

## The Sales of Goods Act, 1930

Existing Goods	Goods <b>that are in existence</b> at the time of the contract of sale. (i) Specific Goods (ii) Ascertained Goods (iii) Unascertained Goods
Future Goods	Goods to be manufactured or produced or acquired by the seller after making the contract of sale.
Contingent Goods	The acquisition of which by the seller <b>depends upon an uncertain contingency</b> (uncertain event) are called 'contingent goods'
Delivery	Voluntary transfer of possession from one person to another. 1. <b>Actual Delivery</b> -Goods are physically delivered to the buyer. 2. <b>Constructive Delivery</b> -When a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on buyer's behalf. 3. <b>Symbolic Delivery</b> -When there is a delivery of a thing in token of a transfer of something else.
Sale and Agreement to Sell	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, it is called an agreement to sell.
Essentials of a Valid Contract of Sale	1. <b>Two Parties.</b> 2. Sub. Matter must be <b>movable property</b> 3. Price in <b>Money</b> (not in kind) 4. <b>Transfer of Property</b> from seller to buyer 5. Contract of sale may be <b>absolute or conditional</b> 6. All other <b>essential elements of valid contract</b>
Distinction b/w sale and agreement to sell	Refer main notes
Sale Vs. Other Similar Contracts	Refer main notes
Subject Matter of Contract of Sale	<b>Existing or future goods-</b> If Existing goods- It is a contract of sale. If Future goods- It is an agreement to sell. <b>Goods perishing before making of contract-</b> In such a case, contract shall be void. <b>Goods perishing before sale but after agreement to sell-</b> In such a case, contract will become void. (If subsequently the goods perish without any fault on the part of the seller or buyer.) <b>Perishing of future goods:</b> If the future goods are specific, the destruction of such goods will amount to supervening impossibility and the contract shall become void.

Ascertainment of Price	Price may be- (1) <b>fixed</b> by the contract, or (2) <b>agreed to be fixed</b> in a manner provided by the contract, e.g., by a valuer, or (3) determined by the <b>course of dealings</b> between the parties.
Agreement to sell at a valuation	1. Where price is to be fixed by valuation by a 3 <sup>rd</sup> party and such 3 <sup>rd</sup> party doesn't make any valuation, the agreement will become void. (If the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price.) 2. If 3 <sup>rd</sup> party could not make valuation due to default of buyer/seller, the aggrieved party will have right to sue against the party in default.
Stipulation as to Time	<b>Stipulation as to time of payment</b> -Not deemed to be essence of contract. (Unless a different intention appears) <b>Stipulation as to time of delivery</b> -Usually the essence of the contract.
Condition and Warranty	<b>Condition</b> -Stipulation essential to the main purpose of the contract. Breach of it gives rise to a right to repudiated the contract. <b>Warranty</b> -Stipulation collateral to the main purpose of the contract. Breach of it gives rise to a claim for damages but not to repudiate the contract.
Difference b/w Condition and Warranty	<b>Refer Main Notes</b>
When Condition to be treated as Warranty	1. Where the buyer altogether waives the performance of the condition. 2. Where the buyer elects to treat the breach of the conditions, as one of a warranty. 3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. 4. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.
Implied Conditions	<b>1. Condition as to Title-</b> (a) in case of a sale, Seller has a right to sell the goods, and (b) in the case of an agreement to sell, seller will have right to sell the goods at the time when the property is to pass.
	<b>2. Sale by Description-</b> The goods shall correspond with the description in case of sale by description. If goods tendered do not correspond with the description, the buyer can reject the goods.
	<b>3. Sale by Sample-</b> (a) the bulk shall correspond with the sample in quality; (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample, (c) the goods shall be free from any defect rendering them un-merchantable. (This condition is applicable only wrt defects which could not be discovered by an ordinary examination of the goods.)

