

Sale of Goods Act 1930
Contract
of
Sale of Goods

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Scope Of The Act.

- The provisions of the Act are applicable to the contracts related to the sale of goods which means movable properties. The Act is not applicable for immovable properties like land, shop or house etc.

Definition.

1] Buyer & Seller

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

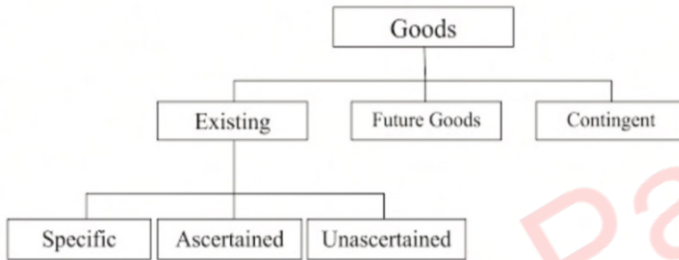
2] Goods & other related terms.

'Goods' means every kind of movable property other than actionable claims & money; & includes stocks & shares, growing crops, grass & 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' are claims which can be enforced only by an action or suit.

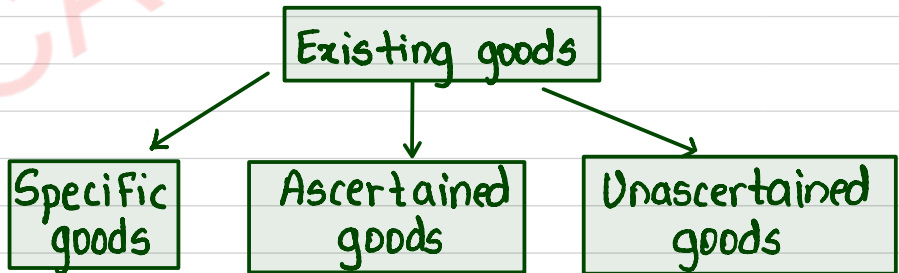
"Goods" include both the tangible & intangible goods like goodwill, copyrights, patents, trademarks etc.

Classification of Goods.



Existing Goods

- Existing goods are such goods as are in existence at the time of the contract of sale.
- The existing goods may be following kinds:



1] Specific goods

• Specific goods means goods identified & agreed upon at the time of contract of sale is made.

2] Ascertained goods

• Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made.

3] Unascertained goods

• Unascertained goods are those goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description or sample.

Future Goods



Future goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale.

• A contract for these good is always agreement to sell & it is never actual sale because a person cannot transfer what is not in existence.

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' & not a 'sale' so far as the question of passing of property to the buyer is concerned.

Delivery.

Delivery means voluntary transfer of possession from one person to another.

Kinds of Delivery

- 1] Actual delivery
- 2] Constructive delivery
- 3] Symbolic delivery.



Actual Delivery

When the goods are physically delivered to the buyer.

Constructive Delivery

When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)

- Constructive delivery takes place 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.

Symbolic Delivery

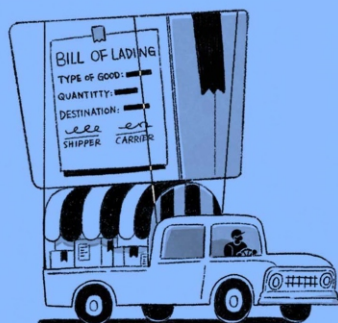
When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like railway receipt.



Document of title to goods.

"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 & 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.

• Though a bill of lading is a document of title, a mate's receipt is not; it is regarded at law as merely an acknowledgement for the receipt of goods.



Bill of Lading

[bil əv 'lā-dɪŋ]

A legal document issued by a carrier to a shipper that details the type, quantity, and destination of the goods being carried.

Mercantile Agent.

It means an agent who in the customary course of business has authority either to sell the goods or to consign the goods for the purpose of sale or to raise money on the security of goods.

Property.

'Property' here means 'ownership'

Insolvent

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.

Price

Price means the money consideration for sale of goods. It is the value of goods expressed in monetary terms.

Quality of goods includes their state or condition.

Sale & Agreement to sell

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.

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

■ A contract for the sale of goods may be either sale or agreement to sell.

