<u>UNIT 2</u>

<u>Sales of Goods Act 1930</u>

According to Sec 4(1) of Sales of Goods Act: “A contract of sales of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price” It thereby includes:
i. Sale (Property in goods is immediately transferred)
ii. Agreement to Sell (Transfer of Property in goods is to take place at a future date or subject to some conditions thereafter to be fulfilled)

<u>Essentials</u>
1. Two parties
2. Transfer of property (means ownership)
3. Goods (moveable goods, transfer of immoveable property is not regulated by sales of goods act)
4. Price (consideration should be money only)
5. Essential elements of Valid Contract must exist

<u>Goods</u>
As per Sec 2(7), “Goods means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass & things attached to or forming part of land which are agreed to be served before the sale or under the contract of sale”.
(Actionable Claim: Unsecured Debt, Loan)

<u>Kinds of Goods</u>
Existing Goods: Physically in existence and which are in seller’s ownership and/or possession by seller at the time of entering the contract of sale are existing goods. Types: Specific Goods (The goods which are identified and agreed upon at the time of contract of sale) & Unascertained (Not identified…. contract of sale)

Future Goods: Goods to be manufactured or produced by the seller after making the contract. E.g. Fruits that may grow on tree. (Agreement to Sell)

Contingent Goods: Acquisition of which by the seller depends upon a contingency which may or may not happen. (Agreement to Sell) Contract is enforceable on the happening of the event, otherwise it is void. E.g. A agrees to sell to B a specific rare painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

Basis	Sale	Agreement to Sell
Transfer of Property	Immediately	At a future date
Types of goods	Existing and specific goods	Future & Contingent Goods
Risk of Loss	Buyer bears the loss if the goods are destroyed	Seller bears the loss if goods are destroyed
Consequence of Breach	If the buyer refuses to pay the price of goods, seller can sue for price	Seller can only sue for damages and not the price if buyer breaks his promise
Right to Re-Sell	Seller can't resell the goods	Seller can sell the goods, buyer can sue for damages because ownership remains with seller
Insolvency of the buyer before he pays for the goods	Seller must return the goods to the official receiver	Seller is not bound to deliver as ownership has not passed to him
Insolvency of Seller if buyer has already paid	Buyer is entitled to recover goods from official receiver	Buyer can only claim rateable dividend as a creditor if he had paid for the goods
Right	Right against the whole world	Right against the specific person
Type of Contract	Executed	Executory

Price – Price may be expressly fixed on contract itself, it may be fixed in an agreed manner provided by the contract (say market price on a prevailing date), It may be determined by the course of dealings between the parties, Reasonable price may be used for dealing

Conditions & Warranties

At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods and about their fitness for buyer's purpose. A representation which forms a part of the contract of sale and affects the contract is called a stipulation. However, every stipulation is not of equal importance.

Condition & Warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition: A condition is a stipulation essential to the main purpose of the contract, and the breach of which gives rise to a right to treat the contract as repudiated.
Essentials – Essential to main purpose of Contract, its non-fulfilment would defeat the very purpose of contract, Aggrieved party can repudiate the contract

Warranty: 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.

When Condition is equal to Warranty?
-Voluntary Waiver by Buyer: Although on a breach of condition, the buyer has a right to treat the contract as repudiated and reject the goods, but he is not bound to do so. He may instead waive the condition and treat it as a breach of warranty, by which he can sue the seller for damages.
-Acceptance of Goods by Buyer: Where the buyer has accepted the goods, and thereafter discovers the breach of condition, then the breach of any condition can be treated as breach of warranty and contract can't be repudiated, although damages can be claimed.

Express Conditions – The conditions which are agreed upon between the parties in express words, either written or oral are express conditions.

