

CHAPTER-2

THE SALE OF GOODS ACT, 1930

UNIT - 1 : FORMATION OF THE

CONTRACT OF SALE.

INTRODUCTION:

- Sale is a typical bargain between the buyer and the seller.
- Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods.
- It extends to the whole of India.
- It came into force on 1st July, 1930.
- APPLICABLE TO : Movable properties like goods.
[Not applicable for sale of immovable properties]

DEFINITION OF SOME TERMS:

1) BUYER :

SECTION 2(1) :

BUYER MEANS A PERSON WHO BUYS OR AGREES TO BUY GOODS.

- A person who buys and agrees to buy.

2, DELIVERY :

SECTION 2(2) :

DELIVERY MEANS ^{VOLUNTARY} TRANSFER OF POSSESSION FROM ONE PERSON TO ANOTHER.

SECTION 2(3) :

GOODS ARE SAID TO BE IN A DELIVERABLE STATE WHEN THEY ARE IN SUCH A CONDITION THAT THE BUYER WOULD, UNDER THE CONTRACT, BE BOUND TO TAKE DELIVERY OF THEM.

- Delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

KINDS OF DELIVERY :

i) ACTUAL DELIVERY :

- Goods are physically delivered to the buyer.

ii) CONSTRUCTIVE DELIVERY :

- It is effected without any change in the custody or actual possession of the thing.

Eg: A warehouseman, holding the goods of A agrees to hold them on behalf of B, at A's request.

iii) SYMBOLIC DELIVERY :

- There is a delivery of a thing in token of a transfer of something else.

Eg: Key of a warehouse containing the goods is handed over to buyer.

3, DOCUMENT OF TITLE OF GOODS :

SECTION 2(4) :

DOCUMENT OF TITLE OF GOODS INCLUDES BILL OF LADING, DOCK-WARRANT, WAREHOUSE KEEPER'S CERTIFICATE, WHARFINGER'S CERTIFICATE, RAILWAY RECEIPT, MULTIMODAL TRANSPORT DOCUMENT, WARRANT OR ORDER FOR THE DELIVERY OF GOODS AND ANY OTHER DOCUMENT USED IN THE ORDINARY COURSE OF BUSINESS AS PROOF OF THE POSSESSION OR CONTROL OF GOODS OR IS FOR AUTHORIZING OR PURPORTING TO AUTHORIZE, EITHER BY ENDORSEMENT OR BY DELIVERY, THE POSSESSOR OF THE DOCUMENT TO TRANSFER OR RECEIVE GOODS THEREBY REPRESENTED.

- Shows an unconditional undertaking to deliver the goods to the holder.

Eg: Bill of lading.

- Mate's receipt is not a document of title. It is only the acknowledgement for the receipt of goods.

DOCUMENT SHOWING TITLE:

- Shows that the person named in the share certificate is entitled to the share represented by it.
- But, it does not allow that person to transfer the shares.

4) GOODS:

SECTION 2(7):

GOODS MEANS EVERY KIND OF MOVABLE PROPERTY OTHER THAN ACTIONABLE CLAIMS AND MONEY; AND INCLUDES STOCK AND SHARES, GROWING CROPS, GRASS, AND THINGS ATTACHED TO OR FORMING PART OF THE LAND, WHICH ARE AGREED TO BE SEVERED BEFORE SALE OR UNDER THE CONTRACT OF SALE.

- ACTIONABLE CLAIMS - enforced only by action or suit, e.g., debt.

Eg: Tangible and intangible goods, stocks, shares, growing crops, grass, decree of the court, FDR, ...

CLASSIFICATION OF GOODS:

A, EXISTING GOODS:

- Goods are in existence at the time of the contract of sale.
- Owned or possessed by the seller at the time of contract of sale.

i) SPECIFIC GOODS:

SECTION 2(14)

SPECIFIC GOODS MEANS GOODS IDENTIFIED AND AGREED UPON AT THE TIME A CONTRACT OF SALE IS MADE.

