it was held that "electricity" is "GOODS". files containing Copies of record entrusted to a lawyer are not goods⁵ The different kinds of goods are ____

(1) Existing Goods -

Sec 6 of the act talks about existing goods. The goods which from contract of Sale are termed as existing goods if they are present. The existing goods are further of the following types

1] (H. Antaj Lots. V. Government of Tamil Nadu & OES. MANU /SC/ 0318/1985

2] Sunrise Associates v. Government of HCT, MANU/SC/8124/2006)

3] Re mahur Lalbhai (1901) 25 Bom 702.

4] MANU/WB/0528/1969

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.Specific Goods

According to Sec 2. (14) of the Act specified goods means goods identified or marked at the time of Contract of Sale.

Example - You want to sell your Mobile online you put an advertisement with its picture and description. A buyer agrees to the sale and Contract formed the mobile In this Case, mobile is specific goods.

.Ascertained Goods-

ascertained Goods are not defined under the sale of goods act 1930, many jurists have considered specific goods & Ascertained Goods as alike. However ascertained goods can be Called those goods which are Specifically Selected from a large set of goods.

Example - Himesh want to buy rice in a wholesale Market. He Specifically Selected 100 bags of rice from a larger set of unspecified rice. These 100 bags of rice will be ascertained goods.

.Unascertained Goods

Unascertained goods are those goods which are not specifically identified by the buyer at the time when the contract for Sale formulated.

Example - Himesh from his 100 rice bag wants to sell 50 rice bags, However he doesnot specify which rice bags he wants to sell. This is Called unascertain goods.

ii] Future Goods

Sec 2(6) of the sale of goods act. 1930 Future Goods means goods which is to be "Manufactured produced or acquired by the Seller" There will be no an actual Sale in sale of future goods. it will be always an "agreement to sell"

In UOI V. K.G. Khosla Co. Ltd ⁶ It was held that specific goods manufactured pursuant to a finalised Contract of sale were future goods.

Example - Himesh has an orange grove with Mangoes He agrees to Sell 500 oranges to a buyer once the oranges are ready for market. This is sale which will happen in the future. However the goods have already been identified along with the agreement to sell such goods are known as future goods.

iii] Contingent Goods -

Contingent Goods are a subtype of future goods. In contingent goods the sale happens in future. The Sale will always come with some Contingency clause in it.

Example - Himesh sells his Apples from his apples from his apple grove when the trees are yet to produce Apples. Then the Apples are Contingent goods. This sale of contingent goods will be dependent on a Condition that the trees will produce apples, which may or may not happen. If the Seller has contracted absolutely to Supply the goods despite the uncertainty & he fails then he will be liable to pay damages. ⁷

3] WHAT IS AN AGREEMENT TO SELL?

IN agreement to sell property in the goods is agreed to be transfer at Some future time or fulfillment of some Condition is Called "agreement to sell."

The Same had been defined in Section 4 (3) An agreement to sell also becomes sale when the given time elapses or the Condition that are needed for the transfer to happen gets fulfilled.

Thus an agreement to se establishes the terms & Conditions of the offer of a property by the Seller to buyer. Nature of sale in agreement to sell is Conditional.

[6] MANU /SC/0434/1979)

(7 Simond v. Braddon (1811) I CB (HS) 324)

The essential of the Contract of Sale are as follows

- 1] there must be two parties
- 2] Transfer or agrees to Transfer property
- 3] price
- 4] Transfer of property in goods.
- 5] Absolute and conditional
- 6] all other essential constituents of a valid Contract.

Section 6(3) of the Sale of goods act, 1930 states that when the subject matter of Sale by a Contract of sale the seller purports to effect a present sale of future goods the Contract operates as an agreement to sell the goods. Though the seller may purport to effect a present Sale of future goods the transaction is not a sale, but an agreement to sell. The reason that "a man Can not in equity any more that at law assign what has no existence" But a man can agree to assign property which is to Come Into existence in the future such a Contract at law Creates only a Personal obligation to pass the property (Jus in persona)and not create any right real right or jus in rem. However, the buyer is in a better position & Such a contract would, when the goods Come in to existence, given him a good title thereto against all persons excepting anyone who, in the Meantime & bonafide, may have had the property transfested to him.

