

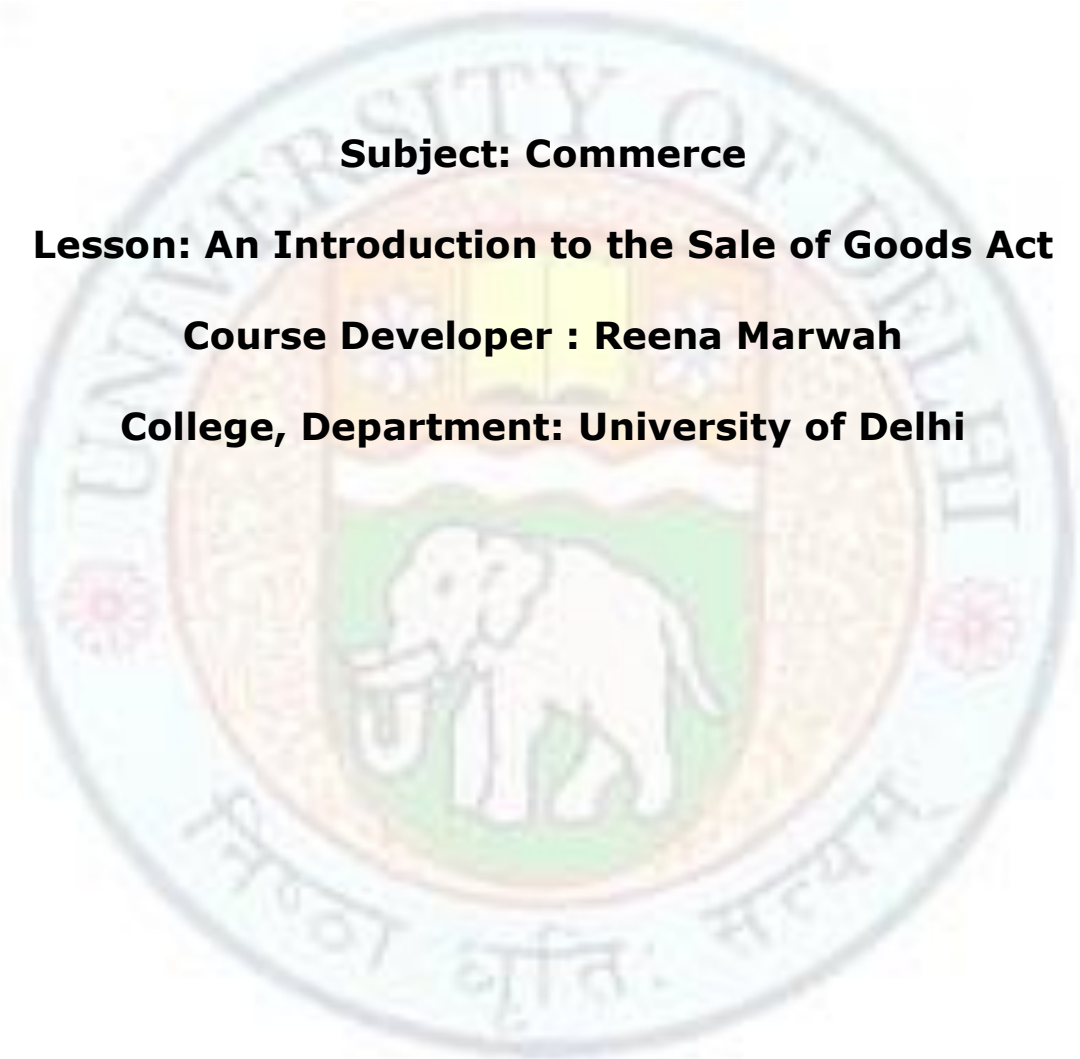
# **An Introduction to the Sale of Goods Act**

**Subject: Commerce**

**Lesson: An Introduction to the Sale of Goods Act**

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# An Introduction to the Sale of Goods Act

## Introduction

In 1930, transactions relating to sales and purchase of goods came in the purview of a separate Act called the 'Indian Sale of Goods Act'. This Act came into force with effect from July 1, 1930. Before 1930, this was a part of the Indian Contract Act. The sale of goods is a common transaction of all commercial contracts. Earlier the legal provisions relating to the contract of sale were contained in Sections 76 to 123 of the Indian Contract Act, 1872. However, as a result of the developments of modern commerce, certain amendments were required in these provisions. To suit these developments, in modern trade and commerce, Sections 76 to 123 of the Indian Contract Act were repealed, and a new Act, known as The Sale of Goods Act, 1930 was enacted for the contracts dealing exclusively with the sale of movable goods. This Act does not deal with the sale of immovable property. In September 1963, another change took place, as the word 'Indian' was removed. The Sale of Goods Act containing 36 sections extends to all of India except the State of Jammu and Kashmir.

