

Unit I - Formation of the Contract of Sale

• Introduction

- It extends to the whole of India.
- Came into force = 1st July, 1930

• Scope

- Sale of goods which means movable property.
- This act is not applicable for the sale of immovable property.

* Definitions :-

(i) Buyer and Seller [Sec. 2(1)]

- Buyer means a person who buys or agrees to buy goods
- Seller means a person who sells or agrees to sell goods

(ii) Goods and other related terms

- Goods means every kind of movable property, excluding actionable claims and money.

- Includes ⇒ Stock and Shares • Growing crops • Grass • Other things attached / forming part with land → which are agreed to be severed before sale or under the contract of sale.

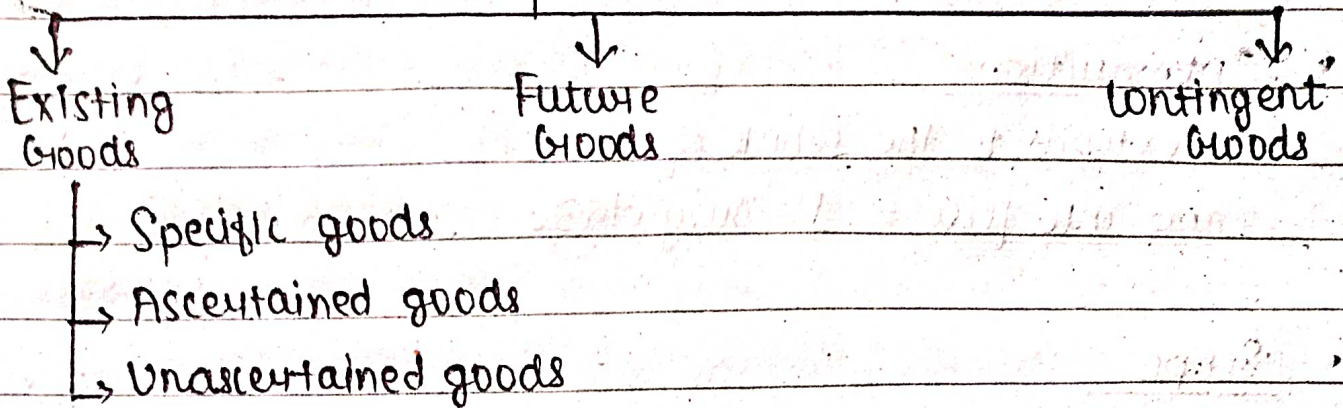
- Actionable claims are claims → which can be enforced only by an action or suit eg. Debt

- Fixed Deposit Receipts [FDR] are considered as Goods.

- Goods include Tangible & Intangible goods

- also Gas, Steam, Water, Electricity, Decree of Court are Goods

Types of Goods



(i) Existing Goods - those owned and possessed or acquired at the time of contract of sale.

- Specific goods - identified and agreed upon at the time a contract of sale is made.
- Ascertained goods - identified in accordance with the agreement after the contract of sale is made.
- Unascertained goods - not specifically identified or ascertained at the time of making the contract.

(ii) Future Goods - goods to be manufactured or produced or acquired after making the contract of sale.

Always agreement to sale & not actual sale.

(iii) Contingent Goods - The acquisition of which depends upon an uncertain contingency [uncertain event].

(iii) Mercantile Agent [Sec. 2(19)] - It means an agent who is in customary course of Business, as such agent, has authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.

(iv) Document of title of goods

→ includes ⇒ • Bill of lading • dock warrant • Warehouse keeper's certificate
• Wharfinger's certificate • railway receipt
• multi-modal transport document • Warrant order for delivery of goods

→ Document as the proof of possession or control of goods

Document showing Title

↓
• Only shows name
• transfer is not possible

Document of Title

↓
• Shows name
• transfer is possible

(v) Delivery - its forms and Derivatives

→ Voluntary transfer of possession from one person to another.

• Forms of Delivery :-

(i) Actual Delivery - • when goods are physically delivered to Buyer.
• takes place when seller transfers physical possession to buyer or third party authorised on behalf of Buyer.

(ii) Constructive Delivery - • when it is effected without any change in the custody or actual possession of goods as in case of delivery by acknowledgement.

(iii) Symbolic Delivery - When there is delivery of thing or token of a transfer of something else.

• When actual delivery is not possible, there may be delivery of the means of getting possession of the goods.

(vi) Property - Here, it means 'ownership' or 'general property'.

• It is possible that general property may be in one person and special property be in another.

(vii) Quality of goods - Includes state or condition of goods.