SALE: In sale, the property in the goods is transferred from the seller to the buyer immediately.

AGREEMENT TO SELL:

In an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

When does agreement to sell becomes Sale.?

- 1] There must be at least two parties, the seller & the buyer.
- 2] The subject matter of the contract must be goods covering only movable property.
- 3] A price in money (not in kind) should be paid.
- 4] A transfer of property in goods should take place.
- 5] A contract of sale may be absolute or conditional.
- 6] All other essential elements of a valid contract must be present in the contract of sale.



SALE VIS AGREEMENT TO SELL

| Basis of difference | Sale | Agreement to sell |
|-----------------------------|--|--|
| Transfer of property | The property in the goods passes to the buyer immediately. | Property in the goods passes to the buyer on future date or on fulfilment of some condition. |
| Nature of contract | It is an executed contract. i.e. contract for which consideration has been paid. | It is an executory contract. i.e. contract for which consideration is to be paid at a future date. |
| Remedies for breach | The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer. | The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date. |
| Liability of parties | A subsequent loss or destruction of the goods is the liability of the buyer. | Such loss or destruction is the liability of the seller. |

| | | |
|--|--|--|
| Burden of risk | Risk of loss is that of buyer since risk follows ownership. | Risk of loss is that of seller. |
| Nature of rights | Creates Jus in rem | Creates Jus in personam |
| Right of resale | The seller cannot resell the goods. | The seller may sell the goods since ownership is with the seller. |
| In case of insolvency of seller | The official assignee will not be able to take over the goods but will recover the price from the buyer. | The official assignee will acquire control over the goods but the price will not be recoverable. |
| In case of insolvency of buyer | The official assignee will have control over the goods. | The official assignee will not have any control over the goods. |

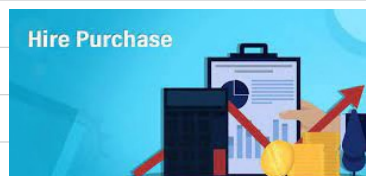
Difference Between Sale & Agreement to Sell

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Sale Vs. 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 v/s 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 & CONTRACT FOR WORK & LABOUR.

A contract of sale of goods is one in which some goods are sold or are to be sold for a price. But where no goods are sold, & there is only the doing or rendering of some work of labour, then the contract is only of work & labour & not of sale of goods.



How Contract of Sale is made

A contract of sale is made by an offer to buy or sell goods for a price & the acceptance of such offer. The contract may provide for the immediate delivery of goods or payment of price or both, or for the delivery or payment by instalments, or delivery or payment or both shall be postponed.

■ As per section 5, 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 words or maybe by the conduct of the parties.

- a) Made by an offer to buy or sell goods for a price & acceptance.
- b) Immediate delivery of goods
- c) Immediate payment of price, but it may be agreed that the delivery is to be made at some future date.
- d) Immediate delivery & payment
- e) Agreed that both delivery & payment are in instalments.
- f) Both at some future date.

Subject matter of Contract of Sale.

■ Existing or Future goods.

- 1) The goods which form the subject matter may be existing or the future goods.
- 2) Sale of goods the acquisition of which by the seller depends upon a contingency.
- 3) Contract of sale purports to effect a present sale or future goods.

■ Goods perishing before making of contract.

Contract for the sale of specific goods, the contract is void if the goods without the knowledge of seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

■ Goods perishing before sale but after agreement to sell: 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 no longer to answer to their description before the risk passes to the buyer, agreement is thereby avoided or becomes void.

■ Perishing of Future goods: future goods are specific, the destruction of such goods will amount to supervening impossibility & the contract shall become void.

Ascertainment of Price.

- 1] 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.

'Price' means monetary consideration for sale of goods. By virtue of section 9, the price in the contract of sale may be -

- 1) fixed by the contract
- 2) Agreed to be fixed in a manner.
- 3) Determined by the course of dealings.



Agreement to sell at valuation.

1] Agreement to sell goods on the terms that the price is to be fixed by the valuation of third party, third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided if the goods or any part have been delivered, he shall pay reasonable price.

2] Third party is prevented from making the valuation, the party not in fault may maintain suit for damages against party in default.

