

Chapter 3: The Sale of Goods Act, 1930 (SOGA)

Key Definitions & Concepts

- Goods:** Every kind of movable property other than actionable claims & money. Includes stock, shares, growing crops, grass, things attached to land agreed to be severed. (Section 2(7))
- Specific Goods:** Goods identified and agreed upon at the time a contract of sale is made. (Section 2(14))
- Ascertained Goods:** Goods identified out of a larger lot after the contract is made. (Judicially interpreted)
- Unascertained Goods:** Goods not specifically identified or ascertained at the time of contract.
- Future Goods:** Goods to be manufactured, produced, or acquired by the seller after making the contract of sale. (Section 2(6))
- Contingent Goods:** Goods whose acquisition by the seller depends upon an uncertain contingency.
- Delivery:** Voluntary transfer of possession from one person to another. (Section 2(2))
 - Actual Delivery:* Physical transfer of goods.
 - Constructive Delivery:* Transfer without change in custody (e.g., attornment).
 - Symbolic Delivery:* Transfer of means of getting possession (e.g., keys, documents of title).
- Document of Title to Goods:** Document used in ordinary course of business as proof of possession/control of goods (e.g., Bill of Lading, Railway Receipt). (Section 2(4))
- Mercantile Agent:** Agent with customary authority to sell, consign, buy goods, or raise money on security. (Section 2(9))
- Property:** General property (ownership), not merely special property. (Section 2(11))
- Insolvent:** Person ceasing to pay debts in ordinary course of business, or unable to pay as they become due. (Section 2(8))
- Price:** Money consideration for a sale of goods. (Section 2(10))
- Condition:** A stipulation essential to the main purpose of the contract, breach gives right to repudiate. (Section 12(2))
- Warranty:** A stipulation collateral to the main purpose of the contract, breach gives right to claim damages but not to repudiate. (Section 12(3))
- Unpaid Seller:** A seller when the whole price has not been paid/tendered, or a bill of exchange/negotiable instrument has been dishonoured. (Section 45(1))

Sale vs. Agreement to Sell (Section 4)

Basis of difference	Sale	Agreement to Sell
Transfer of property	Property passes immediately to buyer.	Property passes on future date or fulfilment of condition.
Nature of contract	Executed contract (consideration paid).	Executory contract (consideration to be paid).
Remedies for breach	Seller can sue for price.	Aggrieved party can sue for damages only (unless price payable on stated date).
Liability of parties	Loss/destruction is buyer's liability.	Loss/destruction is seller's liability.
Burden of risk	Buyer bears risk (risk follows ownership).	Seller bears risk.
Nature of rights	<i>Jus in rem</i> (right against the whole world).	<i>Jus in personam</i> (right against a particular party).
Right of resale	Seller cannot resell goods.	Seller can resell goods.
Insolvency of seller	Official assignee cannot take goods, recovers price.	Official assignee acquires control over goods, price not recoverable.
Insolvency of buyer	Official assignee has control over goods.	Official assignee has no control over goods.

Sale vs. Hire Purchase

Aspect	Sale	Hire Purchase
Ownership	Transfers immediately to buyer.	Transfers after final installment paid.
Possession	Transferred with ownership.	Transferred immediately, ownership later.
Consideration	One-time payment or full payment.	Installments until full ownership.
Termination	No option for termination by buyer.	Buyer can terminate anytime before ownership transfer.
Purpose	To own goods.	To eventually own goods after paying installments.
Risk	Buyer bears risk after sale.	Buyer bears risk once in possession.

Perishing of Goods (Sections 7 & 8)

- Goods perishing before contract (Section 7):** If specific goods perish/damaged (unknownst to seller) before contract, contract is *void ab initio*.
- Goods perishing before sale but after agreement to sell (Section 8):** If specific goods perish/damaged (without fault of buyer/seller) after agreement but before risk passes to buyer, agreement becomes *void*.

Ascertainment of Price (Sections 9 & 10)

- Price can be fixed by:
 - Contract itself.
 - Agreement to be fixed later (e.g., by valuer).
 - Course of dealing between parties.
- Valuation by Third Party (Section 10):**
 - If third party fails to fix price, contract is *void*.
 - If one party prevents third party from fixing price, liable for damages.
 - If buyer has received and used goods, must pay a reasonable price.

