

The background of the cover is a complex, abstract composition. It features numerous reflective, metallic-looking spheres of various sizes. These spheres are interconnected by a dense network of thin, light-colored lines that crisscross the frame. The overall effect is one of intricate, organic complexity, reminiscent of a molecular structure or a tangled web of light. The spheres and lines are set against a plain white background, which makes the metallic elements stand out.

## The Sale of Goods Act and Private Int'l Law







RFKN LEGAL

# **THE SALE OF GOODS ACT AND PRIVATE INT'L LAW**

UNDERSTANDING THE INDIAN FRAMEWORK



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## THE SALE OF GOODS ACT AND PRIVATE INT'L LAW

### I. Foundations of a Sale under SOGA

The Sale of Goods Act, 1930, sets out a hybrid framework that straddles contract and property law, governing transactions where ownership of goods passes from one party to another for a monetary price. It applies exclusively to “goods,” defined as all types of moveable property, excluding actionable claims and money. This includes tangible items like stock, shares, crops, and fixtures that are agreed to be severed before the sale. However, the classification is not always straightforward, as disputes frequently arise in distinguishing contracts for sale from contracts for work or services. This distinction has significant implications, particularly for tax liability and transfer of ownership.

The Act is applicable only when a valid contract is formed under the Indian Contract Act, 1872. Hence, general principles like offer, acceptance, and capacity are prerequisites. What distinguishes a sale under SOGA is that it involves not merely an agreement but also a conveyance, the transfer of ownership or title in goods. This transfer may be immediate or deferred, depending on the intention of the parties and the terms of the contract. Section 4 draws a distinction between a “sale,” where the property passes



immediately, and an “agreement to sell,” where the transfer is conditional or set to occur in the future. Importantly, an agreement to sell ripens into a sale once the stipulated conditions are fulfilled or the agreed-upon time elapses.

Section 5 elaborates on the formation of the contract. A sale may take place through any mode namely oral, written, partly both, or even through conduct so long as the elements of offer, acceptance, and consideration are present. The terms regarding delivery and payment can be immediate, postponed, or made in instalments, depending on the commercial arrangement.

The nature of the goods being sold also bears legal significance. As outlined in Section 6, the Act recognizes three kinds of goods: existing goods in the seller’s possession, future goods to be manufactured or acquired, and contingent goods whose acquisition depends on a future uncertain event. Any attempt to affect a present sale of future goods will only constitute an agreement to sell, not an actual sale. This classification is critical for determining when property and risk pass to the buyer.

Sections 7 and 8 introduce the doctrine of perishing goods. If specific goods perish before the contract is formed, the contract becomes void under Section 7. Conversely, if goods perish after the



agreement to sell is made but before the risk has passed to the buyer, the agreement is avoided under Section 8. In either scenario, the loss typically falls on the seller, provided neither party is at fault. This has particular relevance in cross-border supply chains where transit risks are high, and insurance clauses may play a decisive role in allocating liability.

The determination of price is another essential element of a valid sale contract. Section 9 provides that the price may be fixed by the parties, by a mutually agreed method, or inferred from previous dealings. If none of these routes are viable, a reasonable price is presumed, with its quantification depending on the facts and commercial context. Section 10 further addresses situations where a third party is responsible for setting the price. If this third party fails to do so, and no fault lies with either contracting party, the agreement is avoided. However, if goods have already been delivered and appropriated, the buyer is liable to pay a reasonable price. In cases where a party obstructs the valuation process, the aggrieved party may claim damages for breach.

Thus, the first structural part of SOGA encompassing Sections 2 through 10 lays out the definitional and conceptual backbone of sale contracts. It integrates foundational elements of contract law with



the unique commercial realities of goods transfer, creating a versatile legal framework that has enduring relevance for both domestic and international businesses.

## **II. Conditions, Warranties, and Implied Terms in Sale Contracts**

Once the formal elements of a sale contract have been established, the Sale of Goods Act, 1930 turns to the content of obligations embedded within it specifically, whether a given stipulation constitutes a condition or a warranty. These distinctions are crucial because they determine the nature of the remedies available in the event of breach.

Section 11 provides a useful entry point into this discussion by noting that, unless the contract indicates otherwise, time of payment is not considered “of the essence.” While the timing of delivery may be critical in many commercial agreements, the failure to make prompt payment typically does not allow the seller to terminate the contract. Whether other time-related stipulations are essential depends on the intent reflected in the contract terms.