## Sale and Contract of Sale

To explain a contract of sale, the distinction between sale and contract of sale must be explained.

### What is a Sale?

A sale consists of a transaction between two parties, i.e. the buyer and the seller. In each transaction, the following happens:

- There is a sale of movable goods.
- Between two parties, a buyer and a seller.

**For example:** *A housewife buys a box of juice.*  
*A chemical company buys a truckload of salt.*  
*An office goer buys a car.*

The three examples show the sale of goods. The goods sold are a box of juice, a truckload of salt and a car. The buyer in these illustrations is the housewife, the chemical company and the office goer respectively. The seller is the person or company or shopkeeper who sells the goods. All the illustrations show that in a Sale or Purchase, transfer of ownership of goods takes place.

*Thus, the scope of the Act is:*

- To deal with sale of goods and not mortgages.
- To deal with goods, not with actionable claims and money.

### What is a Contract of Sale?

According to Section 4(1) of the Sale of Goods Act 1930, "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."

Thus, a contract of sale is a contract by which the ownership of movable goods is transferred from the buyer to the seller.

The above definition brings out the following elements of contract of sale. These are:

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- It is a contract as specified in the Indian contract Act 1872.
- Existence of two parties: a buyer and a seller.
- Goods for exchange between two parties.
- Transfer or agreement to transfer property.
- Price as mutually determined.

These points are discussed below:-

**(1)A contract:** A sale or an agreement to sell is in accordance with all the essential elements of a valid contract. Money is the essence of any transaction.

**Illustration 1:** *Sonu wanted to sell hashish to Monu . Is that a valid contract of sale ?*

*Answer : An agreement to sell drugs is not a part of the Act. Why? Because it is an unlawful activity.*

**Illustration 2:** *Ram agrees with Shyam that he will sell a washing machine to Shyam, a month later on payment of cash. This is an agreement to sell and both Ram and Shyam are bound to it. When the washing machine will be transferred to Shyam, it will become a sale.*

**Illustration 3:** *Sita pays Seema an advance amount of Rs.1,00,000 for purchase of a car. The car will be delivered to Sita a month later. This is an agreement to sell.*

*In a contract of sale, the following are important:*

- 1 *There is an offer and an acceptance.*
- 2 *There is a delivery and payment, which can be immediate, in installments or at a later date.*
- 3 *The contract may be in writing or by word of mouth or implied.*

(2) **Two parties:** A seller and a buyer. The Buyer is a person who buys or agrees to buy goods. The Seller is a person who sells or agrees to sell goods. The Act does not permit the buyer and the seller to be the same person.

## **Case Law 1:**

*State of Gujarat Vs Ramanlal<sup>1</sup> : A partnership firm was dissolved and the surplus assets including some stock were divided among the partners in specie. The Sale tax officer was interested in taxing this as a sale. The court held that the property distributed among the partners was their own. They could not sell this property to themselves. Not being a sale, there could be no levying of sales tax.*

Exception to the rule: A part owner may sell to another part owner.

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<sup>1</sup> [1965] AIR Guj 60

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When a person's goods are sold in execution of a decree, he may himself buy them back from the trustee. *King Vs England* <sup>2</sup>

**(2) Goods:** It is important, that there are 'some goods' for a valid sale or for an agreement to sell'.

**Illustration:** *Akash agrees to sell to Bhasker the wheat crop which is grown in his (Akash's) field. They agreed that upon the payment of the price, Bhasker may cut the crop and take it away. It is a valid contract of sale as the growing crop is included in the term 'goods', and can be validly sold.*

"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"[Section 2(7)]. It may be noted that the contracts relating to actionable claims, immovable property and services are not covered by this Act.

A 'Actionable claims' are the claims, which can be enforced through law, e.g., a debt due from one person to another is an actionable claim.

B 'Money' here means legal tender (i.e. currency of the country). Rare coins can be treated as goods and sold.



### Case Law 2:

*Kuresell Vs Timber Operators & Contractors Ltd* <sup>3</sup>:

*Some trees were sold so that they could be cut down and separated from the land and then taken away by the buyer. The court held that it was sale of goods.*

(4) **Transfer or agreement to transfer property.** The word 'general property means ownership of goods'. Special property means possession of goods. For example: Manu pledges a scooter to Ram for a loan of Rs.20,000. In this case, Manu has general property or ownership of the scooter, while Ram has special property or right to the extent of Rs.20,000 in the scooter.

Thus, for contract of sale, the seller should transfer or agree to transfer the ownership of the goods to the buyer. A mere transfer of possession of goods is not sale.

**Illustration :** *Meena keeps some of her jewellery in Kirin's locker. Kirin cannot become the owner of the jewellery, as no sale has taken place. In this case, there is no sale or purchase.*

<sup>2</sup> [1864] 4 B&S 782.