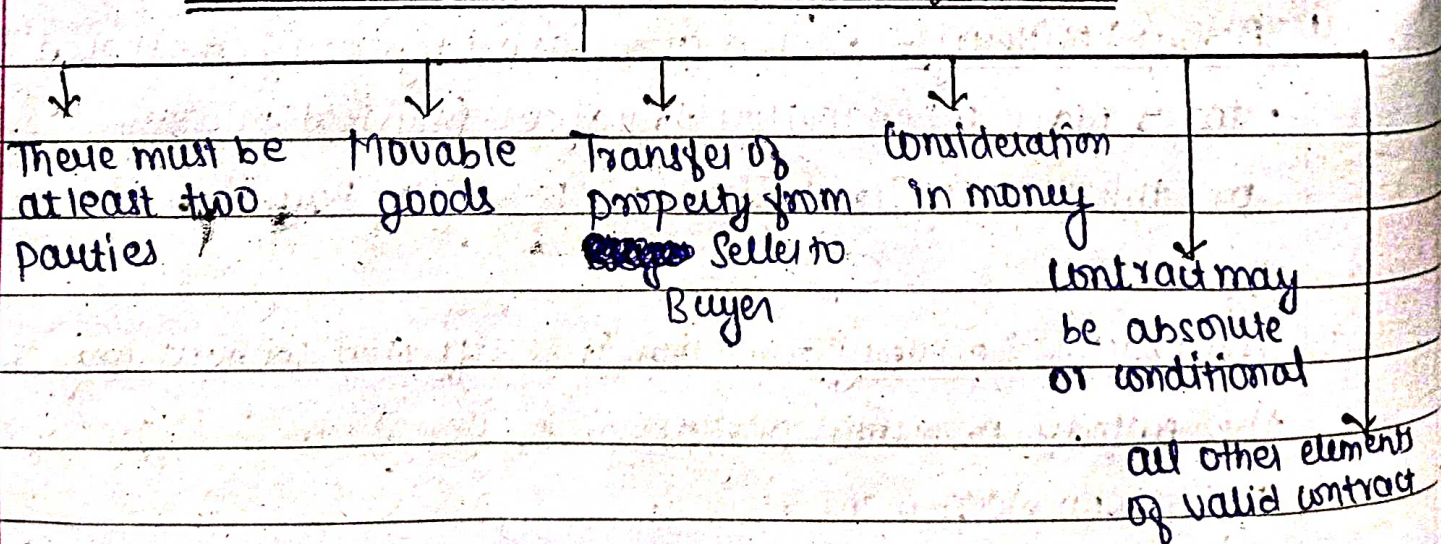
(viii) Insolvent [Sec. 2(8)] - A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

(ix) Price [Sec. 2(10)] - money consideration for sale of goods.

It is the value of goods expressed in monetary terms.

It is an essential requirement to make a contract of sale of goods.

Elements to constitute a contract of Sale



* Difference between Sale and Agreement to Sale:-

- 1.)
 - In case of Sale → property in the goods passes to the buyer immediately
 - In case of Agreement to sale → property in goods passes to buyer on future date or on fulfilment of some condition.
- 2.)
 - Sale is executed contract
 - Agreement to Sale is executory contract
- 3.)
 - Sale → Seller can sue the buyer for the price of the goods because of passing of the property to Buyer
 - Agreement to sale → Aggrieved party can sue for damages only and not for the price, unless the price was payable at stated date.
- 4.)
 - Sale → Subsequent loss or destruction of goods is liability of Buyer
 - Agreement to sale → Such loss or destruction is liability of seller
- 5.)
 - Sale → Burden of risk is on Buyer
 - Agreement to sale → Risk is on Seller
- 6.)
 - Sale → creates Jus in Rem = right against the whole world
 - Agreement to sale → creates Jus in Personam = right against particular party to contract.

* Difference between Sale and Hire Purchase :-

- 1.) • Sale → Property is transferred to Buyer immediately at the time of contract.
• Hire purchase → property is transferred to the hiree upon payment of last installment.
- 2.) • Sale → Position of Buyer is that of owner of goods.
• Hire purchase → Position of Hiree is that of Bailee till the last payment.
- 3.) • Sale → Buyer cannot terminate contract & is bound to pay.
• Hire purchase → Hiree may terminate contract by returning goods to owner without liability.
- 4.) • Sale → Buyer can pass a good title to a bona fide purchaser.
• Hire purchase → Hiree cannot pass any such title.
- 5.) • Sale → Buyer can resell the goods.
• Hire purchase → Hiree cannot resell.
- 6.) • Sale → Seller takes risk of loss resulting from insolvency of Buyer.
• Hire purchase → Owner has no such risk.

* Difference between Sale and Bailment

- 1.) • Sale → Property is transferred from Seller to Buyer. So, transfer is General property.
• Bailment → Only transfer of possession of goods for some purpose. So, transfer is Special property.
- 2.) • Sale → Return of goods is not possible.
• Bailment → Bailee must return goods to Bailor on accomplishment of purpose.
- 3.) • Sale → Consideration is price in terms of money.
• Bailment → Consideration may be gratuitous or non-gratuitous.

* Sale and Contract for work and Labour

- Sale is one in which some goods are sold or are to be sold for a price.
- Contract for work and labour when there is no sale but only the doing or rendering of some work of labour.

* Contract of Sale How made [Sec. 5]

- (i) an offer to buy or sell goods for a price & acceptance of such offer.
- (ii) may be immediate delivery.
- (iii) may be immediate payment but agreed that delivery is to be made at some future date.

- (iv) may be immediate delivery of goods and immediate payment of price.
- (v) may be agreed that delivery or payment or both are to be made in installments.
- (vi) may be agreed that delivery or payment or both are to be made at some future date.

* Ascertainment of Price [Sec. 9 and 10]

→ Price means monetary consideration for sale of goods.

→ Price may be fixed :-

- fixed by contract
- fixed in manner provided by contract
- determined by course of dealings b/w the parties.

* Agreement to sell at Valuation [Sec. 10]

- Where there is an agreement to sell goods on the terms that price is to be fixed by valuation of third party

& such party can not / does not make valuation → Agreement is void.

- If goods or any part thereof has been delivered to, and appropriated by, the buyer, he shall pay reasonable price.
- When such third party is prevented from making valuation by fault of Buyer or Seller → party not in fault may maintain suit for damages against party in default.