


**Advanced Contracts, Tendering and Public Procurement**  
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**Lecture 38: Special Contract: Sale of Goods – Part 01**



**Sale Of Goods Act**

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Difference between Sale and Agreement to sell [Hire Purchase Agreement]

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Difference between Contract of Sale of Goods and Contract for work

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Why Sale is important: transfer of risk

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Definition of 'goods'

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Conditions and warranties

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Remedies for breach of condition and warranties

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Caveat emptor to caveat Venditor



Moving on to a legislation which is a contract law, being part of the 1872 Indian Contract Act, but later on it was considered necessary to make a separate legislation is called the “Sale of Goods Act of 1930.” This is a very, very important legislation for many reasons. Probably not significantly covered sometimes or not emphasized so much upon on the contractual terms and conditions. The Sale of Goods Act is a very comprehensive legislation that actually promotes trade and commerce in goods as distinct from other kinds of contract that could be contract for services, or contract of work.

The sale of goods creates a special legislation. The comparison between Sale of Goods Act and the Indian Contract Act, the Indian contract law defines the remedies for breach as being damages, law of unjust enrichment and restitution. These are the two remedial provisions that the Indian Contract Act 1872 still has.

The complementary legislation in terms of remedies for breach are there in this specific relief. The rule now is about substituted performance of a contract which was introduced in 2018. It talks about rectification and cancellation of an instrument, it talks about injunction

and several other types of remedies which are important. To compare those remedies, they have been discussed so far under the Sale of Goods Act 1930, it gives certain additional remedies for contract for sale of goods.

For example, one of the remedies that the sale of goods act identifies is what is called the rights of an unpaid seller. Even after the sale, an unpaid seller who has made a sale, is yet to get his price, he has been given certain very extraordinary rights under the Sale of Goods. This very clearly means the drafters of those days felt there need not be a rush to go to the courts to get remedies. They can exercise remedies which are provided in the statute. It is called the equitable statutory remedies

According to the rights which are granted to contracting parties, in Sale of Goods Act can there be a right of an unpaid seller to stop goods in transit? In a condition that the goods are yet to reach the buyer, he can recall the goods which is not yet paid. And the right to stop goods in transit is given to an unpaid seller, if he comes to know that the buyer is either an insolvent or there is a suspicion that he will not be given the price for the same.

The remedy provided for a seller under the Sale of Goods Act equips the sellers with rights that they can go ahead and seek the protection of the law in case they are not paid for the same. Similarly, another interesting right that is mentioned in the Sale of Goods Act is called the sue for the price of the goods. This is something that the sellers can definitely go to the court and sue for the price and this distinction is different from a sue for damages.

In damages, the rule is that there shall be something called “suffer some kind of loss” there has to be a damage and the proof of damage is the quantification of damages. This is critical to understand the conceptualization or the law of damages. The proof is required is what can be loss of business, loss of contract price, it can be injury to person or property etc... However, when the Sale of Goods Act or a contract to the sale of goods, when the good as are sold to anyone and has been not given the price, there is a breach because payment of price is considered a breach.

But then to say that the price is in the form of damage not required, then going to show that there has been some kind of damage. After having recorded the price, sue for the price and the price is something that gets suffered because of delaying the payment. There should be damages as well. Along with the sue for prices, an additional remedy that is provided under the Sale of Goods Act, which is distinct from property is “Sue for damages”. To look at the

Sale of Goods Act, it interestingly speaks about the aspects of what is called as a special damage. There is a clear provision in the sale of goods where the special damages can be awarded.

What does special damages actually mean? It means that when the buyer, who has informed the seller that he needs these goods, and when there is a delay in the delivery of goods, he may suffer extraordinary losses. Despite the seller knowing the consequences in a contract for breach, the seller actually commits a breach of contract, then the buyer will be entitled to special damages. There are no extraordinary damages but the special damages are more than nominal damage. The special damages could also include loss of profit or loss of income that could have been generated, if the goods have been delivered on time.

The consequent special damages are provided and is based on the prior information to the parties, on the communication between the parties. It is based on the notification of the parties. In India, special damages are part of the jurisprudence on damage, but the Sale of Goods Act also does not prohibit from payment of interest on damage. From the time the suit has been filed, or from the time the breach has occurred, the parties can have the right to claim interest on damage. Because finally, it is not the amount that is to be given, but the rate of interest and the loss of income money that is involved. These are certain factors, which means the Sale of Goods Act is a very important piece of legislation for contracts, especially those that have common contracts in which goods are actually the subject matter of sales.