<sup>3</sup> [1927] 1 K.B. 298

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(5) **Price or Consideration.** In every sale there must be a price, which is the money consideration for a sale of goods. [Section 2(10)]. If the consideration is in the form of ONLY GOODS, it is a barter and not a sale. However, the Sale of Goods Act, 1930 does recognize a sale where part money and part goods are paid<sup>4</sup>.

**Illustration:** *Mona agrees to sell a saree to Geeta for Rs.500. Geeta makes a payment of Rs.300 to Mona and the balance she pays in the form of a lipstick. This is a valid sale.*

The illustration shows that the entire payment for the transaction has been made.

### **Case Law 3:**

Aldridge Vs Johnsons<sup>5</sup>:

*52 bullocks valued at 6 pounds each were exchanged for 100 quarters of barleys at 2 pounds per quarter and the balance in cash. The court held that it was a sale of goods.*

## **Difference Between 'SALE' and 'AGREEMENT TO SELL'.**

As stated earlier, the 'contract of sale' includes both a sale and an agreement to sell Section 4(1) of the Sale of Goods Act.

S.No.	Differences	Sale	Agreement to Sell
1.	Type of Contract	The contract is complete.	The contract is to be completed.
2.	Transfer of Rights	The Buyer becomes the owner.	The buyer gets a 'jus in personam' i.e. (a right against the person).
3.	Transfer of Property	Creates jus in rem (Right against Property). He can get the property anytime.	Buyer only gets jus in personam
4.	Transfer of Risk	The risk of danger or loss passes with property to the buyer.	Risk of loss or damage has to be borne by the seller.
5.	Rights of seller if there is breach of contract by buyer	The Seller can sue the buyer for price even if goods are in possession of the	Seller can sue the buyer for damages of breach of contract and not for recovery of goods

<sup>4</sup> For a detailed understanding refer to the lesson on consideration, under the Indian Contract Act.

<sup>5</sup> [1857] 7 E and B 885

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		seller	
6.	Rights of buyer if there is breach of contract by seller	The Buyer can sue the seller for damages and sue the third party.	The Buyer can sue the seller for damages only
7.	Right of Resale	The Seller cannot resell the goods even if he has their possession.	The Seller can sell to another buyer, but the first buyer can sue the seller for damages.
8.	Insolvency of Seller and its effects	The Buyer can recover his goods	The Buyer can claim only a proportional amount, depending on the payment that he has made for the purchase of the goods.
9.	Insolvency of buyer and its effects	He can get the delivery of the goods through his legal representative.	The Seller can refuse to sell the goods until the entire price has been paid, by the buyer.

### HIRE PURCHASE AGREEMENT AND SALE: A COMPARISON

A Sale is different from a 'Hire Purchase Agreement.' A hire purchase agreement is an agreement under which an owner delivers his goods on hire basis to a person called 'hirer', to be used by him. Also, the hirer has the option of purchasing the goods by paying the agreed amount in installments. The term 'hire purchase agreement' is defined in Section 2(c) of the Hire Purchase Act, 1972, which reads as under:

"Hire purchase agreement means an agreement under which goods are let on hire and under which the hirer has an option of purchasing them in accordance with the terms of the agreement, and it includes an agreement under which:

- possession of goods is delivered by the owner thereof to a person on the condition that such a person pays the agreed amount in periodical installments, and
- the property in the goods is to pass to such person on the payment of the last of such installments, and
- such a person has a right to terminate the agreement at any time before the property so passes."

The above definition shows that in a hire purchase agreement, the owner delivers his goods to a person (i.e., hirer) for his use, and the hirer agrees to pay the fixed amount in periodical installments. It is agreed that after the payment of all the installments the ownership of the goods will be transferred to the hirer. The hirer has the following two options:

- He may purchase the goods after paying all the installments.
- He may return the goods at any time and stop further payment of the installments. The installments already paid are treated as the hire charges for the use of goods hired.

**Illustration:** Amar, a shopkeeper, delivered his new cycle to Krishan. They agreed that Krishan would pay Rs.50 on the first day of every month for ten consecutive months. After making all the payments regularly for ten months, he (Krishan) would become the owner of the cycle. It was also agreed that Krishan may return the cycle at any time and stop the payment of further installments. This is a hire purchase agreement.

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The nature of Hire Purchase Agreement is described below:

## Hire Purchase Agreement

The hire purchaser agrees to pay a fixed number of installments which are treated as hire charges by the owner of the goods.

When the last payment is made by the hire purchaser, it is only then that he gets the ownership of the goods. If this hire purchaser is unable to pay any of the installments, even one, the seller can take back the ownership and possession of the goods.

The hire purchaser can only recover the goods once he makes the entire payment.