Implied Conditions:
-Condition as to title: Presumption that seller is the true owner of goods. (Seller's right to sell the goods is termed as a Condition as to title)

-Sale by Description: When the goods are sold by describing their qualities & the buyer relies on that description.
-Condition as to quality or fitness: The goods should be reasonably fit for which the buyer wants them. (The buyer should make known to the seller the purpose for which goods are required and the buyer should rely on the seller's skills or judgement)
-Condition as to merchantability: The implied condition is that goods must be in merchantable quality i.e. a condition in which a reasonable man acting reasonably would accept them under the circumstance. Applicability of this condition arises when:
a. The seller must deals in goods of that description, whether he be manufacturer or not.
b. The buyer must not have any opportunity of examining the goods or there must be a latent defect in the good which would not be apparent on reasonable examination of the same.
(If the buyer had an opportunity to examine the good but avoids it, or if he has examined the goods, then there is no implied condition as to merchantability)

-Condition in sales by sample as well as by description: The condition is that the bulk of the goods shall correspond to the sample and description
-Condition in a sale by sample: The goods must correspond with sample in quality. (The buyer shall have a reasonable opportunity of comparing the bulk with sample)
-Condition as to wholesomeness: For eatables, the goods shall be wholesome.

Implied Warranties
-Warranty of quiet possession: Buyer shall have and enjoy quiet possession of the goods.
-Warranty of freedom from encumbrances (burden): The goods shall be free from any charge or encumbrance in favor of any third party not declared.
-Warranty of disclosing the dangerous nature of goods to the ignorant buyer: Where the goods are dangerous and buyer is ignorant of danger, the seller must warn the buyer of probable danger.

Caveat Emptor (let the buyer beware)
When the seller displays their goods in open market, it is for the buyer to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for bad selection of the buyer.

Exceptions:
-Where seller makes a misrepresentation or fraud and buyer relies on it (Voidable)
-Seller actively conceals the defects so that the same could not be discovered one reasonable examination
-Where the goods are purchased by description and they do not correspond to description (implied condition)
-Where goods are bought by sample, and the bulk does not correspond with same, or no opportunity given to compare or hidden latent defect
-Condition in a sale by Sample & Description
Condition as to fitness and quality

Rights of Unpaid Seller

Unpaid Seller: The seller of the goods is deemed to be an unpaid seller:
a. when the whole of the price has not been paid (unpaid wholly or partly)
b. where a bill of exchange or other negotiable instrument has been received as a conditional payment and the same has been dishonored

Rights of unpaid seller against the goods

i. Where the property in goods has passed

1. Right of Lien: Lien is the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered. Unpaid seller is entitled to exercise his lien in following cases:

a. Where the goods have been sold without any stipulation like credit

b. Where the goods have been sold on credit, but the term of credit has expired

c. Where the buyer becomes insolvent, even though the period of credit may not have yet expired

Rules regarding Lien
-The Seller must not have lost the possession
-Lien depends on actual possession not title
-It can be used only for non-payment of price and not for other charges
-When unpaid seller has made part delivery of goods, he may exercise right of lien on the remainder

When Lien is lost?
-Lien depends on physical possession of goods, once that’s lost, lien is also lost
-When the seller delivers the goods to carrier for purpose of transmission without reserving the right of disposal of goods
-When the buyer or his agent lawfully obtain possession
-When seller expressly waives of his right of lien

1. Right of stoppage in transit: Right of stopping the goods while they are in transit, to regain possession and to retain them till full price is paid. (the goods should be in possession of a middleman between the seller who has parted with and buyer who is yet to receive them)
2. Right of resale: Right can be exercised when

-Goods are of perishable condition
-Where seller gives notice to buyer of his intention to resell and the buyer does not pay within a reasonable time after notice
-Where the seller has expressly reserved his right of re-sale in case the buyer should make default

ii. Where the property in goods has not passed

-Right of withholding the deliver gets active when the property in goods has not passed to buyer (lien)
-Right of stoppage in transit

Rights of unpaid seller against the buyer personally

1. Suit for Price: Where property in goods has passed to the buyer, or where the sale price is payable ‘on a day certain’ and the buyer wrongfully neglects or refuses to pay the price as per the terms of contract, then the seller is entitled to sue the buyer for price irrespective of delivery of goods. (In case not delivered, the seller suits for price normally)

2. Suit for damages for non-acceptance: Where the buyer wrongfully neglects or refuses to pay the price for goods, the seller may sue him for damages for non-acceptance. The seller’s remedy is suit for damages rather than for the full price of the goods.

(Damages are calculated in accordance with the rules of Sec 73, the measure of damages is the estimated loss arising directly and naturally from the buyer’s breach of contract)

-Where the goods have a ready market, the principle applicable is that the seller may recover damages equal to difference between the contract price and market price. If difference is nil. Seller can get only nominal damages (say rupee). / Where there is no ready market, measure of damage depends on facts of each case.