	<p><b>4. Sale by sample as well as by description-</b> The bulk of the goods supplied shall correspond both with the sample and the description.</p>
	<p><b>5. Condition as to quality or fitness-</b> If the buyer had</p> <ul style="list-style-type: none"> <li>- informed the seller the purpose of his purchase and</li> <li>- relied upon the skill and judgment of the seller to select the best goods and</li> <li>- the seller has ordinarily been dealing in those goods.</li> </ul> <p>This implied condition will not apply if the goods have been sold under a trademark or a patent name.</p>
	<p><b>6. Condition as to Merchantability-</b> The goods should be of merchantable quality. There are two requirements for this condition to apply: (a) Goods should be bought by description. (b) The seller should be a dealer in goods of that description. Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.</p>
	<p><b>7. Condition as to wholesomeness-</b> In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.</p>
Implied Warranties	<p><b>1.Warranty as to undisturbed possession:</b> The buyer shall have and enjoy quiet possession of the goods.</p> <p><b>2.Warranty as to non-existence of encumbrances:</b> The goods shall be free from any charge or encumbrance.</p> <p><b>3.Warranty as to quality or fitness by usage of trade:</b> Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware'.</p> <p><b>4. Disclosure of dangerous nature of goods:</b> Where the goods are dangerous in nature, the seller must warn the buyer of the probable danger.</p>
Caveat Emptor	<p>When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable.</p> <p><b>Exceptions-</b></p> <ol style="list-style-type: none"> <li>1. Fitness as to quality or use</li> <li>2. Goods purchased under patent or brand name</li> <li>3. Goods sold by description</li> <li>4. Goods of Merchantable Quality</li> <li>5. Sale by sample</li> <li>6. Goods by sample as well as description</li> </ol>

	<p>7. Trade Usage 8. Seller actively conceals a defect or is guilty of fraud</p>
<p>Rules determining Passing of Property</p>	<p><b>1. Property (Specific or ascertained goods) passes when intended to pass</b>  <b>a. Specific goods in a deliverable state:</b>  The property in the goods passes to the buyer when the contract is made.  <b>b. Specific goods to be put into a deliverable state:</b>  The property shall pass when goods are put into a deliverable state and buyer has notice thereof.  <b>c. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price:</b>  Where the seller is bound to weigh, measure, test or do some other act or thing to ascertain the price, the property does not pass until such act or thing is done and the buyer has notice thereof.</p> <p><b>2. Goods must be ascertained</b>  Property shall not pass until the goods are ascertained.  <b>Essentials:</b>  (a) Contract is for the sale of unascertained or future goods.  (b) The goods should conform to the description and quality stated in the contract.  (c) The goods must be in a deliverable state.  (d) The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.  (e) The appropriation must be made by: <ul style="list-style-type: none"> <li>▪ The seller with the assent of the buyer; or</li> <li>▪ The buyer with the assent of the seller.</li> <li>▪ The assent may be express or implied.</li> <li>▪ The assent may be given either before or after appropriation.</li> </ul> </p> <p><b>3. Goods sent on approval or "on sale or return"</b>  Property passes to buyer when:  (a) When he signifies approval or does any other act adopting transaction  (b) When he retains the goods without giving notice of rejection- (i) If a time is fixed-On expiration of that time (ii) If time is not fixed-On expiration of reasonable time.  (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.</p> <p><b>4. Reservation of right of disposal</b>  Even if the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.  (For eg if Seller has imposed condition that property shall pass only after price is paid for, in such as case property in goods shall not pass even if delivery to buyer has been made, until price is paid for.)</p>