Conditions & Warranties (Section 12)

- Stipulation as to Time (Section 11):**
 - Payment timing is generally *not* critical unless stated.
 - Delivery timing is usually *critical*.
- When Condition treated as Warranty (Section 13):**
 - Buyer *waives* the condition voluntarily.
 - Buyer *elects* to treat breach of condition as breach of warranty (claims damages instead of repudiating).
 - Contract is *non-severable* and buyer has accepted goods (in whole or part).
 - Fulfilment of condition is *excused by law* (e.g.,

Implied Conditions (Sections 14-17)

- Condition as to Title (Section 14(a)):**
 - Seller has right to sell goods at time of sale (or when property is to pass for agreement to sell).
 - Breach: Buyer must return goods to true owner, can recover full purchase price from seller.
- Condition as to Description (Section 15):**
 - Goods must correspond with the description.
 - Buyer can reject if goods don't match description, even if not inspected.
- Condition as to Sample (Section 17):**
 - Bulk must correspond with sample in quality.
 - Buyer must have reasonable opportunity to compare bulk with sample.
 - Goods must be free from latent defects rendering them unmerchantable.
- Condition as to Sample and Description (Section 15):**
 - Goods must correspond with both sample and description.
- Condition as to Quality or Fitness (Section 16(1)):**
 - Generally, no implied condition as to quality/fitness (*Caveat Emptor*).
 - Exception:** Implied if buyer makes known purpose, relies on seller's skill/judgment, and seller deals in such goods.
 - No implied condition* if goods sold under patent or trade name.
- Condition as to Merchantability (Section 16(2)):**
 - Implied if goods bought by description from a seller who deals in such goods.
 - "Merchantable quality" means fit for common purpose.
 - Not implied* if buyer examined goods and defects ought to have been revealed.
- Condition as to Wholesomeness:** For eatables/provisions, goods must be fit for human consumption.

Implied Warranties (Section 14, 16)

- Warranty as to Undisturbed Possession (Section 14(b)):**
 - Buyer shall have and enjoy quiet possession of goods.
 - Breach: Buyer can sue for damages if possession is disturbed.
- Warranty as to Non-existence of Encumbrances (Section 14(c)):**
 - Goods shall be free from any charge/encumbrance unknown to buyer at contract time.
 - Breach: Buyer can pay off charge and sue seller for recovery.
- Warranty as to Quality or Fitness by Usage of Trade (Section 16(3)):** May be annexed by custom/trade usage.
- Warranty of Disclosure of Dangerous Nature:** Seller must warn buyer if goods are dangerous and buyer is ignorant.

Caveat Emptor (Buyer Beware) & Exceptions

- Principle:** Buyer is responsible for examining goods before purchase. Seller not liable for defects if buyer had opportunity to inspect.
- Exceptions:** (When seller is liable)
 - Fitness for purpose (Section 16(1))
 - 2Sale by description (Section 15)
 - 3Merchantable quality (Section 16(2))
 - 4Sale by sample (Section 17)
 - 5Sale by sample and description (Section 15)
 - 6Trade usage (Section 16(3))
 - 7Seller actively conceals defect or commits fraud.
 - 8Dangerous nature of goods (seller fails to warn).

Passing of Property (Ownership) (Sections 18-26)

- General Rule:** Property passes when parties intend it to pass. (Section 19(1))
- Rules for Ascertaining Intention (Section 19(2)):**
 - Terms of contract.
 - Conduct of parties.
 - Circumstances of the case.

Specific or Ascertained Goods

- Goods in Deliverable State (Section 20):** Property passes when contract is made, irrespective of payment/delivery.
- Goods to be put into Deliverable State (Section 21):**
 - Seller must do something to put goods in deliverable state.
 - Property passes when that thing is done AND buyer has notice.
- Goods where Price to be Ascertained by Seller (Section 22):**
 - Seller must weigh, measure, test, etc., to ascertain price.
 - Property passes when that act is done AND buyer has notice.

Unascertained Goods (Section 18, 23)

- General Rule:** No property passes until goods are ascertained. (Section 18)
- Appropriation (Section 23(1)):**
 - Goods identified out of unascertained goods for contract.
 - Made with mutual assent of seller and buyer.
 - Goods must be in deliverable state.
 - Unconditional appropriation** (e.g., delivery to carrier).
- Delivery to Carrier (Section 23(2)):** Unconditional appropriation if goods delivered to carrier without reserving right of disposal.