Eg: Agreed to sell any specified goods like mobile phones, washing machine, car, etc.,

ii) ASCERTAINED GOODS:

- Identified after the contract of sale is made from unascertained goods.

Eg: A wholesaler agrees to sell 50 bales of cotton from 100 bales in his godown. These 100 bales are unascertained goods. On the selection of 50 bales of cotton ^{to} sell, the selected goods becomes ascertained goods.

iii) UNASCERTAINED GOODS:

- Goods which are not specifically identified or ascertained at the time of contract of sale is made.
- They are indicated or defined only by description or sample.

Eg: A, who has 10 horses, promises to B to sell one of his horse but does not specify which horse he will sell. It is a contract of sale of unascertained goods.

- Before sales, unascertained goods becomes specific or ascertained goods.

B, FUTURE GOODS:

SECTION 2(6):

FUTURE GOODS MEANS GOODS TO BE MANUFACTURED OR PRODUCED OR ACQUIRED BY THE SELLER AFTER MAKING THE CONTRACT OF SALE.

- A contract of sale of future goods is always an agreement to sell.

Eg: A agrees to sell all the carrots which will be produced in his garden this year to B. This is a contract of sale of future goods.

C, CONTINGENT GOODS:

SECTION 6(2):

THE ACQUISITION OF WHICH BY THE SELLER DEPENDS UPON AN UNCERTAIN CONTINGENCY ARE CALLED CONTINGENT GOODS.

- A contract of sale of contingent goods is also an agreement to sell.

Eg: A agrees to sell a Picasso painting to B provided he is able to purchase it from its present owner.

- The property does not pass to the buyer at the time of making the contract both in future & contingent goods.

5, INSOLVENT:

SECTION 2(8):

A PERSON IS SAID TO BE INSOLVENT WHEN HE CEASES TO PAY HIS DEBTS IN THE ORDINARY COURSE OF BUSINESS, OR CANNOT PAY HIS DEBTS AS THEY BECOME DUE, WHETHER HE HAS COMMITTED AN ACT OF INSOLVENCY OR NOT.

- Insolvency is a state when a business person is unable to pay off his debts.

6, MERCANTILE AGENT:

SECTION 2(9):

MERCANTILE AGENT MEANS AN AGENT WHO IS IN THE CUSTOMARY COURSE OF BUSINESS HAS, AS SUCH AGENT, AUTHORITY EITHER TO SELL GOODS OR TO CONSIGN GOODS FOR THE PURPOSE OF SALE OR TO RAISE MONEY ON THE SECURITY OF THE GOODS

- A person who is appointed by the principal to act on their behalf or to represent them in dealing of goods

Eg: Auctioneers or brokers.

7, PRICE :

SECTION 2(10):

PRICE MEANS THE MONEY CONSIDERATION

FOR A SALE OF GOODS. IT IS THE VALUE OF

GOODS EXPRESSED IN MONETARY TERMS.

IT IS THE ESSENTIAL REQUIREMENT TO MAKE

A CONTRACT OF SALE OF GOODS.

8, PROPERTY :

SECTION 2(11):

PROPERTY GENERALLY MEANS TITLE OR THE

OWNERSHIP RIGHTS OF THE GOODS. IN THE

PROCESS OF SALE, THERE IS A TRANSFER

OF OWNERSHIP OR WE CAN SAY THE

TRANSFER OF PROPERTY FROM ONE PARTY

TO THE OTHER.

- Property in the goods means general property and not merely special property.

- General property in a thing may be in one person and a special property in the same thing may be in another.

Eg: If A, who owns certain goods pledges them to B, has general property in the goods whereas B has special property or interest in the goods to the extent of the amount of advance he has made.

9, QUALITY OF GOODS :

SECTION 2(12) :

QUALITY OF GOODS INCLUDES THEIR STATE OR CONDITION.

10, SELLER :

SECTION 2(13) :

SELLER MEANS A PERSON WHO SELLS OR AGREES TO SELL GOODS.

- A person who not only sells but also a person who agrees to sell.