**Illustration:** Ankush takes a computer from M/s Electronics on hire purchase. It is agreed that Ankush will pay Rs.1,000 for 2 years (24 installments) to M/s Electronics. At the time of payment of the last installment of Rs. 1,000, Ankush defaults and cannot pay. M/s Electronics takes back the computer and the money paid by Ankush is treated as hire charges for the period he used the computer.

## Sale through Installments

Here all the elements of sale are included. The difference is that the total price is not paid in one lump sum but in installments. In the case of consumer goods like washing machines, cars, electronic equipments, this mode of sale is gaining popularity as the buyer does not have to make the entire payment at one time.

**Illustration:** Sheela bought a camera from a shopkeeper. It was agreed that she would pay for the camera in 10 monthly, interest free installments of Rs.1,000 each as the cost of the camera was Rs.10,000. The ownership of the camera was transferred to Sheela at the time of the contract.

## Similarity between Sale and Hire Purchase Agreement

In both a sale and a hire purchase agreement the purpose is that the property in goods passes from the seller to the buyer.

Following are the legal provisions relating to hire-purchase agreement, as contained in the Hire Purchase Act, 1972.

- The hire purchase agreement must be in writing and signed by all the concerned parties. If any one of these two requirements is not fulfilled then, the hire-purchase agreement shall be void. [Section 3(1)].
- The number of installments and the amount of each installment should be specified and written in the hire-purchase agreement. [Section 4 (d)].
- The hirer may end the hire-purchase agreement at any time, before the final payment falls due.
- The owner may also terminate the hire-purchase agreement in any of the following circumstances [Section 18]:
  - A Where the hirer makes defaults that are more than one in the payment of the hirer.
  - B Where the hirer does any act, with regard to the goods, which is inconsistent with any of the terms of the agreement.
  - C Where the hirer does not follow any express condition, which provides that, on breach thereof, the owner may terminate the agreement.

In the cases B and C mentioned above, the owner is also required to give the hirer a notice in writing.

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- D On the termination by the owner, he may keep the hire charges which have already been paid to him. However, if any charges are due, the owner may recover the arrears. He may also apply to court for the recovery of the possession of the goods. [Section 19, 21 & 22].

### Similarity between Hire Purchase Agreement and Sale

The property in goods passes from owner to buyer /hire purchaser at a future date. This happens in both a sale and a hire purchase.

### Difference between Sale and Hire Purchase Agreement

S.No.	Points of Difference	Sale	Hire Purchase Agreement
1.	Governing Law	Sale of Goods Act, 1930	Hire Purchase Act, 1972
2.	Type of contract	It is a contract of sale.	It is an agreement to sell.
3.	Possession of goods	Possession of goods need not be transferred immediately.	Possession of goods is transferred immediately.
4.	Status of ownership of goods	Ownership of goods is transferred immediately.	Ownership of goods is transferred on the payment of the last installment.
5.	Right to end the contract	The buyer has no right to end the contract of sale.	The hirer can end the agreement at any time before the ownership is transferred.
6.	Right to repossess the goods	The seller has no right to repossess the goods. He can sue for the price.	The seller has a right to repossess the goods if the hire-purchaser defaults.
7.	Transfer of goods title to third party	The buyer can transfer the title to goods to third party because ownership of goods has been transferred.	The hirer purchaser cannot transfer the title to goods to third party because ownership of goods has not been transferred.
8.	Written or otherwise	A contract of sale need not necessarily be in writing.	The Hire Purchase Agreement should be in writing.
9.	Benefits	The benefits of implied conditions and warranties are available.	The benefits of implied conditions and warranties are not available.
10.	Levy of Sales tax	In case of sale of taxable goods, sales tax is levied.	In case of hire of even taxable goods, sales tax is not levied.
11.	Payment Vs Hire Charges	The payment made by the buyer is treated as payment toward the price of goods	The payment made by the hire purchases is treated as hire charges for the use of goods till the option to purchase the goods is exercised.

In Hire Purchase Agreement, the person taking the goods can, if he so desires, bring the agreement to an end before the ownership of goods is transferred. In the case where the person taking the goods cannot bring the agreement to an



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end, the said agreement would be a contract of sale even if the price is paid in installments.

## **Case Law 4:**

Helby v. Malthews<sup>6</sup>

*A let a piano to B on hire, on the following terms:*

- *If B regularly pays 36 monthly installments, the piano shall become his property*
- *B can terminate the hire at any time and return the piano to A, and need not pay any more.*

*After paying a few installments, B pledged the piano with C. A brought a legal action against C to recover the piano. It was held that A could recover the piano from C. The court observed that B had no right to pledge the piano because he was not its owner. He had the possession only under a hire purchase agreement. In this case, B had the option to buy the piano by paying all the 36 installments. However, he was not under any legal obligation to purchase the piano.*

## **Difference between Sale and Contract for Work and Labour:**

Under a contract for work and labour, the main objective of the contract is the service that is provided, even though it may ultimately result in the delivery of goods.

