

CHAPTER - 3

THE SALE OF GOODS ACT, 1930

UNIT - 1

FORMATION OF THE CONTRACT
OF SALE

Scope of the Act.

Applicability of the Act

Provision of this act are applicable to Contract related to

"Sale of Movable Property only"

Non Applicability of the Act

Provision of this act are not applicable to Contracts related to

Sale of Immovable properties like

- Land
- House
- Shop etc

General provisions of Indian Contract act, 1872 shall apply when Provision of Sales of Goods Act are inconsistent with provisions of Indian Contract Act.

Expression/terms not defined in Sale of Goods Act, but defined in Indian Contract Act → the meanings of Indian Contract act shall apply

Definitions Under the Act.

Buyer and Seller

Buyer.

Buyer Means a person who buys (or) Agrees to buy Goods.

Seller.

Seller Means a person who sells (or) Agrees to sell Goods.

Goods. [Section 2(7)]



Goods Means every kind of Movable property Other than
 [Actionable Claims
 Money.

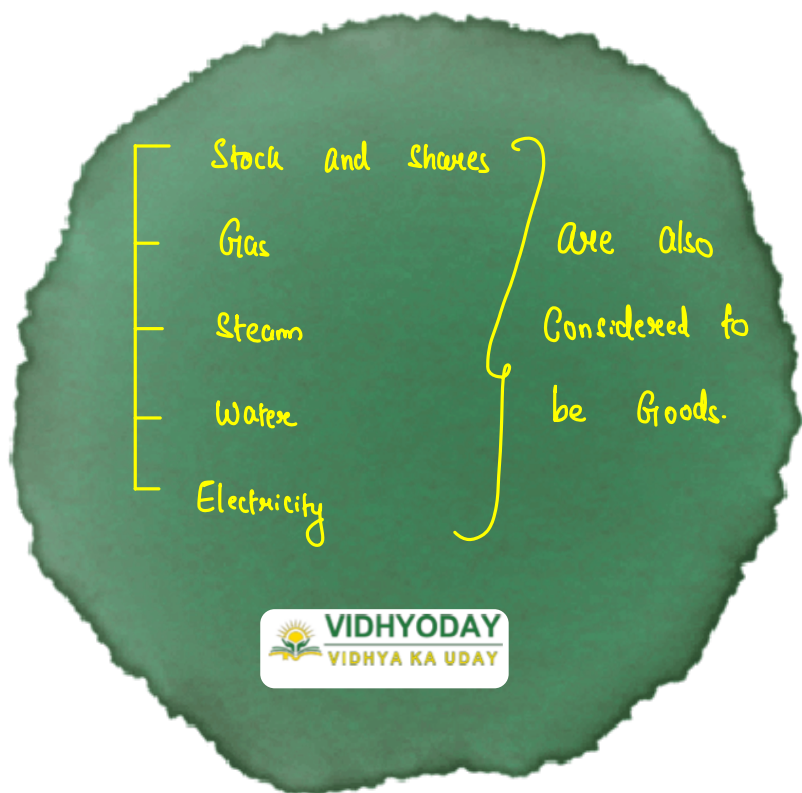
- Goods Includes [Stock and shares
 Growing Crops,
 Grass and things attached to (or) forming part of land

Which are Agreed to be served [before sale (or)
 Under the Contract of Sale.

Goods Include both
Tangible and Intangible
Goods like
↳ Goodwill, Copyright,
Patent, Trademark etc.

Section 176 Read with
Section 2(7)

Fixed deposit Receipts [FDR]
are Considered Goods.



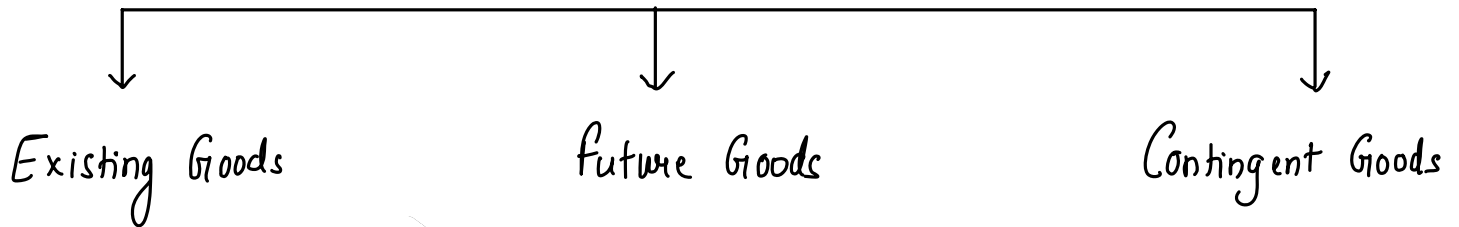
What are Actionable Claims

- Actionable Claims are Claims which
- can be enforced only by [Action @
Suit
- Example → Debt
- A debt is not Movable Property or
Goods
-
-