Goods Sent on Approval / Sale or Return (Section 24)

- Property passes when:
 - Buyer signifies approval/acceptance.
 - Buyer does any act adopting the transaction (e.g., pledges goods).
 - Buyer retains goods beyond fixed time, or a reasonable time if no time fixed, without giving notice of rejection.

Right of Disposal Reservation (Section 25)

- Seller can reserve right of disposal until certain conditions are met (e.g., payment).
- Even if goods delivered to buyer/carrier, property doesn't pass until conditions fulfilled.
- Example:** Goods shipped deliverable to seller's order.

Risk Prima Facie Passes with Property (Section 26)

- General Rule:** Goods remain at seller's risk until property passes to buyer, then at buyer's risk, irrespective of delivery.
- Exception:** If delivery delayed by fault of either party, goods are at risk of party in fault regarding losses that wouldn't have occurred otherwise.

Transfer of Title by Non-Owners (Nemo Dat Quod Non Habet) (Sections 27-30)

- General Rule:** No one can give what he has not got. Buyer gets no better title than seller. (Section 27)
- Exceptions:** (When a non-owner can transfer good title)
 - Sale by Mercantile Agent:** If in possession with owner's consent, acts in ordinary course of business, and buyer acts in good faith without notice of lack of authority. (Proviso to Section 27)
 - Sale by One of Joint Owners:** If one joint owner has sole possession with co-owners' permission, and sells to buyer in good faith without notice of lack of authority. (Section 28)
 - Sale by Person in Possession under Voidable Contract:** If seller obtained possession under a voidable contract (e.g., fraud, coercion) and buyer buys in good faith before contract is rescinded. (Section 29)
 - Sale by Seller in Possession After Sale:** If seller sells goods but continues in possession, and resells to a second buyer who obtains delivery in good faith without notice of previous sale. (Section 30(1))
 - Sale by Buyer Obtaining Possession Before Property Transfer:** If buyer gets possession with seller's consent before property passes, and resells/pledges to a third party who obtains delivery in good faith without notice of seller's lien/rights. (Section 30(2))
 - Estoppel:** If owner's conduct leads buyer to believe seller has authority to sell.
 - Sale by Unpaid Seller:** If unpaid seller resells after exercising lien or stoppage in transit, new buyer gets good title. (Section 54(3))
 - Sale under Other Acts:** (e.g., Official Receiver, Liquidator, Finder of Goods, Pawnee).

Performance of Contract (Delivery) (Sections 31-44)

- Duties of Seller & Buyer (Section 31):** Seller to deliver, buyer to accept and pay.
- Payment & Delivery Concurrent (Section 32):** Unless agreed otherwise, seller ready to deliver, buyer ready to pay.

Rules Regarding Delivery (Sections 33-41)

- Mode of Delivery (Section 33):** Anything parties agree, or puts goods in buyer's possession.
- Effect of Part Delivery (Section 34):** Part delivery in progress of whole has same effect as delivery of whole.
- Buyer to Apply for Delivery (Section 35):** Seller not bound to deliver until buyer applies, unless specified.
- Place of Delivery (Section 36(1)):** Place agreed, or where goods are at time of sale (or agreement to sell if future goods).
- Time of Delivery (Section 36(2)):** Time agreed, or within reasonable time.
- Goods in Possession of Third Party (Section 36(3)):** No delivery until third party acknowledges holding for buyer.
- Expenses of Delivery (Section 36(5)):** Seller bears expenses to put goods in deliverable state.
- Delivery of Wrong Quantity (Section 37):**
 - Less quantity:* Buyer can reject or accept and pay at contract rate.
 - More quantity:* Buyer can reject all, accept contract quantity and reject rest, or accept all and pay at contract rate.
 - Mixed goods:* Buyer can accept conforming goods and reject rest, or reject all.
- Installment Deliveries (Section 38):** Not bound to accept by installments unless agreed.
- Delivery to Carrier (Section 39):** Deemed delivery to buyer.
- Deterioration During Transit (Section 40):** Buyer bears risk if deterioration is necessarily incidental to transit.
- Buyer's Right to Examine Goods (Section 41):** Buyer has right to reasonable examination before acceptance.