SALE AND AGREEMENT TO SELL:

CONTRACT OF SALE OF GOODS:

SECTION 4(1):

A CONTRACT OF SALE OF GOODS IS A CONTRACT WHEREBY THE SELLER TRANSFERS OR AGREES TO TRANSFER THE PROPERTY IN GOODS TO THE BUYER FOR A PRICE.

SECTION 4(2):

A CONTRACT OF SALE MAY BE ABSOLUTE OR CONDITIONAL.

- A contract of sale of goods may be either sale or agreement to sell.
- It may be absolute or conditional.

SALE & AGREEMENT TO SELL:

SECTION 4(3):

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.

- In sale, the property in goods is transferred from seller to buyer immediately.
- In an agreement to sell, the ownership of the goods is not transferred immediately.
- It is intending to transfer at the future date upon the completion of certain conditions thereon.

Eg: X agrees with Y on 10th October, 2020 that he will sell his car to Y on 10th November, 2020 for a sum of ₹3 lakhs. It is an agreement to sell.

AGREEMENT TO SELL BECOMES SALE :

SECTION 4(4):

AN AGREEMENT TO SELL BECOMES A SALE WHEN THE TIME ELAPSES OR THE CONDITIONS ARE FULFILLED SUBJECT TO WHICH THE PROPERTY IN THE GOODS IS TO BE TRANSFERRED.

- An agreement to sell becomes sale at a future date when time elapses or on the completion of certain conditions.

ELEMENTS TO CO-EXIST TO CONSTITUTE CONTRACT OF SALE OF GOODS :

- Must be two parties (buyer & seller) and the two must be two different persons.
- Subject matter must be goods i.e., movable property.
- Price in money (not in kind). But it may be partly in money & partly in kind.
- Made by offer & acceptance.
- Transfer of property must take place.
- May be absolute or conditional.
- Essential elements of a valid contract must be present.

DISTINCTION BETWEEN SALE & AGREEMENT TO SELL:

BASIS	SALE	AGREEMENT TO SELL
TRANSFER OF PROPERTY	• Immediately.	• Future date or on fulfilment of some condition.

NATURE OF CONTRACT	<ul style="list-style-type: none"> • Executed contract. 	<ul style="list-style-type: none"> • Executory contract
REMEDIES FOR BREACH	<ul style="list-style-type: none"> • The seller can sue the buyer for the price. 	<ul style="list-style-type: none"> • Aggrieved party can sue for damages only and not for the price.
LIABILITY ON LOSS OR DESTRUCTION OF THE GOODS	<ul style="list-style-type: none"> • Buyer 	<ul style="list-style-type: none"> • Seller.
BURDEN OF RISK	<ul style="list-style-type: none"> • Buyer 	<ul style="list-style-type: none"> • Seller.
RIGHT OF RESALE	<ul style="list-style-type: none"> • Seller cannot resale the goods. 	<ul style="list-style-type: none"> • Seller may sell the goods.
NATURE OF RIGHT	<ul style="list-style-type: none"> • Creates Jus in rem. 	<ul style="list-style-type: none"> • Creates Jus in personam.

<p>INSOLVENCY OF SELLER</p>	<ul style="list-style-type: none"> The official assignee will not be able to take over the goods but will recover the price from the buyer. 	<ul style="list-style-type: none"> The official assignee will acquire control over the goods but the price will not be recoverable.
<p>INSOLVENCY OF BUYER</p>	<ul style="list-style-type: none"> The official assignee will have control over the goods. 	<ul style="list-style-type: none"> The official assignee will not have any control over the goods.

SALE AND HIRE PURCHASE:

HIRE PURCHASE:

HIRE PURCHASE ACT, 1972:

SECTION 2(C):

"HIRE PURCHASE AGREEMENT" MEANS AN AGREEMENT UNDER WHICH GOODS ARE LET ON HIRE AND UNDER WHICH THE HIRER HAS AN OPTION TO PURCHASE THEM IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT AND INCLUDES AN AGREEMENT UNDER WHICH-

(a) POSSESSION OF GOODS IS DELIVERED BY THE OWNER THEREOF TO A PERSON ON CONDITION THAT SUCH PERSON PAYS THE AGREED AMOUNT IN PERIODICAL INSTALLMENTS.