Classification of Goods



Goods can be of three types



Existing Goods [Section-6]



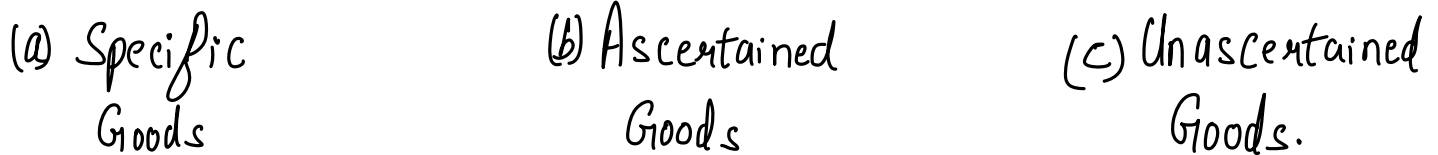
Existing Goods are such Goods as are existence at the time of Contract of Sale

↳ that is

Owned	} by the Seller at the time of Contract of Sale.
Possessed	
Acquired	



Classification of Existing Goods




(a) Specific Goods

 Specific Goods Means Goods identified and Agreed upon at the time a Contract of Sale is Made.

- Example →
- Finally Decided Goods are iPhone XII Pro Max, Whirlpool Washing Machine & Tkgc. etc.
 - From Pre Owned Car showroom among 5 Cars of different Model, Stephanie agreed to buy "Santro" Car and Seller agreed to sell this, here the Car is Identified.

(b) Ascertained Goods

 Ascertained Goods are those Goods which are Identified in accordance with the Agreement after the Contract of Sale is Made.

This term is not defined in the act but has been judicially Interpreted.

When from a lot (or) out of
Large Quantity of Unascertained
Goods


↳ the Number/Quantity
Contracted for is Identified
↳ Such Identified Goods
are called ascertained Goods.

note to self:

In Actual Practice, the
term "Ascertained Goods" is
Used in same sense as
"Specific Goods"

Example → A Wholesaler of Cotton has 100 bales in his Godown.
He Agrees to Sale 50 bales and these bales were selected
and Set Aside. On Selection the Goods becomes Ascertained.

(c) Unascertained Goods

 Unascertained Goods are those Goods which are
Not Specifically Identified (or) } at the time of
Ascertain } Making the Contract.

• They are Indicated (or) defined only by
Description (or) Sample.

Example → If A agrees to sell to B, one packet of salt out of lot of 100 packets lying in his shop, it is a sale of Unascertained Goods because it is not known which packet is to be delivered.



As soon as a particular packet is separated from the lot → it becomes Ascertained (or) Specific Goods.

Example → Nancy has ten houses. She promises to sell one of them but does not specify which house she will sell. It is a Contract of sale of Unascertained Goods.

Future Goods [Section - 2(b)]



Future Goods Means

Goods to be Manufactured/Produced
OR
Acquired by Seller after Making Contract of Sale.

note to self:


A Contract of Sale of Future Goods is always an Agreement to Sell

note to self:

It is never Actual Sale because, a person cannot transfer what is not in existence

Example → Tanmay Agreed to Sell all the Oranges which will be produced in his Garden this year. It is a Contract of Sale of future Goods, amounting to
↳ An Agreement to Sell.

Contingent Goods

 The Acquisition of which by Seller depends upon an Uncertain Contingency [Uncertain Event] are called Contingent Goods.

- Contingent Goods also operate as "An Agreement to Sell" and not a "Sale"
↳ so far as the question of passing property to the buyer is concerned.

In other words, like the future Goods, in the Case of Contingent Goods also
↳ the property does not pass to buyer at the time of Making the Contract.