### **Illustration:**

- Painting of a building. To paint a building it requires special experience and skill.*
- Painting of a portrait. This work is considered as a work of art and also requires extensive creativity.*
- Flower decoration of a hall. This involves considerable labour and creative skills.*

Services, like the delivery of goods or contracts for skill and labour are not included in the Sale of Goods Act.

## **Case Law 5:**

Day Vs Yates<sup>7</sup>

*A agreed to print and deliver to B five hundred copies of a manuscript which B entrusted to A for that purpose. It was agreed that A will also use his own ink and paper. It is a contract for work and skill, and not for the sale of goods. In this case, though A used his own ink and paper, but the substance of the contract was the skill and experience of the printer. It is to be noted that the use of ink and paper by A was only ancillary to the main contract of printing the manuscript.*

## **Case Law 6:**

Lee Vs Friffin<sup>8</sup>

*A lady contracted with a dentist to make for her two sets of false teeth. The contract was held to be one for sale of goods, although it involved lot of technical*

<sup>6</sup> (1893) AC 471

<sup>7</sup> [1856] 1 H & N 73.

<sup>8</sup> [1861] 30 LJ QB 252

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*work also. The false teeth required both the use of a special material and work and skill for proper fitting of the teeth.*

## Types of Goods

The goods are the subject matter of any contract. They can be classified as follows:

### **1** Existing Goods

These may be of three types:

- A Specific Goods
- B Ascertained Goods
- C Unascertained Goods

### **2** Future Goods

### **3** Contingent Goods



We now explain each one.

1) Existing Goods: When the goods are in possession of the seller at the time the contract is entered into, they are called existing goods. This means that the goods to be sold are in the control of the seller (Section 6(1) has stated: "The goods which form the subject matter of a contract of sale may be either existing goods, owned or possessed by the seller; or future goods."

As stated above the existing goods may be Specific, Ascertained or Unascertained. According to Section 2(14) "Specific goods means goods identified and agreed upon at the time the contract of sale is made."

**Illustration:** *A contract to sell a Nokia cell phone of a particular model is a contract to sell a specific good. In this case, the sale is for a specific good, as the phone has been identified.*

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An ascertained good is a part of the goods that are available in bulk are specially meant for sale.

**Illustration:** Sheela owns 20 Maruti Cars. Uma enters into a contract with Sheela to buy one car out of those 20 cars. After the contract one car is given to Uma and this car will then be an ascertained good.

Unascertained goods are the goods that are not specifically agreed upon at the time of entering into the contract.

**Illustration:** 100 leather jackets are lying in the godown out of this lot of 100 jackets 10 jackets are to be bought by Bhawana, this is a contract for sale of unascertained goods made by the leather jacket manufacturer.

2) Future Goods: Section 2(6) has defined future goods as "Future Goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of the sale" Future goods therefore are neither in existence nor in possession of the seller at the time when the contract of sale is entered into.

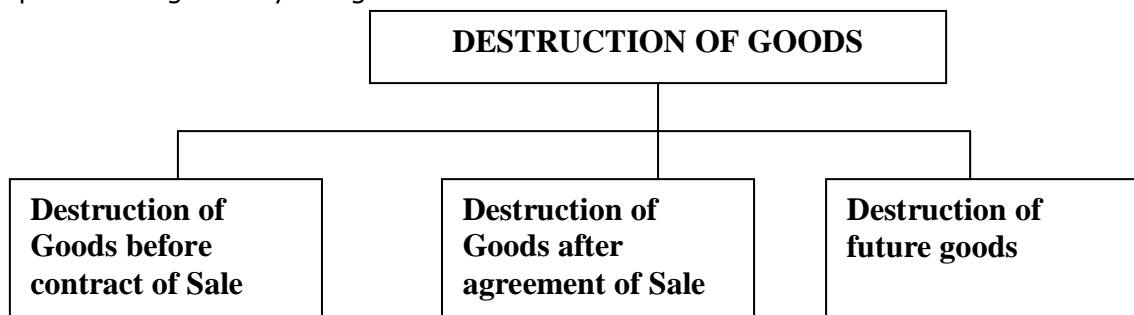
**Illustration:** Rama agrees to sell to Urmilla the entire crop of sugarcane to be grown at her farm in Uttar Pradesh for an amount of Rs.2,00,000. Such type of agreement is not a sale but an agreement to sell future goods.

3) Contingent Goods: Section 6(2) has defined 'contingent goods' as the goods "the acquisition of which by the seller depends upon a contingency which may or may not happen". Such goods are therefore dependent upon an event or an occurrence which may or may not happen.