Acceptance of Goods (Section 42)

- Buyer deemed to have accepted when:
 - Intimates acceptance to seller.
 - Does any act inconsistent with seller's ownership.
 - Retains goods beyond reasonable time without intimating rejection.
- Buyer Not Bound to Return Rejected Goods (Section 43):** Sufficient to notify seller of rejection.
- Liability for Neglecting Delivery (Section 44):** Buyer liable for loss and reasonable charge if neglects to take delivery.



Rights of Unpaid Seller (Sections 46-61)

- **Against the Goods** (even if property has passed to buyer): (Section 46(1))
 1. **Right of Lien (Section 47):** Retain possession until payment.
 - *When exercisable:* Goods sold without credit, credit term expired, buyer insolvent.
 - *Termination of Lien (Section 49):* Delivery to carrier without reserving right, buyer lawfully obtains possession, waiver by seller, estoppel.
 2. **Right of Stoppage in Transit (Sections 50-52):** Stop goods in transit, regain possession, and retain until payment.
 - *When exercisable:* Seller unpaid, goods parted from seller, goods in transit, buyer insolvent.
 - *Duration of Transit (Section 51):* From delivery to carrier until buyer/agent takes delivery. Ends with actual delivery, wrongful refusal by carrier, etc.
 - *How effected (Section 52):* By taking actual possession or giving notice to carrier/principal.
 3. **Right of Re-sale (Section 54):**
 - *Perishable goods:* Can resell without notice.
 - *Non-perishable:* Can resell after notice to buyer of intention to resell and buyer fails to pay. Seller can recover loss, but cannot keep profit.
 - *Express reservation:* Can resell without notice, can recover loss and keep profit.
 - *Property not passed:* Similar to quasi-lien.
- **Against the Buyer Personally** (Sections 55-61): (Known as seller's remedies)
 1. **Suit for Price (Section 55):**
 - If property passed and buyer wrongfully neglects to pay.
 - If price payable on certain day, irrespective of delivery, and buyer neglects to pay (even if property not passed).
 2. **Suit for Damages for Non-acceptance (Section 56):** If buyer wrongfully neglects to accept and pay.
 3. **Repudiation of Contract Before Due Date (Section 60):** Seller can treat contract as rescinded and sue for damages (anticipatory breach).
 4. **Suit for Interest (Section 61):** Can claim interest if agreed, or at court's discretion.

auctions 拍卖 Auction Sale (Section 64)

- **Goods in Lots (Section 64(1)):** Each lot is prima facie subject of separate contract.
- **Completion of Sale (Section 64(2)):** Sale complete on fall of hammer (or customary manner). Bidder can retract bid before hammer falls.
- **Right to Bid Reserved (Section 64(3)):** Seller can reserve right to bid if expressly stated.
- **No Notice of Seller's Right to Bid (Section 64(4)):** Unlawful for seller to bid or employ someone to bid. Sale treated as fraudulent.
- **Reserved Price (Section 64(5)):** Sale subject to a reserve or upset price.
- **Pretended Bidding (Section 64(6)):** Using pretended bidding to raise price makes sale voidable at buyer's option.



Inclusion of Increased/Decreased Taxes (Section 64A)

- If tax changes (Customs, Excise, Sales Tax) occur before contract fulfilment, price adjusted accordingly (buyer pays more for increase, less for decrease).
- Parties can agree to exclude this adjustment.

Tricks / Memory Hacks

- **SOGA Applicability:** Only for **Movable Property** (Goods). Think "M" for Movable, "M" for Money (not included).
- **Condition vs. Warranty:**
 - Condition = Core of contract, Cancel contract.
 - Warranty = Weaker term, Win damages.
- **Caveat Emptor Exceptions:** "FIT MAD STD"
 - Fitness for purpose
 - Implied condition (title, description, sample)
 - Trade usage
 - Merchantable quality
 - Actively concealed defects / Fraud
 - Dangerous goods
 - Sale by sample & description
 - Title (implied condition)
 - Description (implied condition)
- **Nemo Dat Quod Non Habet Exceptions:** "JOINT FORM"
 - Joint owner
 - Owner by estoppel
 - In possession of voidable contract
 - No title (mercantile agent)
 - Transfer of title by seller in possession (after sale)
 - Finder of goods (under ICA)
 - Official Receiver/Liquidator
 - Resale by unpaid seller
 - Mortgagee/Pawnee
- **Unpaid Seller's Rights:** "LIEN STOP RESELL"
 - **Lien** on goods
 - **Stoppage** in transit
 - **Resell** goods