Delivery

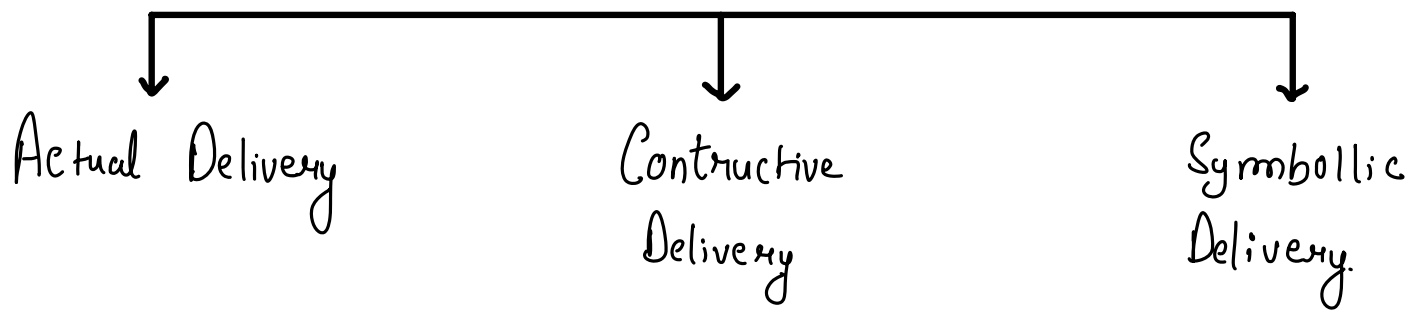
Meaning of Delivery

Delivery Means Voluntary transfer of possession from one person to another

How to Make Delivery

Delivery of Goods May be Made by
↓
Doing anything which has the effect of putting the Goods in possession of
[Buyer
Any person authorised to hold them.

Forms of Delivery.



Actual Delivery.

👉 When the Goods are **physically delivered** to the buyer.

- Actual delivery takes place when the seller transfers physical possession of Goods
 - to buyer
 - to a third person authorised to hold Goods on behalf of the buyer.
- This is most common method of delivery.

Constructive Delivery.


👉 When it is effected without any change in **Custody / Actual possession** of thing as in case of

"Delivery of Attornment" [Acknowledgement]

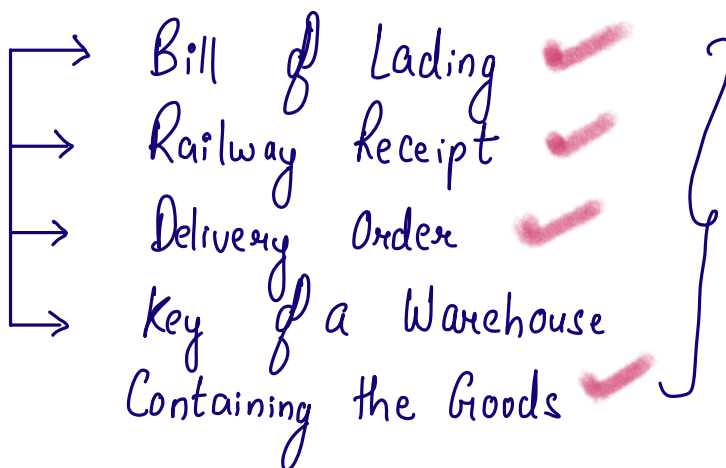
- Constructive Delivery takes place when a person in possession of the Goods ^{पारण} belonging to the Seller Acknowledges to the ^{Chinta} buyer, that he holds the Goods on buyer's behalf.

Example → Where a Warehouseman, holding the Goods of A agrees to hold them on behalf of B, at A's request.

Symbolic Delivery.

 When there is delivery of thing ^{in token} of a transfer of something else.

- Delivery of Goods in course of transit May be Made by handing over documents of title to Goods like


Bill of Lading ✓
Railway receipt ✓
Delivery Order ✓
Key of a Warehouse
Containing the Goods ✓

is handed over to buyer.

- When Actual delivery is not possible there may be delivery of Means of Getting Possession of Goods.

Section 2(3)

When are Goods in Deliverable State??

Goods are said to be in Deliverable state when they are in such a Condition that the buyer would under the Contract
↳ be bound to take delivery of them.

Example → Where A Contracts to sell timber and make bundles thereof,
↓
the Goods will be in deliverable state after A has put the Goods in such a Condition.

