"The Sale of Goods Act, 1930"

Unit (1) Formation of the Contract of Sale

Scope and Applicability of the Act (SOGA, 1930)

This Act Came into force on 01/07/1930 and it is applicable to the whole India.
This acts deals with the sale of Goods in India means, applicable Only to moveable and not immovable property (IMMP, TOPA, 1882) (Transfer of Property ACT)
General provisions of the ICA, 1872 will apply to Soga except when ICA is inconsistent with SOGA

- SoGA is Not Applicable in the following Cases.

1) Sale of immovable property.
2) Contract of Services (work and labour)
3) Barter [Exchange of a good for a good]
4) Contract of Bailment
5) Contract of pledge.
6) GIFT - As no price or Consideration

Buyer and Seller

Not Only the person who buys but also the One who agrees to buy is a 'buyer' Similarly a 'Seller' means not Only a person who Sells but also a person who agrees to Sell.

Section (4) Contract of sale [CoS]

(1) Definition -' where a buyer buys or agrees to buy and seller sells or agrees to sell movable goods.

This results in transfer of Ownership / property for price.

elements of Contract of Sale:
- Two Parties (B/s)
- Price (Consideration)
- Subject matter (movable Goods)
- Transfer of property (ownership) — absolute or Conditional; Delivery.
- All essential elements of a valid Contract (Covered under ICA 1872)

Goods]- Included —
- stocks
- shares

movable — Every kinds of forms matter [Gas, liquid, air]

Tangible or intangible (IPR)
- Goodwill
- Copyright
- Trademark

(Intellectual property rights.)

Excluded — Actionable claim
- money

And things attached to or forming part of the land which are agreed to be Severed / Separated from the land, before Sale or under the Contract of Sale

Actionable Claim': (it is not a Good)

Action-able: Court / suit file — right on debt money.

It is a Claim or debt or future benefit which is unsecured and can be enforced only by legal action by filing a suit or going to the Court

eg: insurance claim

Transfer of property:

Aspect	General Property	Special property.
Definition	Full Ownership rights	L.R. Often Conditional
Scope	Complete rights, inclu. transfer / sale	Specific rights, not full Ownership.
Example	Owning a Car.	Pledged item (Pawned Goods)
Transferability	Can be fully transfer	it doesn't affect General Ownership
legal rights	Total Control and responsibility	Controll limited to Specific Conditions.

Transfer of Property (ownership)

This means in the Contract of Sale General Property gets transferred and not merely.

Special property! eg. of SP – Contract of Bailment / pledge

General property means full ownership Complete rights including transfer or Re-Sale. This means Complete Control and responsibility gets transferred.

Delivery – Delivery means Voluntary transfer of possession from one person to another [sec 2(2)].

(1) Actual Delivery. when the goods are physically delivered to the buyer.
actual delivery take place when the Seller transfers the physical possession of the goods to the buyer or to a third person authorized to hold goods. On behalf of the buyer.
This is most Common method of delivery.

Constructive delivery :- when transfer of goods is affected without any change in the Custody or actual possession of the thing as in the Case of delivery by attornment (acknowledgement)

Symbolic D. : where actual delivery or physical possession Can't be transeferred then in Such Case delivery token place through transfer of a Token of Someting else.
eg: Document of Title (DOT)

* Sale and Agreement to Sell (section 4)

(1) In Contract of Sale there is an immediate transfer of Ownership, whereas in Agreement to Sell, Ownership transfers at a future date or upon fulfilment of Conditions.

[A2S] Converts into Contract of Sale when time lapses / Conditions fulfiled.

In Sale, buyer becomes the Owner hence liable for loss / risk, But in A2S, Seller is still is owner hence Risk / loss is of Seller.

① Sale of Goods v/s. Bailment

① 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 acomplished to the bailor or are to be dispsed of according to the directions of the bailor.

provisions related to bailment are regulated by The Indian Contract Act, 1872.

Basis of diff.	Sale	Bailment
Transfer of property	The property in goods is Transferred from the Seller to the buyer. So it is trafer of General property	There is Only transfer of Possesion of goods from the bailor to the bailee for any of the reasons like Safe Custody, Carrage etc. 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.
onsideration	The Consideration is the price in terms of money.	The Consideration may be gratuitous or non-gratuitous.

Sale of Goods v/s Hire purchase

RANKA
DATE / /
PAGE

Basis of dif	Sale	Hire - Purchase
Time of Passing Property	Property in the goods is transferred to the buyer immediatly 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.
Burdan 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.
Resell	The buyer in sale Can resell the goods.	The hirer purchaser cannot resell unless he has paid all the instalments.

(3)

Sale and Contract for work and 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, and there is Only the doing or rendering of Some work of labour. then the Contract is Only of work and labour and not of Sale of goods.

E.g: where gold is Supplied to a goldsmith for preparing an Ornment or when an artist is asked to paint a picture.

(4) ## Types of Goods.