**Illustration:** Ravi agreed to sell 100 cotton shirts he was importing from China provided his ship arrived safely in time. In this example, the cotton shirts are contingent goods as their sale is dependent upon the safe and timely arrival of the ship.

## Destruction of Goods

When goods have perished or have deteriorated to an extent that they can not be put to the use they were meant for, they are considered to be destroyed. The causes include: a) physical destruction of good; b) damage of good, for example, perishing of vegetables or spoiling of juices etc; c) loss of goods by theft; and d) acquisition of goods by the government.



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## Effect of Destruction of Goods before contract of sale is made

In such a situation the contract is void *ab-initio* because the contract is impossible to be performed.

**Illustration :** *Seema sold a container to Savita which was on its way from Thailand to India. At the time of the contract the ship had already sunk. The contract of sale is void, even though both Seema and Savita were not aware of it.*

In this context, it is important to consider the following:

- The good must be a specific good.
- When the subject matter has entirely been destroyed, the contract is void. However, where the contract is divisible, the parties will be bound to honour that part of the contract, which can be fulfilled.

### **Case Law 7:**

Barrow Lane & Ballard Ltd. Vs. Phillips & Co.<sup>9</sup> :

*A agreed to sell to B a parcel of 700 bags of groundnut lying at a particular place. It was discovered later that at the date of the contract, there were only 591 bags in the parcel, 109 bags having been stolen before the contract was made. The court held that the contract was not divisible because the buyer wanted to buy a specific quantity, and to ask him to take less would be compelling him to do what he had not contracted for. The contract is void.*

A The seller should not have the information of the destruction of the goods. In such a situation the seller would be liable to pay compensation to the buyer, when the buyer is unaware. However, if the buyer has the information regarding the destruction of the goods and he still enters into a contract, the seller would not be held liable for any compensation.

B The goods must have been destroyed before the contract was entered into.

## Effect of Destruction of Goods after agreement of Sale

When an agreement is made for the sale of some specific goods but the goods are destroyed before the final sale, the contract of sale becomes void and both sides are not liable. Here, the following points are important:

- i. There must be an agreement to sell and not an actual sale.
- ii. There must not be any fault of either party, i.e, the buyer or the seller.
- iii. The goods must be specific goods, and
- iv. If only the part of goods have been destroyed and contract is indivisible then the whole contract is void. However, in case the contract is divisible then the part of the contract which applies to the goods that are in usable condition can be implemented.

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<sup>9</sup> [1929] KB 574

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**Illustration 1:** *Chander agreed to sell to Ramesh 100 bags of cement lying in his godown. In fact, that cement had already been destroyed by leakage of water and has been converted into stone. But this fact was not known to the seller (A) In this case, the contract of sale is valid.*

**Illustration 2:** *Arun sold to Manish a specific cargo of goods which was on its way from America to Bombay. The ship conveying the goods had been sunk before the day of the barging. The parties were not aware of this fact. In this case, the contract of sale is void. It will be interesting to know, that the contract will also be void where only a part of the goods are perished which makes the rest of the goods useless for the buyer.*

### **Case Law 8:**

Appleby Vs. Myers<sup>10</sup> :

*A agreed to erect a machinery on the premises of M, where the price was agreed to be paid on completion of the work. While the work was in progress, a fire broke out, and whatever machinery was erected by then, got destroyed. The court held that the contract was indivisible because price was to be paid on completion of the work, and hence void. Thus, A could not recover the price of the work already done before the fire.*

## Effect of Destruction of future goods

When the goods are future goods because they have not been acquired by the seller then the destruction of such goods will result in the contract becoming void. When specific goods perished then Section 8 will apply to the contract.

### **Case Law 9:**

Howell Vs Coupland<sup>11</sup>:

*C agreed to sell H 200 tonnes of regent potatoes to be grown on C's land. C cultivated sufficient land to grow more than 200 tonnes of potatoes, but a disease attacked the crop with the result that he got only about 10 tonnes from the land. The court held that the contract could be avoided.*

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<sup>10</sup> [1867] L.R. 2 C.P. 651

<sup>11</sup> [1876] 1 QBD 258

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## Price of Goods

Section 2(10) of the Act defines price as the money consideration for the sale of goods. Thus, price has to be in terms of money.

The price may be fixed in the following ways:

- a) The price may be fixed in contract [Section 9], this is the usual way of fixing the price.
  - The way the prices fixed may have been agreed upon in the contract of sale [Section 9(1)].
  - The price may be decided by a course of dealings between the parties [Section 9(1)].
  - When the price is not fixed by any of the above ways. [Section 9 (2)]. When the price is not being fixed through an agreement of both the parties then a reasonable price is taken as the price of the contract, depending upon the prevailing circumstances of the case.