Mercantile Agent [Section 2 (9)]



It Means an Agent who in the Customary Course of business has Authority either to sell the Goods or to Consign Goods for the purpose of

- Sale Goods
- Buy Goods
- Raise Money on Security of Goods.

Property [Section 2 (11)]



Property here Means Ownership OR General Property.

General Property

Property in Goods Means the General Property
ie all ownership Right of the Goods

• In Every Contract of Sale

Ownership of Goods Must be Transferred by Seller to Buyer

there should be an Agreement by Seller to transfer Ownership to buyer

Property Means General Property and not Mere Special Property.

General Property v/s Special Property.

It is quite possible that General Property in a thing may be in one person and the special property in the same thing may be in another.

Example → When an Asset is Pledged.

The General Property in a thing may be transferred subject to Special Property continue to remain with another person.

Example → Pledgee who has right to Retain the Goods Pledged
↳ till payment of stipulated dues.

Example → If A who owns Gold Pledges them to B, where A has General property in Gold and B has special property, to the extent of amount of loan advanced.

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.

Price [Section 2(10)]



Price Means the Money Consideration for 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.

Quality of Goods [Section 2(12)]



Quality of Goods includes their State (OR) Condition

Sale and Agreement to sale [Section 4]

Section 4[1]

A Contract of Sale of Goods is a Contract where the Seller transfers (or) Agrees to transfer property in Goods to buyer for a price.

A Contract of Sale May be Absolute (or) Conditional.

Meaning of Sale

Where under Contract of sale, the property in Goods is transferred from Seller to Buyer, the Contract is called Sale.

Meaning of Agreement to Sell.

Where transfer of property in Goods is to take place at future time or subject to such condition thereafter to be fulfilled.

Section 4(4) → An Agreement to Sell becomes sale when

Time Elapses (OR)

Conditions are fulfilled
Subjected to which the
property in the Goods
is to be transferred.

note to self:

DON'T FORGET

A Contract of Sale of
Goods May be

Either
Sale

(OR)

Agreement
to Sell.

Example → X Agrees
with Y on
10th October 2021 that he
will sell his Car on
10th November 2021 for
Rs 5,00,000. It is an
Agreement to Sell

When "Agreement to Sell" becomes
"Sale"??

An Agreement to Sell becomes
a Sale ↓

When time elapses (OR) Condition
the Condition are fulfilled subjected
to which the property in Goods
is to be transferred.

Elements of Contract of Sale



Following Elements Must Co-Exist as to Constitute a Contract of Sale of Goods :-

- There Must be atleast two parties
[the seller } and the two Must be
the buyers } different persons.

A person Cannot be both buyer and seller and sell his Goods to himself.

- The Subject Matter of the Contract Must Necessarily be Goods [Covering only Movable property].

Goods May be [Existing Goods [Owned (or) Possessed by seller]
Future Goods.

- A Price in Money (not in kind) should be paid (or) Promised

DON'T FORGET

Consideration Can be partly in Money and partly in kind

- A transfer of property in Goods from Seller to Buyer Must take place.

The Contract of Sale is Made by an offer to buy (or) Sell Goods for a price by one party and Acceptance by other.

- A Contract of Sale may be Absolute (or) Conditional.
- All other Essential elements of Valid Contract Must be present in Contract of Sale

Example Free Consent of Parties
 Competency of Parties
 Legality of Object and Consideration etc.

SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

Sale and Hire Purchase.

Contract of sale Resembels with Contract of hire purchase Very Closely.

Real object of Contract of hire purchase is sale of Goods Ultimately.



Hire purchase Agreement are Governed by "The Hire purchase Act, 1972"

Meaning of Hire Purchase Agreement.

An Agreement under which

Goods are lent of hire and under which the hirer has an "option" to purchase them in accordance with terms of Agreement

 Hire Purchase Agreement includes an Agreement under which


Possession of Goods is delivered by owner thereof to a person on condition that such person pays the agreed amount in periodical installments.



Property in Goods is to pass to such person on payment of last installment.



Such person has right to terminate the agreement at any time before the property so passes.

 Distinguish between Sale and Hire Purchase

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	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	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

Sale and Bailment

Bailor Person delivering the Goods is called bailor.

Bailee Person to Whom Goods are delivered is called bailee.

A Bailment is the delivery of Goods for some specific purpose under a contract on the condition that

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.



