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THE SALES OF GOODS ACT, 1930

Unit -1

Formation and Contract of Sale

IMPORTANT DEFINITIONS:

- **Goods** means every kind of movable property other than actionable claims 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.
- **Mercantile agent** means a person who is an agent and has authority to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.
- **Property** here means ownership
- **Document of title to goods** includes bill of lading, dock-warrant, railway receipt, warrant, wharfingers' certificate or any other kind of document as a proof of possession of goods.

NOTE: *There is a difference between DOCUMENT SHOWING TITLE and DOCUMENT OF TITLE TO GOODS. A Share Certificate is a document showing title and not document of title to goods.*

CLASSIFICATION OF GOODS:

- **Existing goods** are those goods which are owned and possessed by the seller at the time of sale. Existing goods are of three types:
 - (a) **Specific goods** are those goods which are identified and agreed upon the time of contract.
 - (b) **Ascertained goods** are those goods which are identified in accordance with agreement after the contract of sale is made. These types of goods are identified from a large lot and kept aside from the lot.
 - (c) **Unascertained goods** are those goods which are indicated or defined only by description or sample at the time of making the contract.
- **Future goods** are those goods which are to be manufactured or produced or acquired by the seller after making the contract of sale.
- **Contingent goods** are those goods whose acquisition of which by the seller depends upon an uncertain event (contingency).

MEANING AND TYPES OF DELIVERY

Delivery means voluntary transfer of possession from one person to another. Delivery is of three types:

- **Actual delivery** is when the goods are physically delivered to the buyer.
- **Constructive delivery** happens when the transfer of goods is effected without any change in custody or possession of goods in case of delivery by attornment (acknowledgement).
- **Symbolic delivery** means delivery of thing in a token of a transfer of something else. Eg, Bill of lading or railway receipt.

SALE AND AGREEMENT TO Sell (SECTION 4)

Contract of sale includes both sale and agreement to sell.

Sale means when property is transferred to the buyer immediately.

Whereas , **Agreement to sell** means the transfer of property of goods takes place in future time or subject to some condition thereafter to be fulfilled.

The following elements must co-exist to constitute a contract of sale:

- There must be atleast two parties , i.e buyer and seller
- The subject matter of contract must be goods
- A price in money should be paid or promised
- A transfer of property of goods must take place
- A contract of sale maybe absolute or conditional and other essential elements of a valid contract.

NOTE 1: Ascertainment of price can be : (a) fixed by the contract , (b) agreed to be fixed by the manner provided in the contract, e.g.. by a valuer (C) determined by the course of dealings between the parties.

NOTE 2: In case where goods are perishing in nature whether before making the contract (sec.8) or after making the contract (sec.9) or future goods which are specific in nature perish without the knowledge of the seller or the buyer , the agreement becomes **void**.

DIFFERENCE BETWEEN SALE , AGREEMENT TO SELL , BAILMENT , HIRE PURCHASE

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 fulfillment of some condition.
Nature of contract	It is an executed contract , i.e. consideration is paid	It is an executory contract , i.e. consideration is paid on future date.
Right of resale	seller cannot resell the goods	Seller may resell the goods
Burden of risk	Risk of loss is of buyer as risk follows ownership.	Risk of loss is that of seller
Remedies for breach	Seller can sue the buyer for price of goods because the ownership is with the buyer.	The aggrieved party can sue for damages only and not for price.

BASIS	SALE	HIRE-PURCHASE
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Time of passing property	Property of goods passes to the buyer immediately.	Property of goods passes to the buyer to the hirer upon the payment of last instalment.
Position of the party	Buyer is the owner of the goods.	The hirer is the bailee till he pays the last instalment.
Resale	Buyer can resell the goods	The hire purchaser cannot resell the goods until he pays for last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the full price.	The hirer may , if he likes , can terminate the contract without any liability of paying the remaining instalments and returning 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 until he pay for the last instalment

BASIS	SALE	BAILMENT
Transfer of property	It is transfer of general property ,i.e., from seller to buyer	It is transfer of special property as there is transfer of only possession of goods from bailor to bailee
Return of goods	Not possible	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
Consideration	Here , consideration is the price in terms of money	The consideration maybe gratuitous or non-gratuitous