**Illustration:** Amita orders Bhawna to supply 100 Pounds to her without discussing the exchange rate of a Pound in terms of Rupee. Here Bhawna would pay Amita according to the prevailing market exchange rate for a Pound.

- Price to be fixed by a third party [Section 10(1)]. When a third party is brought in to fix the price and such a third party is not able to do so, then the situation will be handled depending on the reasons for which the third party has not been able to fix the price. The contract can be avoided when the third party is not willing to fix the price or is unable to do so due to any other reason any reason. However, where the third party is stopped from valuing the goods due to the fault of the buyer or the seller then the one who is in fault will be liable to pay damages to the other party. The party that is not at fault has the right to sue the other for damages

**Illustration:** Vikram agrees to sell 50 tonnes of steel to Ramesh at a price to be fixed by Amar and to be delivered in 4 equal installments. Ramesh receives a delivery of 20 tonnes of steel. State the legal position (a) if Amar refuses to value the goods and fix the price; (b) if Amar is prevented from fixing the price by the fault of Vikram; (c) if Amar is prevented for fixing the price by the fault of Ramesh.

*Solution:*

**Case (a):** The agreement to sell becomes void. But Ramesh must pay a reasonable price for 20 tonnes of steel.

**Case (b):** The agreement to sell becomes void. But Ramesh must pay a reasonable price for 20 tonnes of steel. However, Ramesh may maintain a suit for damages against Vikram.

**Case (c):** The agreement to sell becomes void. But Ramesh must pay a reasonable price for 20 tonnes of steel. However, Vikram may maintain a suit for damages against Ramesh.

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## Earnest Money and Advance Payment or Security Deposit

Earnest money implies a payment as a security. When the total price is to be paid, the earnest money is adjusted against the total price to be paid. When the transaction or contract is not or can not be undertaken because of the buyer's fault the other party can forfeit the earnest money and keep it. However, a security deposit is different because it is not part of the total value of the contract. This security amount cannot be forfeited when the contract is completed as it is not a part of the purchase price.

**Illustration** : A student deposits Rs.10,000 as a security deposit with an educational institution for a one year diploma course. After completion of the diploma course, the student is entitled to receive the security deposit of Rs.10,000.

### Case Law 10:

*Shree Hanuman Cotton Mills Vs. Tata Air Craft Ltd.*<sup>12</sup> : A contracted with B to purchase his aerocrap for Rs. 1.00 lac and paid Rs.25,000 as earnest money, which is 25% of the purchase price. One of the conditions of the contract was that if A failed to pay the balance, contract would stand cancelled and the earnest money would be forfeited. A defaulted in paying the balance and in consequence, B forfeited the deposit. A filed a suit for recovery of the deposit. The court held that the deposit was intended as earnest money, and the seller was entitled to forfeit it.

### Case Law 11:

*Maula Bux Vs. Union of India*<sup>13</sup>:

*A contracted to supply potatoes, eggs, and fish, etc. to Military Headquarters. He deposited Rs.18,500 as a security for due performance of the contract. A committed defaults in making regular and full supplies. The government rescinded the contract and forfeited the deposit. The court held that the amount was a 'security deposit' and the government was not entitled to forfeit the same.*

## Stipulations Regarding Time

A contract of sale of goods may include a time schedule for two elements of the contract. a) payment of price and b) delivery of goods. Although, the element of time of payment is important, a delay in payment cannot give the seller the right to terminate the contract. Section 11 lays down the provision in relation to importance of the time factor in undertaking the contract. In this context, the terms of the contract would be important. The view adopted by courts is that time is an important element with respect to the delivery of goods in commercial contract.

## Document of the Title

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<sup>12</sup> [1970] AIR SC 1986

<sup>13</sup> [1969] SCC 544

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A right over a document of title symbolizes the right over goods. Section 2(4) has defined the documents of title as follows:

"Documents of title to goods" includes "bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, [multi-modal, transport document] warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document, to transfer or receive goods thereby represented".

**Illustration:** Amit agreed to buy a new motor cycle from Sanjay, a dealer, for Rs.20,000. Amit paid the price and the motor cycle was registered in his name. Sanjay delivered the registration book (title of the motor cycle) to Amit. This is a valid contract of sale as the ownership of the motor cycle has been transferred to the buyer (Amit).

**Note:** Sometimes, the ownership is agreed to be transferred at some future date. In such cases, there is an 'agreement to sell', and legally, an 'agreement to sell' is included in the definition of 'contract of sale'.

Thus, the document of title is the proof that the goods are in the possession of the issuing authority and entitles the document holder, to receive the goods mentioned in the document or further transfer them.

## Points to Remember

### Introduction

- The Sale of Goods Act was passed in 1930
- It extends to the whole of India except the State of Jammu and Kashmir.