3. Suit for Special Damage: Which the parties knew when they made the contract, to be likely to result from the breach of it.

Buyer’s Rights Against Seller

a. Suit for Damages for Non-Delivery
b. Suit for Specific Performance: Court may direct that the contract shall be performed specifically
c. Suit for breach of warranty: Buyer can suit for damages, but if price has already been paid then he may ask seller for reasonable reduction in price.
d. Suit for rescission of contract and damages for breach of condition
e. Suit for recovery of price together with interest

Negotiable Instruments Act 1881

Definition

The word negotiable means ‘transferable by delivery’ and the word instrument means ‘a written document by which a right is created in favor of some person’.
The term ‘negotiable instrument’ means ‘a written document transferable by delivery’.

As per Section 13 of the Negotiable Instruments Act, “a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.”
Section 13(2): A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees”

Section 31 of RBI ACT

I. No person in India other than RBI or Central Govt. can make/issue a promissory note ‘payable to bearer’.
ii. No person in India other than RBI or Central Govt. can draw or accept a bill of exchange ‘payable to bearer on demand’
iii. A cheque ‘payable to bearer on demand’ can be drawn or a person’s account with a banker.

Characteristics of Negotiable Instruments

1. Freely Transferable

- Negotiable instruments can be transferred from one person to another by mere delivery (for bearer instruments) or endorsement and delivery (for order instruments).
- The transferee obtains full legal title to the instrument.

2. Holder in Due Course (HDC)

- A person who acquires a negotiable instrument for value, in good faith, and without notice of any defect, becomes a **holder in due course (HDC)**.
- The HDC enjoys certain privileges, such as being protected against prior defects in title.

3. Unconditional Promise or Order

- A negotiable instrument contains an unconditional promise (in promissory notes) or order to pay (in bills of exchange or cheques).
- The payment cannot be dependent on a future event or condition.

4. Payment of a Fixed Amount

- The amount payable under a negotiable instrument must be specific and certain, without any ambiguity.

5. Payable to Order or Bearer

- A negotiable instrument may be payable:
    - **To Order:** Specifies a particular person to whom payment is to be made.
    - **To Bearer:** Payable to the person holding the instrument without specifying any name.

6. Time of Payment

- The instrument may specify a fixed date, be payable on demand, or at sight.

7. Right of Recovery

- The holder has the right to recover the amount specified on the instrument from the parties involved (drawer, acceptor, or endorser).

8. Legal Presumptions

Under the Negotiable Instruments Act, certain presumptions apply:

- **Consideration:** It is presumed that the instrument was issued for valuable consideration.
- **Date:** The date mentioned is presumed to be correct.
- **Transfer:** It is presumed that the instrument was transferred in good faith.

9. Negotiability and Endorsement

- **Negotiability:** The instrument can be transferred multiple times until maturity or realization.
- **Endorsement:** To transfer the ownership of an order instrument, it must be endorsed by the current holder.

10. Notice of Transfer Not Necessary

- The transfer of a negotiable instrument does not require prior notice to the original debtor or issuer.

11. Rights of the Bona Fide Transferee

- A bona fide transferee for value gains a better title than the transferor, even if the transferor's title was defective.

12. No Formalities for Transfer

- Unlike other types of contracts, negotiable instruments require no formal agreement or additional documentation to transfer ownership.

<u>Types of Instruments</u>

Negotiable Instruments: Bills of Exchange, Promissory Notes, Cheques, Treasury Bills Dividend/Share Warrants, Hundis, Railway Bonds payable to bearer.

Non-Negotiable Instruments: Money Orders, Postal Orders, Fixed Deposit Receipts, Letters of Credit etc.

Quasi-Negotiable Instrument: They are capable of being transferred by endorsement and/or delivery, but the transferor of such documents cannot give to the holder any better title to the goods than he himself possesses. E.g. Bills of Lading, Railway Receipts, Dock Warrants, Wharfinger Certificates

Promissory Note

As per Section 4: A Promissory note is an instrument in writing, containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.