4] TRANSFER of PROPERTY IN GOODS

Transfer of property i.e. ownership in the goods from the Seller to the buyer is the essence of the Contract According the Sale of Goods Act. Property means general property in The Goods rather than mere Special property. The general property means ownership and special property means only some of the rights. Thus the Contract of Sale occurs when ownership in goods is transferred and not when the right possession is transferred.

5] Sec 23 TRANSFER OF PROPERTY IN CASE OF FUTURE GOODS

Sec 23 of the act talks about the transfer of property (ownership) between seller & buyer in case of unascertained or future goods .

In Case of Contract of sale of unascertained goods the property does not pass to the purchaser Unless there is an unconditional appropriation of goods in deliverable State of the contract.

In case of future goods where goods are not in the possession of the seller at the time of formulation of Contract of sale and is either to be manufactured, produced or obtained the ownership of goods does not transfer to buyer unless and until the goods are ascertained and appropriated either by the seller with the assent of buyer or either with the buyer with the assent of the Seller

Example -20 bags of Sugar out of bulk were agreed to be sold 5 bags of sugar were filled up and taken away by the buyer subsequently the seller filled up 15 bags and informed the buyer then buyer replied that he will take the delivery as soon as possible

Here the ownership of future goods of (15 bags) are transferred as soon as the goods were ascertained by the buyer.

The Selection of the goods by one party & acceptance by the other, Connects that, which before was a mere agreement to sell into an actual sale & the property there by passed ⁸ once the goods are ascertained by the buyer & seller Cannot deliver into any other person as now he is not the owner of goods.

If goods are Selected with intention to perform the Contract,with mutual Consent of seller & buyer it called appropriation of goods.

Essentials for appariation of goods.

- .The goods should conform to the description & quality
- .The goods must be in deliverable state.
- .The goods must be Conditionally appropriated to the contract either by delivery to buyer or his agent or the carrier. The Seller does not have the right to dispose the goods.
- .The appropriation Must be Seller with assent of buyer.
- .The assent may be express or implied which may be given either before or after appropriation

[8] Rohdas v Thwaites (1827) 6 B&C 388;) 108 FR 495

goods of a larger quantity and the goods have to be selected by the seller, the property does not pass until the seller has selected the goods and appropriated them to the Contract .

The buyer acquired an undivided interest in the larger bulk and such an interest is an insurable interest.⁹

If the Seller gives the delivery order upon a party in possession of the large bulk of goods in respect of the quantity sold to the buyer and buyer accepts the order, the risk of loss from something happening to the goods such as a deterioration in their quality passes to the buyer on acceptance of the delivery order¹⁰

6 RIGHTS of SELLER AND BUYER

There are two parties for contract of the sale i.e. Seller and buyer and each has some duties and obligation to perform.

The duty of the Seller to deliver the goods, whether he is owner or not or he has possession of goods at the time of contract of sale or not. The duties of the buyer to accept the goods and pay for them. Both these duties are performed accordance with the terms of contract of sale. Rights of seller to hold delivery of goods until payment is done. whereas delivery as specified buyer may check the goods if damaged.

CONCLUSION

Thus the future goods are those goods which is to be Manufactured, Produced or acquired by the Seller after the formulation Contract, There will be no actual sale in the Sale of future goods. It will be always be an "Agreement to Sell"

The sale of goods deals with the Movable property only. Here ownership of property is transferred. Risk is not transferred until & unless the ownership is transferred.

[9] Inglis v Stock. (1885) 10 App cas 263

[10] Sterns Ltd v Vickers Ltd, (1923) 1 KB 78 (CA))