Goods

- Existing
  - Specific (Selected at thime of make the Sale)
  - Ascertained (after the time of making of Contract of Sale)
  - unascertaind (
- future
- Contingent

RANKA
DATE / /
PAGE

① Specific goods: Specific goods means identified and agreed upon at the time of Contract of Sale is made (section 2(14)

② Ascertained Goods: are those Goods which are identified in accordance with the agreement after the Contract of Sale is made. This term is not definied in the act but has been judicially interpreted. in actual practice The term Ascertained goods is used in the Same sense as 'Specific goods when from a lot or Out of large quantity of unascertained goods the number or quantity Contracted for is identified, such identified goods are Called Ascertained Goods

③ Unascertained goods; are the 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

E.g. A has 10 horses. He promises to Sell One of them but ~~not~~ does not Specify which horse he will sell. it is a Contract of Sale of Unascertained goods.

RANKA
DATE / /
PAGE

(1) Future Goods : means goods to be manufactured or produced or acquired by the seller after making the Contract of Sale (sec 2 (6))

E.g: P agrees to sell to Q all the milk his cow may yield during the coming year. This is a Contract for the Sale of future goods. (Agrement to sell)

(3) Contingent Goods : The acquistion of which by the seller depends upon an uncertain Contingency (uncertain event) are called "Contingent goods (section 6 (12))

Contingent goods also Operate as 'an agreement to sell' and not a 'sale' so far as the question of passing of property to buyer is Concerned.
In other words, like the future goods in the case of Contingent goods also, the property does not pass to the buyer at the time of making the Contract.

E.g: A agrees to sell to B a picasso painting provided he is able to purchase it from its present Owner. This is a Contract for the Sale of Contingent goods.

(Section no. 7 : (Initial Impossiability)

① **Goods perishing before making of Contract (Sec 7)**

where there is a Contract for the Sale of Specific goods, The Contract is Void if the goods without the Knowledge of the Seller have, at the time when the Contract was made. perished or become so damaged that they no longer answer to their description given in the Contract.

Eg: A agrees to Sell B 50 kg wheat stored in the A's godown. Due to waterlogging all the goods stored in the godown were destroyed. At time of agreement. niether parties were aware of the fact . The agreement is void.

② **Goods perishing before Sale but after agreement to sell (sec (8))**

Where 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 became so damaged that they no longer answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void

perishing of future goods: If the future goods are Specific, the discription of such

Goods will amount to Supervening impossibility and the Contract shall become void.

③ Section - 9 Ascertainment of price

This Section deals with how the price of goods is decided in a Contract of Sale.

it says: Contract Fixes price: The price in a Contract of sale may be:

(1) Fixed by the Contract itself or.
(2) Left to be fixed in an agreed manner (for example. by Valuation, market rate or third party)

(3) Determined by the Course of dealings between the parties.

② Reasonable price: If the price is not determined in any of the above ways, then the buyer must pay a reasonable price.

reasonable depends On the facts and Cirumtances of each Case (like prevailing market price at the time of delivery)

eg: ① If A agrees to Sell 100 bags of wheat to B at 2000 per bag. — price fixed by Contract

② If A agrees to Sell 100 wags of wheat to B at market price on the Date of Delivery — price fixed in an agreed manner.

unit 2. Conditions and warranties

① what is Representation ?

AT The time of selling the goods, a Seller usally makes Certain statements or representations with view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods. and about their fitness for buyer's purpose.

A representation which forms a part of the Contract of the Sale and affects the Contract, is Called a stipulation.

Representation

- Stipulalation
  - Condition
    - [Essential to main purpose of the Contract]
    - Breach
    - Right to Cancel the Contract
  - warranty
    - [Collateral to main Purpose of the Contract]
    - Breach - claim for damages.
    - right to claim damages.
- Only representation

① Stipulations as to time (section 11)

Stipulations as to time of payment are generally not considered "of the essence" unless the contract states otherwise.

② Condition and Warranty (Sec 12)

① Conditions (s.12)(2): Essential to the main purpose of the Contract. Breach allows the buyer to repudiate (cancel) the Contract and claim damages.

② Warranty (s.12(3)): Collateral (secoundry) to main purpose of the Contract. Breach Only allows the buyer to Claim damages. (Cannot cancle the Contract)

③ Condition Treated as Warranty (sec 13)

A breach of Condition may be treated as breach of warranty if the buyer waives the breach or has accepted the goods. in this Case, the buyer Can Only Sue for damages.

④ Implied Stipulations (Section 14-17).

DATE / /
PAGE

Sec 14 Implied undertaking as to Title.

Conditions as to title: The Seller must have The right to sell the Goods.

warranty of quiet possision: The buyer should enjoy possision without Interference.

warranty of freedom from Encumbrance: The ~~me~~ goods must be free from any charge (e.g. mortage) not known to the buyer.

Sec 15 Sale by discription

Implied Condition: The goods must Correspond with the description.

Sec 16 Implied Conditions as to Quality or fitness

Fitness for purpose (sec 16 (1)): Goods must be reasonbly fit for the purpose Communicated by the buyer. provided the buyer relies On the Seller's Skill

Merchantable Quality (sec16)(2)) Goods must be of merchantable Quality (fit for their Ordinary use) when bought from a Seller who deals in those goods by description.

Section 17 Sale by Sample Implied Condition

The bulk must Correspond with the Sample in Quality.