Section 12 further classifies contract stipulations. A condition is a term that goes to the root of the contract, its breach allows the aggrieved party to repudiate the contract entirely. A warranty, in



contrast, is a collateral term; its breach may give rise to damages but not to repudiation. Interestingly, the classification does not solely depend on the terminology used. Even a term labelled as a warranty may, on judicial scrutiny, be deemed a condition based on the contract's construction. Section 13 allows a buyer, in some circumstances, to treat the breach of a condition as a breach of warranty instead, waiving the right to reject the goods and choosing instead to claim damages. This is significant where a buyer has already accepted part of the goods or where treating the contract as repudiated would be commercially counterproductive.

Beyond express terms, the Act also recognizes several implied terms, particularly concerning title, description, quality, and fitness, which serve as default rules. These are found in Sections 14 to 17.

Section 14 begins with a foundational guarantee: the seller must have the right to sell the goods. This is an implied condition of title. Additionally, the buyer is entitled to quiet possession, and the goods must be free from undisclosed encumbrances. These latter two are warranties rather than conditions, meaning their breach leads to damages rather than contract repudiation. These provisions reflect the principle of *'nemo dat quod non habet'*, no one can transfer better title than they possess unless exceptions apply under other



statutory or equitable doctrines.

Section 15 deals with sale by description, wherein there is an implied condition that the goods correspond to their description. This is particularly pertinent where the buyer has not seen the goods at the time of the contract. If the sale is by sample as well as description, the goods must comply with both; conformity with one alone is insufficient. The test is strict: even minor deviations from the description may amount to a breach.

Section 16 addresses quality and fitness for purpose, where the general rule is '*caveat emptor*', buyer beware. However, exceptions apply. Where the buyer relies on the seller's skill or judgment and makes the purpose known, there is an implied condition that the goods be fit for that purpose. A second condition applies when goods are bought by description from a seller who deals in goods of that description; they must be of merchantable quality. The buyer's right is limited if the goods were examined, and the defect should have been discovered during inspection. Further implied warranties may arise from usage of trade, and any express warranties do not override implied ones unless the two are inconsistent.

Finally, Section 17 provides for sale by sample, implying three conditions: the bulk must correspond with the sample in quality, the



buyer must have a reasonable opportunity to compare the two, and the goods must be free from latent defects not discoverable by examining the sample.

Together, these sections weave a network of implied obligations that safeguard buyer expectations and allocate responsibility in ways that support commercial certainty. In transnational settings, where cross-border disputes often arise over quality, title, or delay, these provisions function as crucial fallback norms, unless explicitly excluded by contract.

### III. Transfer of Property and Allocation of Risk

Sections 18 to 26 of the Sale of Goods Act, 1930 regulate the point at which ownership (property in goods) passes from seller to buyer, a moment that determines not just title, but also who bears the risk of loss.

Section 18 establishes a preliminary rule: in the case of unascertained goods, property does not pass until the goods are identified and appropriated to the contract. This requirement is foundational, particularly in bulk goods contracts where segregation is necessary before title shifts.

Section 19 provides the general principle that property passes when



the parties intend it to, ascertained through contract terms, conduct, and surrounding circumstances. Sections 20 to 24 then provide presumptive rules to aid this determination:

1. If specific goods are in a deliverable state, property passes when the contract is made (S. 20).
2. If goods need work to become deliverable, title passes only after the work is done and the buyer is notified (S. 21).
3. If further action is needed to ascertain price—like weighing or testing—property passes only once that is completed and the buyer is informed (S. 22).
4. For goods sent on approval, property passes only upon acceptance or retention beyond a reasonable time (S. 24).
5. In the case of unascertained goods, property passes when goods are unconditionally appropriated to the contract with mutual assent (S. 23), including through delivery to a carrier if no right of disposal is reserved.

Section 25 gives sellers the right to reserve disposal even after handing over goods to a carrier, thereby deferring transfer of title until conditions are met. This is commonly invoked in CIF contracts,



where control over shipping documents secures the seller's position.

Finally, Section 26 clarifies that risk follows property unless agreed otherwise. Until ownership passes, goods remain at the seller's risk. But once property transfers, even without delivery, the buyer assumes the risk of loss unless fault or delay lies with either party.