<p>Seller is presumed to have reserved the right of disposal</p>	<p>(1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.</p> <p>(2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.</p> <p>And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.</p>
<p>Risk Prima Facie Passes with the Property</p>	<p>Where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.</p>
<p>Transfer of Title by Non-Owners</p>	<p>In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:</p> <ol style="list-style-type: none"> <li>1. <b>Sale by a Mercantile Agent-</b> <ol style="list-style-type: none"> <li>(a) He was in possession of goods or documents with the consent of owner.</li> <li>(b) Sale made in ordinary course of business.</li> <li>(c) Buyer acted in good faith and without notice that seller didn't have authority to sell.</li> </ol> </li> <li>2. <b>Sale by one of the joint owners-</b> Where one of the several joint owners have sole possession and buyer purchases in good faith.</li> <li>3. <b>Sale by a person in possession under voidable contract-</b> A seller who had obtained possession of the goods under a contract voidable contract and that the contract had not been rescinded until the time of the sale.</li> <li>4. <b>Sale by one who has already sold the goods but continues in possession thereof-</b> If a person has sold the goods but continues to have possession or documents to title of goods, and again has sold the same goods to 3<sup>rd</sup> party, such sale shall be valid provided the buyer had acted in good faith.</li> <li>5. <b>Sale by buyer obtaining possession before the property in the goods has vested in him-</b> If buyer has obtained possession of goods with the consent of seller and the property in goods has not yet passed in him, in such a case if he has sold the goods and buyer has purchased them in good faith then such sale shall be valid. (Exception-Hire Purchase)</li> <li>6. <b>Effect of Estoppel-</b> In case of sale by Estoppel, the transferee will get a good title as against the true owner.</li> <li>7. <b>Sale by an unpaid seller-</b></li> </ol>

	<p>Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer.</p> <p><b>8. Sale under the provisions of other acts-</b></p> <p>(i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.</p> <p>(ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]</p> <p>(iii) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]</p>
<p>Rules Regarding Delivery of Goods</p>	<ol style="list-style-type: none"> <li>1. Delivery may be made <b>by doing anything which the parties agree</b> shall be treated as delivery.</li> <li>2. Delivery of part of the goods in progress of delivery of whole shall result in passing of property in whole goods.</li> <li>3. Seller of goods is <b>not bound to deliver</b> them until the buyer applies for delivery.</li> <li>4. <b>Place of Delivery-</b> Shall be subject to contract b/w partners. If no contract then delivery shall be at the place where goods are at the time of sale.</li> <li>5. <b>Time for Delivery-</b>If no time is fixed then goods to be delivered in reasonable time.</li> <li>6. <b>Goods in possession of a third party-</b>If the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.</li> <li>7. Demand or tender of delivery may be treated as ineffectual unless made at a <b>reasonable hour</b>.</li> <li>8. The <b>expenses of and incidental</b> to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary.</li> <li>9. <b>If wrong quantity delivered-</b>(i) If lesser/greater quantity delivered and buyer accepts delivery then he shall have to pay at contracted rate. (ii) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description, the buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole.</li> <li>10. <b>Installment Deliveries-</b> Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.</li> <li>11. <b>Delivery to Carrier-</b> Delivery to carrier will be deemed to be delivery to buyer unless otherwise agreed.</li> <li>12. <b>Deterioration during transit-</b>Liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk.</li> <li>13. <b>Buyer's right to examine the goods-</b> Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them.</li> </ol>



Rule related to Acceptance of Delivery of Goods (Section 42)	Acceptance is deemed to take place when the buyer- (a) <b>intimates</b> that he had accepted the goods; or (b) <b>does any act inconsistent</b> with the ownership of the seller; or (c) <b>retains the goods</b> after the lapse of a reasonable time.
Buyer not bound to return rejected goods (Section 43)	Where buyer has right to reject goods he is not bound to return them to the seller, it is sufficient if he intimates to the seller that he refuses to accept them.
Liability of buyer for neglecting or refusing delivery of goods (Section 44)	When the seller is ready and willing to deliver the goods the buyer does not within take delivery within a reasonable time, he is liable to the seller for any loss occasioned and also for a reasonable charge for the care and custody of the goods. The rights of seller will remain unaffected where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.
Rights of an Unpaid Seller against the Goods	<p><b>(1) Seller's Lien:</b> It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.</p> <p><b>Exercise of Lien:</b> This right can be exercised by him in the following cases only: (a) where goods have been sold without any stipulation of credit; (i.e., on cash sale) (b) where goods have been sold on credit but the term of credit has expired; or (c) where the buyer becomes insolvent.</p> <p><b>Termination of lien:</b> The unpaid seller loses his right of lien: (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods. (ii) Where the buyer or his agent lawfully obtains possession of the goods. (iii) Where seller has waived the right of lien. (iv) By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.</p>
	<p><b>(2) Right of stoppage in transit:</b> When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.</p> <p><b>The right of stoppage in transit is subject to following:</b> (a) The seller must be unpaid. (b) He must have parted with the possession of goods. (c) The goods are in transit. (d) The buyer has become insolvent. (e) The right is subject to provisions of the Act.</p> <p><b>Duration of Transit:</b> The goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer,</p>

