

Sale of Goods Act 1930 Chapter II - Formation of the contract

4. Sale and agreement to sell:

(1) 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.

(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 the 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.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

5. Contract of sale how made:

Formalities of the contract

(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word

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of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

**6. Existing or future goods:**

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where 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.

**7. Goods perishing before making of contract:**

Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

**8. Goods perishing before sale but after agreement to sell:**

Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

**9. Ascertainment of price:**

(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed

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or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

**10. Agreement to sell at valuation:**

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

**11. Stipulations as to time:**

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

**12. Condition and warranty:**

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**(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.**

**(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.**

**(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.**

**(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.**

**13. When condition to be treated as warranty:**

**(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.**

**(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.**

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**(3) Nothing in this section shall affect the case of any condition or warranty fulfillment of which is excused by law by reason of impossibility or otherwise.**

**14. Implied undertaking as to title, etc:**

**In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is--**

**(a) an implied condition on the part of the seller that, 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;**

**(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 charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.**

**15. Sale by description:**

**Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.**

**16. Implied condition as to quality or fitness:**

**Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular**

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**purpose of goods supplied under a contract of sale, excepts as follows:-**

**(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose. Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied conditions to its fitness for any particular purpose.**

**(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Provided that, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.**

**(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.**

**(4) An express warranty or conditions does not negative a warranty or condition implied by this Act unless inconsistent therewith.**

**17. Sale by sample:**

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**(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.**

**(2) In the case of a contract for sale by sample there is an implied condition-**

**(a) that the bulk shall correspond with the sample in quality;**

**(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;**

**(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.**

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