### The sale of goods implies both a sale and an agreement to sell.

All the elements of the contract Act hold true in a contract of sale.

Other essential elements are :

1. A buyer and a Seller
2. Goods
3. Transfer of property
4. Price

### Differences between Sale and Agreement to sell are based on the following :

- Nature of contract
- Transfer of ownership
- Transfer of risk
- Rgths of seller
- Rights of buyer
- Effect of insolvency of seller
- Effect of insolvency of buyer

### A hire purchase agreement and a contract of sale are different in many respects.

Differences relate to the possession of goods, the nature and type of contract, the right to repossess the goods, the method of stating the contract, payment of hire charges and levy of sales tax.

### A contract of work and labor is different from a contract of sale.

In a contract of sale there is delivery of some goods, However, in a contract for work and labor the rendering of service and exercise of skill is the essence.

### Meaning and types of goods

Goods includes every kind of movable property other than actionable claims and money and includes:



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- Stocks and shares
- Grass and items attached to the land including trees and crops etc.

### Effect of destruction of goods

- In case of contract of sale, the effect of destruction can result in the contract becoming void if the contract is impossible to be performed.
- In the case of an agreement to sell, the agreement becomes void if the specific goods agreed upon are destroyed for no fault of the buyer or the seller, and the goods are not passed to the buyer.

### There are different ways of determining the price of goods

The price may be fixed by contract

- (i) It may be left to be fixed in an agreed manner
- (ii)** It may be determined during the course of dealings between the two parties.



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## Questions

State which of the following is true or false, giving reasons:

- 1 A contract of sale can be absolute or conditional.
- 2 A person can buy goods from himself.
- 3 The object of a contract of sale must be transfer of ownership of goods from one party to another.
- 4 A contract of sale is different from any other contract.
- 5 A contract of sale has to be in writing.
- 6 In a sale, the transfer of risk of loss of goods passes to the buyer as soon as the sale is made.
- 7 A sale of goods contract is not an executed contract.
- 8 The hire purchase agreements are governed by the sale of goods act.
- 9 Sales tax is not levied in the case of hire purchase agreement.
- 10 Old rare coins, shares and goodwill are examples of goods.

**Answers: 1.T; 2.F; 3.T; 4.F; 5.F; 6.T; 7.F; 8.F; 9.T; 10.T.**

### **Long answer questions:**

- 1 When does an agreement to sell become a sale? What are the essential elements of a valid contract of sale?
- 2 Distinguish between a sale and an agreement to sell. Give examples.
- 3 What are the differences between sale and hire purchase agreement?
- 4 'A contract for work and labour can never be a sale'. Explain.
- 5 Goods can mean both existing and future goods in a contract of sale. Explain.
- 6 Discuss and explain the effect of destruction of goods in a contract of sale.
- 7 Define the term price. What are the different ways of price fixation?

### **Practical Problems:**

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1 Amita agrees to buy ten leather bags from Bhavna's shop. Bhavna has many shops of leather bags and many bags in each shop. Is this a sale or an agreement to sell?

Answer: This is an agreement to sell because the exact goods have not been identified or ascertained.

2 Anil enters into a contract for sale for the entire crop of cotton that would be produced on his farm. Is this a sale or an agreement to sell?

Answer: This is an agreement to sell because the subject matter of the contract is future goods.

3 Seema enters into a contract with Shalu for the sale of ten cloth pieces out of 100 cloth pieces lying in her house. Unknown to Seema all the pieces get destroyed and she refuses to deliver. Can Shalu recover the goods?

Answer: Yes. According to section 7, Seema must deliver the 10 pieces or pay damages to Shalu for the breach of contract.

4. Arushi agreed to sell a dog to Megha on the condition that Megha will keep it for 2 weeks and can return the dog if she finds it difficult to manage it. However, the dog dies on the tenth day, without any fault of the seller or the buyer. What will be the position of the two parties?

Answer: According to section 8, the agreement to sell has become void and Megha is not liable to pay for the dog.

5. Rajiv gave a piece of cloth to his tailor to stitch a shirt for him. The tailor got the buttons and the collar material for the shirt. Can this be called a contract of sale?

Answer: No. This is only a contract of work and labour and not a contract of sale because the essence of the contract is the skill in stitching.

6. Madhu agreed to sell 10 silver coins for Rs. 4,000/- to Shreya. Can this be termed as a contract of sale.

Answer: Yes. This is a contract of sale, because old rare coins can be the subject matter of sale.

7. Namita agreed to exchange with Meher 50 kgs of rice valued at Rs. 60 per kg for 100 kg of wheat. (valued at Rs. 40 per kg and pay the difference in cash). Can this be termed as a contract of sale.

Answer: Yes, since there is no provision in law to prevent the consideration from being partly in money and partly in kind or goods.

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