

Chapter 3- The Sale Of Goods Act, 1930

Unit-1: Formation of the Contract of Sale

Sale of Goods before Sale of Goods Act, 1930

The Sale of Goods Act, 1930 deals with the laws relating to sale of goods in India. This Act is mainly based on English Sale of Goods Act, 1893. Before the Sale of Goods Act, 1930, all the provisions relating to sale of goods was covered under the Chapter VII of Indian Contract Act, 1872.

A strong need was felt to have an independent Sale of Goods Act and consequently a new act called the Sale of Goods Act, 1930 was passed. The Act came into force from 1st July 1930 and extends to whole of India.

Introduction

Sale of goods is one of the specific forms of contracts recognized and regulated by law in India. Sale is a typical bargain between the buyer and the seller. The Sale of Goods Act, 1930 allows the parties to modify the provisions of the law by express stipulations. However, in some cases, this freedom is severely restricted.

Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods.

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 the sale of immovable properties like land, fields, shop or house etc. For immovable property, Transfer of Property Act, 1882 is applicable. Sale of Goods Act, 1930 deals only with movable property.

The general provisions of the Indian Contract Act, 1872 apply to a Contract of Sale of Goods as far as they are not inconsistent with the express provisions of the Sale of Goods Act.

The expressions used but not defined in the Sales of Goods Act, 1930 and defined in the Indian Contract Act, 1872 have the meanings assigned to them in that Act.

The customs and usages will bind both the parties if these are reasonable and are known to the parties at the time of entering the contract of sale.



Definitions

The Sale of Goods Act, 1930 defines the terms which have been frequently used in the Act, which are as follows -

(A) Buyer and Seller	Buyer	<i>means a person who buys or agrees to buy goods [Section 2(1)].</i>
	Seller	<i>means a person who sells or agrees to sell goods [Section 2(13)].</i>
	<p><i>The two terms, 'buyer' and 'seller' are complementary and represent the two parties to a contract of sale of goods. Both the terms are, however, used in a sense wider than their common meaning.</i></p> <p><i>Not only the person who buys but also the one who agrees to buy is a buyer.</i></p> <p><i>Similarly, a 'seller' means not only a person who sells but also a person who agrees to sell.</i></p>	
(B) Goods and other related terms	"Goods" [Section 2(7)]	<i>means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, 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.</i>
	'Actionable claims'	<i>are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.</i>
	<p><i>"Goods" include both tangible goods and intangible goods like goodwill, copyrights, patents, trademarks etc. Stock and shares, gas, steam, water, electricity and decree of the court are also considered to be goods.</i></p>	

Classification of Goods

(1) Existing Goods (Section 6)	<i>are such goods which are in existence at the time of the contract of sale, i.e., those owned or possessed or acquired by the seller at the time of contract of sale.</i>
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(a) *Specific goods mean goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].*

Example: Any specified and finally decided goods like a Samsung Galaxy S7 Edge, Whirlpool washing machine of 7 kg etc.

Example: 'A' had five cars of different models. He agreed to sell his 'Santro' car to 'B' and 'B' agreed to purchase the same 'Santro' car. In this case, the sale is for specific goods as the car has been identified and agreed at the time of the contract of sale.

(b) *Ascertained Goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined 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 out of 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.*

Example: A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract. It may be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods.

(c) *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.*

Example: If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.