Under the Sale of Goods Act there is the difference between sale and agreement to sell. Now, if one goes by section 4 of the Sale of Goods Act for the first time in the year 1930, the contracts can be in several stages. Stage one could be agreement to sell and stage two contract of Sale. When compared, these two stages are both contracts enforceable at law. Because they should have an offer acceptance consideration, the object should be legal, free consent and the parties should have capacity to contract

The basic requirement is that in a contract an element of an agreement to sell is present. Usually the best example to say the two stages of a contract, or the multi stages of a contract. Now generally, when someone buys an apartment, then a booking amount is given. When booking amount or the advance is given, an agreement to sell is drafted. The parties are given some time to actually prepare, probably the sale deed, prepare the sale consideration and probably apply for a home loan. Three months' time is generally taken by the buyers to

actually to convert the sale. When the complete consideration is paid or the price is paid, a sale deed is executed or agreed upon, then it is registered.

And that is how the two-stage contract documentation is done in the apartment or real estate project. These two kinds of contract enforceable at law. However, there are distinctions over here. For example, an agreement to sell is an executory contract. Whereas a sale contract is an executed contract. The term executory contract means that the performance is yet to be done or is supposed to be done.

It means that when an agreement to sell is entered into, there are a lot of things that are still to be executed and that are not finalized. In an agreement itself, there are things to be finalized. And it is executed in the character of the agreement. So, this is not a complete agreement in itself. Contract of Sale is a complete agreement, an agreement to sell probably is the initial kind of lock in between the parties. They may have decided as to what they can decide right now, but finally the things will decide only when a contract of sale takes place.

The best example to explain the executed versus executory contract is the contract farming. What happens in contract farming is suppose it is Pepsi, or any other multinational company which goes to a farmer and wants the farmer to do farming for the companies. Because, some of these companies control the seed having a specific requirement, it can be genetically modified or it can be specially hybrid seed. The company gives the seed to the farmers, the farmer has to grow the seed, at this stage, when the company and the farmer agree that this is the crop to be sown in his land, they enter into what is known as “contract farming.”

Now, why is it executory in nature is because that this is what is called the expected obligation. Hence the performance plus the contract is executed from both the parties. Now, why is it called executory? Is for the simple reason is that the seed for is tomatoes or potatoes, let us assume that it is pathetic. If it is potato, it takes some time for the potatoes to grow. When not sure to sell is made, because in one season, it could be X kind of quantity in another season, it could be Y quantity. Not sure how much quantity the Pepsi company will buy or not sure as a farmer how much he is going to sell. It is all dependent on the crop. Second, it is also dependent upon the obligations of how the product is grown, what is the skill of the farmer, what is the quality of the potatoes, and of course the potatoes are graded by quality.

When the graded crop, that is A Grade, B grade, two or three months down the line the potato crop is ready then what is the price of the product? Today it may be X price, but after three months, it could be Y price. So, has everything been agreed? No, it cannot be. However, the agreement is enforceable. The farmer can sue the company and the company can sue the farmer in this case that is breach at the initial stage. This two stage kind of an agreement has been introduced in 1930, a kind of facilitating the reality of contract saying that in complex modern day contracts. It is not one document that makes a contract, there can be several documents that make a contract. The parties must probably agree, which is the enforceable. The final agreement to be taken to the court as evidence to prove their obligations under the same.

Suppose a farmer in an agreement to sell does not sell the potatoes to Pepsi? What can Pepsi do? What are the remedies for Pepsi? What shall be assume that the sale agreement has already been made and the farmer then does not agree to sell the potato to Pepsi. It is now to should understand that the remedies which will also will differ in this case. Why will they differ because in an agreement to sale the farmer does not want to sell the potatoes. He has not sold the potatoes; he has only agreed to sell. If he had sold the potatoes, then the character in the potatoes would have passed on to Pepsi. That is what the contract of sale does. The sale not only ensures transfer of title it also ensures transfer of position. So, sale here is two-combination: - title as well as position.

In an agreement to sell note the title does not transfer neither the position transfers and hence the farmer can sell to someone else. That is possible because he is just agreed to sell and not made a sale. If he does, so, of course, the Pepsi company cannot probably, object to that because they have not taken the right to do it. But they can definitely sue the farmer for breach because an agreement to sell is enforceable, and they can sue for damages.

But suppose after sale the farmer sells the potatoes to some third party, this would amount to serious breach of contract by the farmer, because he has already transferred title and he is supposed to transfer the position. That was a serious breach for which the farmer could be held responsible not only for an ordinary breach, but also for wrongful conversion of title in the property. The third party in a sale cannot get title because it is already with Pepsi.

The rights for the third party gets normally determined when there is sale or agreement to sell. So, third parties cannot get title because title is already with Pepsi, they can probably get position but again, the position can be recalled from Pepsi, which requires the same to be

handed over as well. So, these are probably some of the consequences to make certain kinds of these agreements having very significant consequences regarding the understanding of sale of goods, per say.