(b) THE PROPERTY IN THE GOODS IS TO PASS TO SUCH PERSON ON THE PAYMENT OF THE LAST OF SUCH INSTALMENTS, AND

(c) SUCH PERSON HAS A RIGHT TO TERMINATE THE AGREEMENT AT ANY TIME BEFORE THE PROPERTY SO PASSES.

- Contract of sale resembles with contracts of hire purchase.
- Real object of a contract of hire purchase is the sale of the goods

DISTINCTION BETWEEN SALE & HIRE-PURCHASE:

BASIS	SALE	HIRE - PURCHASE
TIME OF PASSING PROPERTY	• Immediately at the time of contract.	• Payment of the last installment.

POSITION OF THE BUYER/HIRER	<ul style="list-style-type: none"> • Owner 	<ul style="list-style-type: none"> • Bailee till he pays the last installment.
TERMINATION OF CONTRACT	<ul style="list-style-type: none"> • The buyer cannot terminate the contract & is bound to pay the price of the goods. 	<ul style="list-style-type: none"> • The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
BURDEN OF RISK OF INSOLVENCY OF THE BUYER	<ul style="list-style-type: none"> • Seller takes the risk. 	<ul style="list-style-type: none"> • Owner takes no such risk & he has right to take back the goods.
TRANSFER OF TITLE	<ul style="list-style-type: none"> • Buyer can pass a good title to a bona fide purchaser. 	<ul style="list-style-type: none"> • Hirer cannot pass any title even to a bonafide purchaser.

RESALE	• The buyer can resale.	• The hire purchaser cannot resale.
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SALE AND BAILMENT:

BAILMENT:

INDIAN CONTRACT ACT, 1872:

SECTION 148:

A 'BAILMENT' IS THE DELIVERY OF GOODS FOR SOME SPECIFIC PURPOSE UNDER A CONTRACT ON THE CONDITION THAT THE SAME GOODS ARE TO BE RETURNED WHEN THE PURPOSE IS ACCOMPLISHED TO THE BAILOR OR ARE TO BE DISPOSED OF ACCORDING TO THE DIRECTIONS OF THE BAILOR.

DISTINCTION BETWEEN SALE & BAILMENT:

BASIS	SALE	BAILMENT
TRANSFER OF PROPERTY	• Transfer of general property.	• Transfer of special property.

RETURN OF GOODS	<ul style="list-style-type: none"> Return of goods is not possible. 	<ul style="list-style-type: none"> Must return the goods.
CONSIDERATION	<ul style="list-style-type: none"> price in terms of money. 	<ul style="list-style-type: none"> May be gratuitous or non-gratuitous.

SALE AND CONTRACT FOR WORK & LABOUR:

CONTRACT OF SALE OF GOODS:

- Some goods are sold or are to be sold for a price.

CONTRACT FOR WORK & LABOUR:

- No goods are sold and there is only the doing or rendering of some work of labour.

Eg: Where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture.

HOW CONTRACT OF SALE IS MADE:

SECTION 5(1):

A CONTRACT OF SALE IS MADE BY AN OFFER TO BUY OR SELL GOODS FOR A PRICE AND THE

ACCEPTANCE OF SUCH OFFER. THE CONTRACT MAY PROVIDE FOR THE IMMEDIATE DELIVERY OF THE GOODS OR IMMEDIATE PAYMENT OF THE PRICE OR BOTH, OR FOR THE DELIVERY OR PAYMENT BY INSTALMENTS, OR THAT THE DELIVERY OR PAYMENT OR BOTH SHALL BE POSTPONED.

- Made by offer & acceptance.
- Immediate delivery or
- Immediate payment or
- Immediate delivery & immediate payment.
- Delivery or payment or both by instalments.
- Delivery or payment or both made at future date.