① The Sample buyer must have a reasonable Opportunity to Compare the bulk with the Sample.

① The Sample (goods) must be free from any defect that makes them unmerchantable and would not be apparent on examination of the Sample.

Unit 3

Transfer of Ownership and Delivery of Goods

"Nemo dat quod Non habet" (No One Can give what he has not got")

The transfer of Ownership (property) means the tranfer of legal title (ownership) not just as physical possision. This is Vital because the legal principle is:

Risk passes with propety (sec(26), meaning the Owner (the buyer) bears the risk of loss or damage even if the Seller still has possission.

RANKA
DATE / /
PAGE

① Specific Goods in Deliverable state (section(20))

if the goods are specific (identified) and ready for the buyer to take delivery (in a Deliverable state) Ownership passes immediately when the Contract is made. The postponement of payment or delivery does not delay the transfer of Ownership.

② Specific Goods to be put into a Deliverable state (sec(21))

If the Seller must still do Something (like repairing, packing or finishing the goods.) to make them deliverable, Ownership does not pass untill that act is done and the buyer is notified of it.

③ Specific goods where price is to be Ascertained (section(22))

If the goods are deliverable, but the Seller has to weigh, measure, test or Count them to determine the final price, Ownership does not pass untill that action is Completed and the buyer is notified.

④ Unascertained Goods and Appropriation: (section(23))

for Unascertained goods (e.g. a quantity from a large stock)

Ownership Cannot pass until the goods are Ascertaind (identified). Ownership passes when the goods are Unconditionally appropriated to the Contract. This involves Setting aside the Specific goods with express or implied Consent of both the Seller and the buyer. Such as by delivering them to a Carrier without reserving the of disposal.

⑤ Sale of return (section (24)) when goods are delivered to a buyer On approval, Ownership passes Only when the buyer approves accepts or does an act Consistent with being the Owner (eg: resells the goods) if the buyer retains the good beyond the reasonable time it is also deemed an acceptance.

⑥ Reservation of right of Disposal (section (25))

The Seller Can expressly reserve the right of Disposal over the goods, in this Case, Ownership does not pass to the buyer until the Seller's Conditions (usally payment) are fulfilled) even if the goods are delivered to the buyer or a Carrier.

Transfer of Title by Non-Owners (sec 27-30)

RANKA
DATE / /
PAGE

The general legal rule is Nemo dat quod non habet. (no One Can give what he doesn't have) meaning a Seller Cannot pass better title than they posses, However, SOGA provides Several exceptions:

⑦ Estoppel (Sec(27)): If the True Owner acts in a way that leads the buyer to believe the Seller has the authority to Sell (e.g: by remaining Silient, making a misleading Statement) The Owner is estopped (prevented) from later denying the Sale's Validity.

⑧ Sale by Joint Owner (sec (28)) If One of Several joint Owners has Sole possesion of the goods with the Consent of the Others, a buyer who purchaces in good faith and without notice of any lack of authority gets a good title.

⑨ Sale under a Voidable Contract (29)

If a Seller Obtains goods under a Voidable Contract (e.g. due to Coercion or misrepresentation but has not yet been rescinded by the time of the Sale, a new buyer who acts in goods faith gets a good title.

(10) Seller or buyer in possession (sec (30))

If a Seller Continues ~~to~~ in possission of the goods after the sale (where Ownership has passed to the first buyer) a resell to a Secound, innocent buyer gives the Secount buyer a good title, Similarly if a buyer Obtains possission of the goods with the Seller's Consent before Ownership passes, a Sale by that buyer to Secound, innocent buyer is Valid.

(11) performance and Delivery of Goods (sec 31-39)

Delivery means the Voluntry transfer of physical possession. it is the Seller's primary duty to deliver the goods and buyer's duty to accept and pay for them (section(31))

(12) Concurrent Conditions (section (32)): Unless agreed Otherwise, delivery and payment are Concurrent Conditions, The Seller must be ready to give possession Simultaneously with the buyer's readiness to pay the price.

(13) Modes of Delivery (sec (33)) : Delivery may be actual (physical transfer), Symbolic or Constructive.

(14) Buyer to Apply for Delivery (Section (35))

The Seller is generally not Obligated to deliver the goods until the buyer applies for them, unless the Contract has a Specific delivery Clause.

(15) place and Time of Delivery (Sec (36))

place: Determined by the Contract. if not Specified, goods Sold are delivered at the place they are at the time of Sale.

Time: if no time is fixed delivery must be done within a reasonable time.

(16) Delivery of wrong Quantity: Section (37)

If the Seller delivers a quantity less than or more than Contracted or delivers mixed goods The buyer generally has the right to reject the whole Consignment or accept what Conforms ~~to~~ to the Contrat and reject the rest.

RANKA
DATE / /
PAGE

(17) Installment Delivery (section (38)) : The buyer is generally not bound to accept delivery in installments, unless the Contract Specifically allows for it.

(18) Delivery to Carrier (section (39))

Delivery of the goods to a Carrier for the purpose of transmission to the buyer is Considred prima facie deliverly to the buyer. The Carrier becomes the buyer's agent.