

SALE

OF

GOODS ACT

LL.B. II Sem

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Q. 7. (a) Enumerate the various formalities which are to be observed for "contract of sale" and the various modes in which they are performed.

(b) Summarise the rules regarding the subject-matter of the contract of the Sale of Goods Act.

A. Section 5 of the Sale of Goods Act, provides the formalities which should be observed for the contract of sale. Section 5 runs as follows—

"A contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer. The contract may provide for the immediate delivery of goods or immediate payment of price or both to the delivery of the payment instalments or that the payment or both shall be postponed" — [Section 5(i)].

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 of mouth ; or partly in writing and partly by word of mouth or may be implied from the conduct of the parties. [Section 5 (ii)].

According to the language of Section 5 of this Act following are the formalities which are required to be performed for making a contract of sale.

1. Proposal by one party and acceptance by other.—

In the contract of sale offer from one party and the acceptance by the other party is necessary. The contract is made by a buyer offering to buy or a seller offering to sell goods for a price, and the other party accepting such offer.

2. Proposal and acceptance—May be in writing or oral or both.—A contract of sale may be made by words of

mouth or in writing, or partly in writing and partly by words of mouth or may be implied from the conduct of the parties. However it is subject to the provisions of law for the time being in force.

3. Subject-matter of contract.—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. There may be a contract of sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

Whereby 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.

Future goods are those goods which are to be manufactured or produced or acquired by the seller, after the making of the contract of sale. [Section 2 (6)].

There may be circumstances in which the goods contracted for, may not be in existence due to its perishable nature.

In such conditions such goods may perish before making the contract or these may perish before actual sale but after the agreement to sell.

(1) Goods perishing before the Contract.—Section 7 deals with this problem. 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 so damaged that it no longer answer to their description in the contract.

The expression perished goods has not been defined in the Act, but it is generally taken to mean not only the goods where they are physically destroyed, but also if they had ceased to exist in commercial sense.

(2) Goods perishing before sale but after agreement to sale.—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 void.

According to the language of Section 8 of the Act the agreement will be void, if the following conditions are satisfied—

- (i) There should be an agreement to sell specific goods.
- (ii) Goods perish or become so damaged as no longer answer their description in the contract.
- (iii) Goods perish without fault of any party, and
- (iv) Goods perish before the risk passes to the purchaser.

Lord Denning M. R. in *C. E. B. Draper & Son Ltd. v. Edward Turner & Son Ltd.*, (1965) 1 Q.B. 424, said :

"The word 'sale' properly connotes the transfer of the absolute or general property in a thing for a price in money."

The essential object of the contract of sale is the exchange of property for a money price. There must be a transfer of property, or an agreement to transfer it, from one party the seller, to the other—the buyer, for the consideration of a money payment or promise thereof by the buyer (*TELCO Ltd. v. The Assistant Commissioner of Commercial Taxes*, AIR 1970 SC 1281). It is, however, not an inevitable rule that the price must be fixed (*K. V. Mallaya & another v. J. Ramaswami & Co.*, AIR 1964 SC 818).

4. Ascertainment of price.—The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined in accordance with foregoing provisions. The buyer shall pay a reasonable price to the seller.

Price means the money consideration for a sale of goods. The parties may fix the price in the contract, or it may be fixed in a manner agreed. The price may also be determined by the course of dealing between the parties. When no price is fixed nor there is any stipulation on the basis of which it can be subsequently fixed the buyer is bound to pay reasonable price to the seller.

Whenever goods is to be sold at valuation of third party and such third party fails to fix such price, the agreement is thereby avoided.

If part delivery has been made, the purchaser will have to pay a reasonable sum for the goods received. Whenever any party to the

contract prevents that third person from evaluating the price of goods, the party not in fault can file a suit for damages against the party at fault.

An allotment of goods among parties on a dissolution of firm is not a sale, (*State of Gujarat v. Ramanlal Sanhalchand*, AIR 1965 Guj. 60). Exchange of property for something other than money is not sale.

(b) Subject-matter of a Contract of Sale.—The subject-matter of a contract of sale must always be "goods". The goods may be either existing goods owned or possessed by the seller, or future goods. [Section 6 (1)]. Now a contract of sale of goods to be delivered in future is valid and it hardly matters whether the seller has or has not the goods at the time of the contract.

According to Section 2 (6) of the Sale of Goods Act, "*future goods*", means goods to be manufactured or procured or acquired by the seller after the making of the contract of sale. There may be contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. [Section 6 (2)].

It may, however, be noted that 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. [Section 6 (3)].