	<p><i>Example: X has ten horses. He promises to sell one of them but does not specify which horse he will sell. It is a contract of sale of unascertained goods.</i></p>
<p>(ii) Future Goods [Section 2(6)]</p>	<p><i>means goods to be manufactured or produced or acquired by the seller after making the contract of sale.</i></p> <p><i>A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a person cannot transfer what is not in existence.</i></p> <p><i>Example: 1,000 quintals of potatoes to be grown on A's field is an example of agreement to sell.</i></p> <p><i>Example: P agrees to sell to Q all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.</i></p> <p><i>Example: T agrees to sell to S all the oranges which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'</i></p>
<p>(III) Contingent Goods [Section 6(2)]</p>	<p><i>The acquisition of goods which depends upon an uncertain contingency (uncertain event) are called 'contingent goods'.</i></p> <p><i>Contingent goods also operate as 'an agreement to sell' and not a 'sale' so far as the question of passing of property to the buyer is concerned.</i></p> <p><i>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.</i></p> <p><i>Example: 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.</i></p> <p><i>Example: P contracts to sell 50 pieces of particular article provided the ship which is bringing them reaches the port safely. This is an agreement for the sale of contingent goods.</i></p>
	<p><i>Delivery means voluntary transfer of possession from one person to another [Section 2(2)]. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.</i></p>



<p>(C) Delivery - its forms and derivatives</p>	<p>Forms of delivery: Following are the kinds of delivery for transfer of possession:</p> <p>Voluntary transfer of possession by one person to another</p>	
	<p>(i) Actual delivery</p>	<p>When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer. This is the most common method of delivery.</p>
	<p>(ii) Constructive delivery</p>	<p>When transfer of goods is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement). Example: Where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.</p> <p>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.</p>
	<p>(iii) Symbolic delivery</p>	<p>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 bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.</p>
<p>Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].</p> <p>Example: When A contracts to sell timber and make bundles thereof, the goods will be in a deliverable state after A has put the goods in such a condition.</p>		
<p>(D) "Document"</p>	<p><u>includes</u> bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other documents used in</p>	



of title to goods"	<p><i>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. [Section 2(4)].</i></p> <p>Example: Bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant, an order of delivery of goods.</p> <p><i>The list is only illustrative and not exhaustive. Any other document which has the above characteristics also will fall under the same category. 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. A document amounts to a document of title only where it shows an unconditional undertaking to deliver the goods to the holder of the document.</i></p> <p><i>However, there is a difference between a 'document showing title' and 'document of title'. A share certificate is a 'document' showing title but not a document of title. It merely shows that the person named in the share certificate is entitled to the share represented by it, but it does not allow that person to transfer the share mentioned therein by mere endorsement on the back of the certificate and the delivery of the certificate.</i></p>
(E) Mercantile Agent [Section 2(9)]	<p><i>It means an agent who in the customary course of business has, as such agent, authority either 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. Mercantile agent can borrow money by pledging the goods.</i></p> <p>Example: Such kind of agents are auctioneers or brokers, etc.</p>
(F) Property [Section 2(11)]	<p><i>'Property' here means 'ownership' or general property. In every contract of sale, the ownership of goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. It means the general property (right of ownership-in-goods) and not merely a special property.</i></p> <p><i>The property in the goods means the general property i.e., all ownership right of the goods. Note that the 'general property' in goods is to be distinguished from a 'special property'. It is quite possible that the general</i></p>



	<p>property in a thing may be in one person and a special property in the same thing may be in another e.g., when an article is pledged, the special property gets transferred and not the general property. The general property in a thing may be transferred, subject to the special property continuing to remain with another person i.e., the pledgee who has a right to retain the goods pledged till payment of the stipulated dues.</p> <p>Example: If A who owns certain goods pledges them to B, A has general property in the goods, whereas B has special property or interest in the goods to the extent of the amount of advance he has made. In case A fails to repay the amount borrowed on pledging the goods, then B may sell his goods but not otherwise.</p>
(G) Insolvent [Section 2(8)]	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, whether he has committed an act of insolvency or not.
(H) Price [Section 2(10)]	Price means the money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.
(I) Quality of goods	includes their state or condition. [Section 2(12)]

Sale And Agreement to Sell (Section 4)

According to section 4(1), "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". There may be a contract of sale between one part-owner and another.

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

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 an agreement to sell. [Section 4(3)]



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.
[Section 4(4)]

<p>Sale</p>	<p>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 Sale of Goods Act, 1930 as "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."</p>
<p>Agreement to sell</p>	<p>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. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as "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 an agreement to sell."</p> <p>Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date.</p> <p>Example: X agrees with Y on 10th October, 2022 that he will sell his car to Y on 10th November, 2022 for a sum of 7 lakhs. It is an agreement to sell.</p>

When agreement to sell becomes 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.