For cross-border transactions, these provisions are vital. Understanding when and how title passes impacts not just taxation and insurance, but also dispute resolution across jurisdictions.

#### IV. Important Judgments

The Supreme Court in *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu and Ors.*<sup>1</sup>, dealt with the contentious distinction between a sale and a works contract. The issue arose over whether the manufacture, supply, and installation of lifts constituted a sale of goods. The Court held that such a transaction, being composite in nature, amounted to a works contract. Emphasis was laid on the fact that the lift only becomes functional upon installation and testing, and the true character of the transaction had to be derived from its dominant intention rather than any rigid classification. The

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<sup>1</sup> (2014) 7 SCC 1



judgment reiterates that the substance of the contract, including the extent of skill and labour involved, determines whether it falls within the ambit of the Sale of Goods Act.

However, it is interesting to note that a contrasting outcome had been reached and reiterated as good law. In ***TV Sunderam Iyengar v. State of Madras***<sup>2</sup>, where the Court considered whether constructing bus bodies on chassis provided by customers constituted a sale. It held that this did amount to a sale of goods. The assessee had control over the construction process and transferred completed bus bodies for a price. The ruling underscored that where the principal object is the transfer of property in a finished good, it falls within the meaning of a sale under the Act, even if certain work is involved.

In ***Mahabir Commercial Co. Ltd. v. CIT West Bengal***,<sup>3</sup> the question was when property in unascertained goods passed under a CIF contract executed across borders. The Supreme Court clarified the distinction between Sections 23(1) and 23(2). It held that where the seller delivers goods to a carrier and does not reserve the right of disposal, the appropriation is deemed unconditional, and property

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<sup>2</sup> (1974) 3 SCC 424

<sup>3</sup> (1972) 2 SCC 704



passes. However, if the bill of lading is retained or delivery is made to a seller's agent, it indicates a reservation of disposal. Importantly, appropriation must reflect the intention to pass property, and merely shipping goods is not enough if that intention is absent.

Lastly, in *CST v Husenali Adamnji & Co.*,<sup>4</sup> the Court examined whether property in goods passed at the point of loading in Chanda or upon receipt in Ambarnath. It analysed appropriation under Section 23(2), focusing on the role of the carrier, the buyer's assent, and whether the transfer was unconditional. The case turned on identifying when appropriation was complete and whether delivery to the railway constituted final transfer. The buyer's presence during loading and naming in railway receipts were held to be indicators of property having passed.

Together, these cases refine the statutory rules by foregrounding the parties' intention, mode of delivery, and commercial context in assessing when and how property and consequently risk passes under the Act.

#### **IV. Conflict of Laws: Governing Law and Jurisdiction Clauses in Sale Contracts**

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<sup>4</sup> 1959 SCC OnLine SC 113



In the realm of transnational commerce, legal certainty hinges on effective conflict of laws rules. For companies engaged in cross-border sales, the most critical questions are: which law governs the contract, and which forum has jurisdiction in case of dispute. Indian private international law adopts a party-centric approach on both fronts, but subject to important caveats.

Governing law clauses are the primary tool by which parties choose the legal system to regulate their contractual rights and obligations. Indian courts uphold this principle of party autonomy, provided the choice is bona fide, not in conflict with public policy, and has a substantial connection to the transaction. If Indian law is chosen, the Sale of Goods Act, 1930 becomes the governing statute for goods-related obligations. If the contract is silent, the law with the “closest and most real connection” is typically determined by factors like the place of delivery, negotiation, or performance.

However, this autonomy is not absolute. Indian courts may override a foreign governing law where overriding mandatory rules (*lois de police*) apply such as domestic consumer protection statutes, foreign exchange regulations, or public interest standards. Thus, in transactions with strong territorial links to India or involving regulated goods, Indian courts may apply SOGA even if foreign law



is nominally chosen.

Jurisdiction clauses are similarly respected if they reflect mutual agreement and are not contrary to Indian procedural law. However, Indian courts scrutinise exclusive jurisdiction clauses closely, particularly when parties seek to oust Indian courts' jurisdiction where a substantial part of the cause of action arises in India. The enforceability of such clauses often turns on whether the chosen forum is a neutral venue or is intended to oust jurisdiction unfairly. Additionally, the Indian Code of Civil Procedure allows Indian courts to assume jurisdiction where part of the contract is performed in India, or where the defendant resides or conducts business.