SECTION 5(2):

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 & PARTLY BY WORD OF MOUTH OR MAY BE IMPLIED FROM THE CONDUCT OF THE PARTIES.

- May be made in writing or
- by word of mouth or
- partly in writing & partly by word of mouth or
- implied from conduct of the parties.

SUBJECT MATTER OF CONTRACT OF SALE:

EXISTING OR FUTURE GOODS:

SECTION 6:

(1) THE GOODS WHICH FORM THE SUBJECT MATTER OF A CONTRACT OF SALE MAY BE EITHER EXISTING GOODS THAT ARE ACQUIRED, OWNED OR POSSESSED BY THE SELLER, OR FUTURE GOODS.

(2) 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.

(3) 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.

- The goods which form the subject matter of a contract of sale may be either existing goods or future goods or contingent goods.

- Contract of sale of future goods or contingent goods operates as an agreement to sell the goods.

GOODS PERISHING BEFORE MAKING OF CONTRACT:

SECTION 7:

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 BECOME SO DAMAGED AS NO LONGER TO ANSWER TO THEIR DESCRIPTION CONTRACT.

- Contract is void if the goods are perished before making of the contract, without the knowledge of the seller.

Eg: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The agreement is void.

GOODS PERISHING BEFORE SALE BUT AFTER

AGREEMENT TO SELL:

SECTION 8:

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 BECAME SO DAMAGED AS NO LONGER TO ANSWER THEIR DESCRIPTION IN THE AGREEMENT BEFORE THE RISK PASSES TO THE BUYER, THE AGREEMENT IS THEREBY AVOIDED OR BECOMES VOID.

- Contract is void if the goods are perished before sale but after the agreement to sell without any fault on the part of the seller or buyer.

PERISHING OF FUTURE GOODS:

- 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:

ASCERTAINMENT OF PRICE:

SECTION 9:

(1) 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 BY THE COURSE OF DEALING BETWEEN THE PARTIES.

(2) WHERE THE PRICE IS NOT DETERMINED IN ACCORDANCE WITH THE FOREGOING PROVISIONS, THE BUYER SHALL PAY THE SELLER A REASONABLE PRICE. WHAT IS A REASONABLE PRICE IS A QUESTION OF FACT DEPENDENT ON THE CIRCUMSTANCES OF EACH PARTICULAR CASE.

• Price in a contract may be:

⇒ fixed by the contract.

⇒ agreed to be fixed in a manner provided by the contract.

⇒ determined by the course of dealings between the parties.

⇒ reasonable price.

AGREEMENT TO SELL AT VALUATION:

SECTION 10:

(1) WHERE THERE IS AN AGREEMENT TO SELL GOODS ON THE TERMS THAT THE PRICE IS TO BE FIXED BY THE VALUATION OF THIRD PARTY AND SUCH THIRD PARTY CANNOT OR DOES NOT MAKE SUCH VALUATION, THE AGREEMENT IS THEREBY AVOIDED:

PROVIDED THAT, IF THE GOODS OR ANY PART THEREOF HAVE BEEN DELIVERED TO, AND APPROPRIATED BY, THE BUYER, HE SHALL PAY A REASONABLE PRICE THEREON.

(2) WHERE SUCH THIRD PARTY IS PREVENTED FROM MAKING THE VALUATION BY THE FAULT OF THE SELLER OR BUYER, THE PARTY NOT IN FAULT MAY MAINTAIN A SUIT FOR DAMAGES AGAINST THE PARTY IN DEFAULT.

- If the price is to be fixed by the third party and he cannot or does not make such valuation, the agreement is void.
- If he is prevented by the default of either party, the party at fault will be liable to the damages.

- If the buyer has received the goods or any part, he must pay a reasonable price.

Eg: A is having two bikes. He agrees to sell both of the bikes to B at a price fixed by C. He gives delivery of one bike immediately. C refuses to fix the price. As such A ask B to return the bike already delivered while B claims for the delivery of the second bike too. Here, buyer B shall pay reasonable price to A for the bike already taken. As regards the second bike, the contract can be avoided.