

# CH-4 THE SALES OF GOODS

ACT, 1930

DOMS

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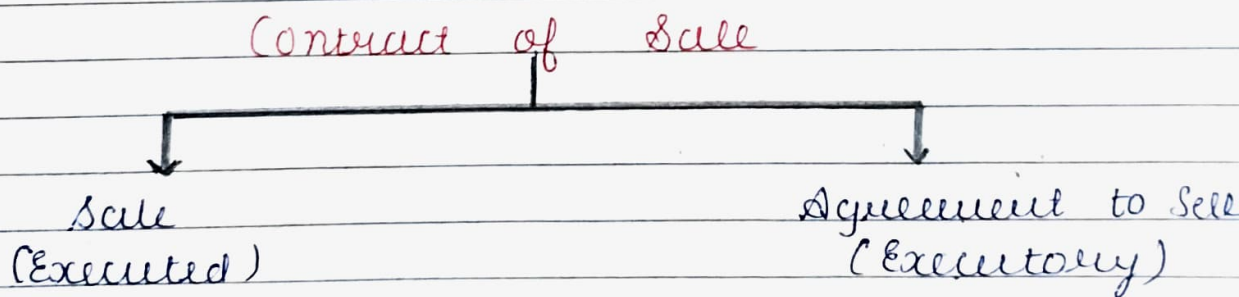
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## \* Introduction

- It came into force on 1<sup>st</sup> July, 1930
- It is applicable to whole of India.
- The law relating to this statute was contained in the chapter VII of the Indian Contract Act, 1872.
- Where the sale of Goods Act is silent on any point, the general principle of the law of contract apply.



## Definition of contract of Sale : Section 4(1)

- The term 'contract of sale' is defined in section 4(1)
- A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for price.

→ A contract of sale may be absolute or conditional. [Section 4 (2)]

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

→ The term sale is defined in the Section 4 (3) of the Sales of Goods Act, 1930.

→ "In contract where sale the property in the goods is transferred from the seller to the buyer, the contract is called sale".

**Agreement to sell** :- In an agreement to sell, the ownership of goods is not transferred immediately.

→ The term is defined in Section 4 (3) of Sales of Goods Act 1930.

→ "where the transfer of property in the goods is take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell".

→ When agreement to become sale

→ 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.

\* Goods [Section 2 (7)] :-

→ "Goods" means every kind of movable assets other than actionable claim and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under contract of sale.

→ Everything movable is goods, except the following

1. Money
2. Actionable claims
3. Immoveable assets
4. Services

## → Classification of goods :-

→ There are three types of goods.

1. Existing goods
2. Future goods
3. Contingent goods.

### 1. Existing Goods :-

- Goods which are already in existence at the time of contract of sale.

→ There are two sub-types of Existing goods.

#### 1. Specific / Ascertained Goods

→ Goods which are identified and agreed upon at the time of a contract

Ex A particular painting.

#### 2. Unascertained Goods

→ Goods which are not specially identified but indicated by description at the time of contract.

Ex Any one pen out of 50 pens.

## 2. Future goods :- [Section 2 (6)]

- Goods which are yet to be manufactured in future, is known as future goods.

## 3. Contingent goods [Section 6 (2)]

- Acquisition of such goods depend upon contingency which may or may not happen.

## \* Delivery : [Section 2 (2)]

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

→ There are three types of delivery

1. Actual Delivery :- When the goods are actually physically delivered to the buyer.

2. Symbolic Delivery :- When there is delivery of things is taken as transfer of something else

Ex - Handing over car keys,  
- Documents of title.

3. Constructive delivery :- When it is affect without any change in the custody or actual possession.

Ex Warehouse keeper.

### Section 2(4)

Document showing title goods	Document of title of goods
It is a document which shows the ownership of goods	It is a document which is used as proof of possession or control of goods.
It includes share certificate, RC book of car, etc	It includes Bill of lading, Dock warrant, etc.

→ Essential elements of a valid contract of sale

1. All the requirement of a valid contract must be fulfilled.

- A contract of sale must fulfill all the requirement of valid contract

Ex free consent, consideration.

2. There must be two parties to the contract of sale.

- There must be two parties, one seller and one buyer.

- The reason for the same is that in contract of sale, the ownership of goods has to pass from one person to another.

3. There must be some goods as a subject matter.

- The 'goods' as defined in Section 2(7) of Sale of Goods Act.

4. The property in the goods must be transferred to buyer.

- The term 'property' in the goods means the ownership of the goods.

- In every contract of sale, the ownership of the goods must be transferred by seller to the buyer or there should be an agreement by the seller to transfer the ownership to the buyer.

- The term 'property' here means general property.

5 There must be some price for the goods

- The goods must be sold for some price.