The following **elements must co-exist** so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930:

(i) There must be at least two parties, the seller and the buyer and the two must be different persons. A person cannot be both the seller and the buyer and sell his goods to himself.



(ii) The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future. Goods.

(iii) A price in money (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.

(iv) A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.

(v) A contract of sale may be absolute or conditional.

(vi) All other essential elements of a valid contract must be present in the contract of sale, e.g. free consent of parties, competency of parties, legality of object and consideration etc

Distinction Between Sale & An Agreement To Sell

The differences between the two are as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the immediately buyer	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.
Liability of parties	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.
Burden of risk	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Nature of rights	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Right of resale	Creates Jus in rem means right against the whole world.	Creates Jus in personam means rights against a particular party to the contract



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

Sale Distinguished from Other Similar Contracts

(1) Sale and Hire Purchase: Contract of sale resembles with contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire purchase agreements are governed by the Hire-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 the agreement and includes an agreement under which-

(a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

(b) The property in the goods is to pass to such person on the payment of the last of such instalments, and

(c) Such person has a right to terminate the agreement at any time before the property so passes;

Nonetheless, a sale has to be distinguished from a hire purchase as their legal incidents are quite different.

The main points of distinction between the 'sale' and 'hire-purchase' are as follows:

<i>Basis of difference</i>	<i>Sale</i>	<i>Hire- Purchase</i>
<i>Time of passing property</i>	<i>Property in the goods is transferred to the buyer immediately at the time of contract.</i>	<i>The property in goods passes to the hirer upon payment of the last instalment.</i>



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 contract of	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 instalments remaining.
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 until he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

(ii) 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 directions of the bailor.

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

The difference between bailment and sale may be clearly understood by studying the following:

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	<i>The consideration is the price in terms of money.</i>	<i>The consideration may be gratuitous or non-gratuitous.</i>
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(iii) 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.

Example: Where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture. Here, the basic substance of the contract is the exercise of skill and labour, therefore it is contract for work and labour.

Contract of Sale How Made (Section 5)

According to Section 5(1), A contract of sale may be made in any of the following modes:

(i) Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.

(ii) There may be immediate delivery of the goods; or

(iii) There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or

(iv) There may be immediate delivery of the goods and an immediate payment of price; or

(v) It may be agreed that the delivery or payment or both are to be made in instalments; or

(vi) It may be agreed that the delivery or payment or both are to be made at some future date.

Example: R agrees to deliver his old motorcycle valued at ₹55,000 to S in exchange for a new motorcycle and agrees to pay the difference in cash, it is a Contract of Sale



Subject Matter of Contract of Sale

Existing or future goods (section 6):

(1) The goods which form the subject matter of a contract of sale may be either existing goods that are acquired, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

Example: A contract for sale of certain cloth to be manufactured by a certain mill is a valid contract. Such contracts are called contingent contracts.

(3) There may be a contract of sale, where the seller purports to effect a present sale of future goods, such contract operates as an agreement to sell the goods.

Goods perishing before making of contract (Section 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.

Example: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The agreement is void.

Goods perishing before sale but after agreement to sell (Section 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 become 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 destruction of such goods will amount to supervening impossibility and the contract shall become void.

Example: A agrees to sell B 100 tons of tomatoes grown on his land next year. But the crop failed due to some disease in plants and A could only deliver 80 tons of tomatoes to B. It was held A was not liable as the performance of contract became impossible due to supervening impossibility.



Ascertainment Of Price (Section 9 & 10)

Ascertainment of price (Section 9):

'Price' means the monetary consideration for sale of goods [Section 2 (10)].

By virtue of Section 9, the price in the contract of sale may be-

(1) fixed by the contract, or

(2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or

(3) determined by the course of dealings between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.

2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

3. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

Example: *P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided as the third-party Q refuses to fix the price*