	<p>until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.</p> <p><b>Transit comes to an end when:</b></p> <ul style="list-style-type: none"> <li>◆ When the buyer or other bailee obtains delivery.</li> <li>◆ Buyer obtains delivery before the arrival of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.</li> <li>◆ Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.</li> <li>◆ If the carrier wrongfully refuses to deliver the goods to the buyer.</li> <li>◆ Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.</li> <li>◆ Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.</li> </ul> <p><b>There are two modes of stoppage in transit:</b></p> <p>(i) By Taking <b>actual possession</b> of Goods.</p> <p>(ii) By <b>giving notice</b> to the carrier not to deliver the goods.</p>
Distinction b/w Right of Lien and Stoppage in Transit	<p>Refer main notes</p> <p style="text-align: center;"><b>CA. Kavita Dariyani</b></p>
Effects of sub-sale or pledge by buyer	<p>The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.</p>
Cases where seller's right of lien and stoppage in transit is defeated	<p>(a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.</p> <p>(b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value.</p>
Right of Resale	<p><b>Right to resell can be exercised in the following Conditions:</b></p> <p>(i) Where the goods are of perishable nature.</p> <p>(ii) Where seller gives notice to the buyer of his intention to re-sell the goods.</p> <p>(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods the subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.</p> <p>(iv) If it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.</p> <p>(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods.</p>



	<p><b>On the resale of the goods, the seller is also entitled to:</b></p> <p>(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.</p> <p>(b) Retain the profit if the resale price is higher than the contract price. if the goods are resold by the seller without giving any notice, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him</p>
RIGHTS OF UNPAID SELLER AGAINST THE BUYER	<p><b>1. Suit for Price-</b></p> <p>If property has passed and buyer wrongfully neglects-seller may sue for price. If price is payable on certain day irrespective of delivery and buyer wrongfully refuses-seller may sue for price even though property hasn't passed.</p> <p>2. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for <b>damages for non-acceptance</b>.</p> <p>3. Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and <b>sue damages for the breach</b>.</p> <p>4. Where there is specific agreement as to <b>interest on the price</b> of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.</p>
REMEDIES OF BUYER AGAINST THE SELLER	<p><b>1. Damages for Non-delivery</b></p> <p><b>2. Suit for specific performance- Conditions-</b></p> <p>(a) The contract must be for the sale of specific and ascertained goods.</p> <p>(b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.</p> <p>(c) It empowers the court to order specific performance where damages would not be an adequate remedy.</p> <p>(d) It will be granted as remedy if goods are of special nature or are unique.</p> <p><b>3. Suit for breach of warranty-</b></p> <p>Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty.</p> <p><b>4. Repudiation of contract before due date-</b></p> <p>Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.</p> <p><b>5. Suit for Interest</b></p>
Legal Rules of Auction Sale	<p>(a) Where goods are put up for <b>sale in lots</b>, each lot is prima facie deemed to be subject of a separate contract of sale.</p> <p>(b) The sale is complete when the auctioneer announces its completion by the <b>fall of hammer</b>.</p> <p>(c) Right to <b>bid may be reserved</b> expressly by or on behalf of the seller.</p>

(d) Where the sale is not notified to be subject to a right to bid on behalf of the seller, **it shall not be lawful for the seller to bid himself** or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(e) The sale may be notified to be subject to a **reserve or upset price**.

(f) If the seller makes use of **pretended bidding** to raise the price, the sale is voidable at the option of the buyer.

CA. Kavita Dariyani