6. A contract of sale can be absolute or conditional. [Section 4 (2)]

ii] Sale and Hire purchase :

→ Hire purchase agreements are governed by the Hire-purchase-purchase Act, 1972.

→ Term "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 agreement and includes an



- a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installment, and.
- b) The property in the goods is to pass to such person on the payment of the last of such installment, and.
- c) Such person has right to terminate the agreement at any time before the property so passes;

### iii] Sale and Bailment :-

→ 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 direction of the bailor.

→ Provision related to bailment are regulated by the Indian Contract Act, 1872.

## \* Barter and Exchange :

Barter : Where goods are transferred for goods, the transaction is one of a 'barter' and not sale.

i.e wheat is given in exchange of rice.

## \* Formation and Modes of a contract of Sale

→ A contract of sale is made by an offer to buy or sell by one person, and acceptance of such offer by other person. And it may be made in any one of the following modes. Section 5 (1)

## i] Sale and Agreement to Sell.

Basis	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 fulfillment of some condition.
Nature of Contract	It is an executed contract.	It is an executory contract.
Remedies of Breach	The seller can sue the buyer for the price of the goods because of passing 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 state.
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 Seller.
Burden of Risk.	Risk of loss is that of buyer since risk follows ownership.	Risk of all loss is that of seller.
Nature of Right.	Creates jus in rem minus rights against the whole world.	Creates jus in personam minus right against particular party to the contract.

Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
In the case of insolvency of seller	The official assignee will not be able to take over the good but will recover from buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
In the 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.

ii) Sale and hire-purchase.

Basis	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 last installment.
Position of party	The position of the buyer is that of the owner of the goods.	The position of hirer is that of bailee till he pays the last installment.

Right  
of  
Resale

The seller cannot  
resale the goods.

The seller may sell  
the goods since ownership  
is with the seller.

In the  
case of  
insolvency  
of seller.

The official assignee  
will not be able to  
takeover the goods  
but will recover from  
buyer.

The official assignee  
will acquire control  
over the goods but  
the price will not  
recoverable.

In the  
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.

## ii) Sale and Hire-purchase.

Basis	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 last installment.
Position of party	The position of the buyer is that of the owner of the goods.	The position of hirer is that of bailee till he pays the last installment.

Termination  
of  
contract

The buyer cannot terminate the contract and is bound to pay the price of 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 installments.

Burden of  
risk of  
insolvency  
of buyer

The seller takes the risk of any loss resulting from insolvency of the buyer.

The owner takes no such risk. For the hirer fails to pay an installment, the owner has right to take back the goods.

Transfer  
of  
title

The buyer can pass a goods title to a bona fide purchaser from him.

The hirer cannot pass any title even to a bona fide purchaser until he pays the last installment.

Resale

The buyer in sale can resell the goods.

The hire purchaser cannot resell unless he paid all installments.

## iii] Sale and Bailment

Basis

Sale

Bailment

Transfer  
of  
Property

The property in goods is transferred from seller to a buyer. So, it is transfer of general property.

There is only transfer of possession of goods from bailor to bailee or any of the reason like safe custody, savings etc. So it is a transfer of special property.

Return  
of  
goods.

The return of goods in context 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.

⇒ Price and modes of fixing the price  
Section- 9

1. The fixation of price by contract of sale. (Section 9 (1))

→ The price may be expressly fixed in the contract of sale. The parties may fix any price they like.

2. The fixation of price under manner provided in the contract of sale

→ The contract of sale may provide for some manner in which price is to be fixed. In such cases, the price may be fixed in manner provided in contract.

3. The fixation of price by course of dealing. "

→ Sometimes, the customs or usage of trade provide certain principle for the determination of price. In such cases price may be determined from course of dealing between parties.



#### 4. The fixation of a reasonable price - Section 9 (2)

→ Sometimes, none of the above principles applicable. In such cases the buyer shall pay to the seller at a reasonable price. The term 'reasonable' price is a question of fact which depends on the circumstances of each particular case.

#### 5. The fixation of price by third party Section- 10

→ The parties may agreed to sell and buy goods on the terms that the price shall be fixed by valuation of third party.

→ If such third party fails to make valuation, the contract become void. But the buyer has received the goods and has appropriated them, he become bound to pay reasonable price to the seller.

Ⓜ (MOST IMP)

\* When a condition can be treated as warranty

1. Voluntary waiver of condition: When a contract of sale is subject to any condition be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of condition as a breach of warranty and not as a ground for treating the contract as repudiated.

2. Where the buyer elect to treat the breach of the condition, as one of warranty. That is to say, he may claim only damages instead of repudiating contract.

3. Compulsory waiver of condition: Where a contract of sale is not severable and buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as breach of warranty and not as ground for rejecting the goods and treating the contract as repudiated, unless there is a term of contract, express or implied that effect

4. Impossibility : Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by reason of impossibility or otherwise.