Distinguish between Sale and Bailment

Basis of difference	Sale	Bailment
Transfer of property	The property in goods is transferred from the seller to the buyer. So it is transfer of general property.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc. So, it is transfer of special property.
Return of goods	The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
Consideration	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

Sale and Contract for Work and Labour.

A Contract of Sale of Goods is one in which

↓ ↓
Some Goods (OR) Are to be
Are Sold Sold.

Where no goods are sold and there is only doing (or) Rendering of some work of labour

→ then the Contract is only for Work and Labour and not of Sale of Goods.

Example → When Dress Material is given to tailor for stitching, is the example of Contract for Work and Labour.

Contract of Sale - How Made [Section 5]



As per Section 5(1)

A Contract of Sale is Made by
an offer to buy or sell
Goods for Price
+
Acceptance of offer

As per Section 5(2)

Subjected to any Provisions of any law for time being in force

A Contract of Sale May be

Made in Writing
(OR)
by word of Mouth
(OR)
Partly in Writing and
Partly by Word of Mouth
(OR)
May be Implied from
Conduct of the parties.

Example

Stephie Agrees to deliver her Acura to John in Exchange for Rs 25000 and pay difference and buy a New Acura, this is Contract of Sale.



A Contract of Sale May be Made in any of following Modes :-

- A Contract of Sale is Made by an offer to buy (or) sell the goods for a price and Acceptance of such offer.
(OR)
- There May be Immediate delivery of Goods.
- There may be Immediate payment of price, but it May be Agreed that delivery is to be Made at Future date.
- There May be Immediate delivery of the Goods and Immediate Payment of price.
- It may be Agreed that the


[Delivery	} are to	
	Payment		be Made
	Both		in

 Installment.
- It May be agreed that

[Delivery	} are to be	
	Payment		Made at some
	Both		future date.


SUBJECT Matter of Contract of Sale [Section 6, 7, 8]

Existing (OR) future Goods [Section 6]


 The Goods which form the subject Matter of Contract of Sale May be

↓ ↓


Either Existing Goods, that are Acquired, owned, Possessed by Seller. (OR) future Goods

 There May be a Contract for Sale of Goods the acquisition of which by Seller depend upon Contingency which May (OR) May not happen.

Example → A Contract of Sale of Certain Cloth to be Manufactured by Certain Mill is Valid Contract, such Contracts are called Contingent Contracts.

 Where by a Contract of Sale the Seller purports to effect a present sale of future Goods, the Contract operates as an Agreement to Sale


Goods Perishing before Making of Contract. [Section 7]

 Where there is Contract for Sale of specific Goods
→ the Contract is Void if the goods
without the knowledge of Seller at the
time when Contract was Made

was perished (OR) become so damaged
as no longer to
answer to their description.

Example → A agrees to sell 50 Bags of wheat stored
in A's Godown. Due to Water logging
all the Goods stored in Godown were destroyed. At
the time of Agreement, neither parties were aware of
the fact
→ The Agreement is Void.

Goods Perishing before Sale after Agreement to sell. [Section 8]

 When 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) become so damaged as to no longer to answer to their description in the agreement before the risk passes to buyer the Agreement is thereby AVOIDED (or) becomes Void.

◆ Perishing of Future Goods

If the future Goods are specific, the destruction of such Goods will amount to

Supervening Impossibility

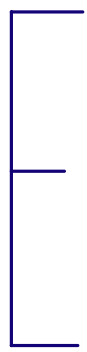
- The Contract shall be void.

Ascertainment of Price and Agreement to Sell at Valuation [Section - 9 and 10]

Ascertainment of Price [Section 9]



The Price in a Contract of Sale May be fixed by the Contract



May be left to be fixed in Manner Agreed.

May be determined by Course of dealing between the parties.




When the Price is not determined in accordance with above [foregoing] Provisions
the buyer shall pay seller Reasonable price.

What is Reasonable Price

• It is a Question of fact dependent on


Circumstances of each Particular Case

Agreement to Sell at Valuation [Section 10]

 When there is Agreement to Sell Goods on the terms that price is to be fixed by Valuation of third party

And third party cannot/does not Make such Valuation the agreement is there by avoided.

Provided that, if Goods or any part, thereof have been delivered to and appropriated by buyer, he shall pay a Reasonable price therefore.

 Where such third party is prevented from Making Valuation, by fault of Seller/Buyer

↓
the party not in fault May Maintain a suit for damages against the party in default.