- A Promissory note payable "only to a particular person' is valid if it satisfies the requirements of the definition, but it shall not be a negotiable instrument as its transferability is restricted.
- As per Section 31 of RBI Act, 1934 RBI and Central Govt. can only make a promissory note payable to bearer.
- Bank Notes (promissory notes issued by a banker payable to bearer on demand) and Currency Notes (promissory notes issued by the RBI/Central Govt. payable to bearer on demand) are excluded from the definition of promissory notes because both are treated as money.
- The person who makes the promise to pay is called the 'maker'. He is the debtor and must sign the document, whereas the person to whom the payment is made is the creditor and is called the 'payee'.

Essentials of Promissory Notes

1. It must be in writing: An oral promise to pay does not become a promissory note. The writing maybe on a paper, or on any book, written with a pencil or in ink and includes printing or typing.
2. It must contain a promise or undertaking to pay: Undertaking may be gathered either from express words or by necessary implication. A mere acknowledgement of indebtedness is not a promissory note, although is a valid agreement which may be sued upon.
3. The promise to pay must be unconditional: Certainty is very necessary, a promissory note must contain an unconditional promise to pay, and this promise must not depend upon the happening of some uncertain event.
4. It must be signed by the maker.
5. The maker must be a certain person: The instrument itself must indicate with certainty who is the person or are the person engaging himself to pay. In case the person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity.

6. The payee must be certain: Like the maker, the payee of a pronote must also be certain on the face of the instrument. A note is valid even if the payee is misnamed or indicated by his official designation only, provided he can be ascertained by evidence.
7. The sum payable must be certain: The sum must be certain and definite, and must not be capable of contingent additions or subtractions.
8. The amount payable must be in legal tender money of India: A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of foods is not a promissory note.

Bill of Exchange

Section 5 of Negotiable Instrument Act
"A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument."
Note:

- A BOE directing to pay 'only to a particular person' is not a NI within the NI Act as its transferability is restricted.
- Although a BOE may be originally draw 'payable to bearer' but in such a case it must be payable otherwise than on demand (say 3 months after date). In other words, a bill cannot be drawn 'payable to bearer on demand'. If it is 'payable on demand' then it must be 'payable to order' (Section 31 of RBI Act)

Parties to a BOE

- Drawer: Person who makes the bill
- Drawee: Person who is directed to pay
- Payee: Person to whom the payment is to be made

The drawer, or if the bill is endorsed to the payee, the endorsee who is in possession of the bill is called the "holder". The holder must present the bill to the drawee for his acceptance. When the drawee accepts the bill, by writing the words 'accepted' and then signing it, he is called the 'acceptor'.

One person maybe:
'drawer and payee' – when the bill is drawn 'pay to me or my order'
'drawee and payee' – when the bill is subsequently endorsed in favor of the drawee
'drawer and drawee' – when one draws the bill upon himself

Drawee in case of need – Sometimes the name of another person maybe mentioned in a BOE as the person who will accept the bill if the original drawee does not accept it, he is known as 'drawee in case of need'

Acceptor for Honor – When a BOE has been noted or protested for no-acceptance or for better security, and any other person accepts it *supra protest* for honor of the drawer or any one of the endorsers, then such a person is called an 'acceptor for honor' – section 7

Essential of a BOE

1. It must be in writing
2. It must contain an *Order to Pay* (not request)
3. The order to pay must be unconditional
4. It must be signed by the drawer
5. The drawer, drawee and payee must be certain (where liability lies, no ambiguity must lie)
6. The sum payable must be certain
7. The bill must contain an order to pay *money only*

8. It must comply with the formalities like date, consideration, stamps etc.

Specific Benefits of BOE:

- It is a double secured instrument, if dishonoured by acceptor, the holder or the payee may look to the drawer of the bill for payment
- In case of immediate need of money, a bill can be discounted with a bank by the payee
- Two separated trade debts can be discharged by a single BOE.

E.g. A buys good on credit from B from 1k, B buys good on credit from C for 1k, an order by B to A to pay the sum of 1k to C will discharge two separate trade debts.

Cheque

Section 6 defines cheque as:

"A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form"

Thus, a cheque is always drawn on a bank and is always payable on demand

Note:

1. A cheque is always drawn on a baker
2. A cheque can only be drawn payable on demand
3. A cheque drawn 'payable to bearer on demand is valid.
4. A cheque does not require any acceptance by the drawee before payment can be demanded.
5. It does not require any stamp
6. Cheques can be crossed
7. There is no system of Noting or Protest in case of a cheque