



THE SALE OF GOODS ACT, 1930

UNIT -1: FORMATION OF THE CONTRACT OF SALE

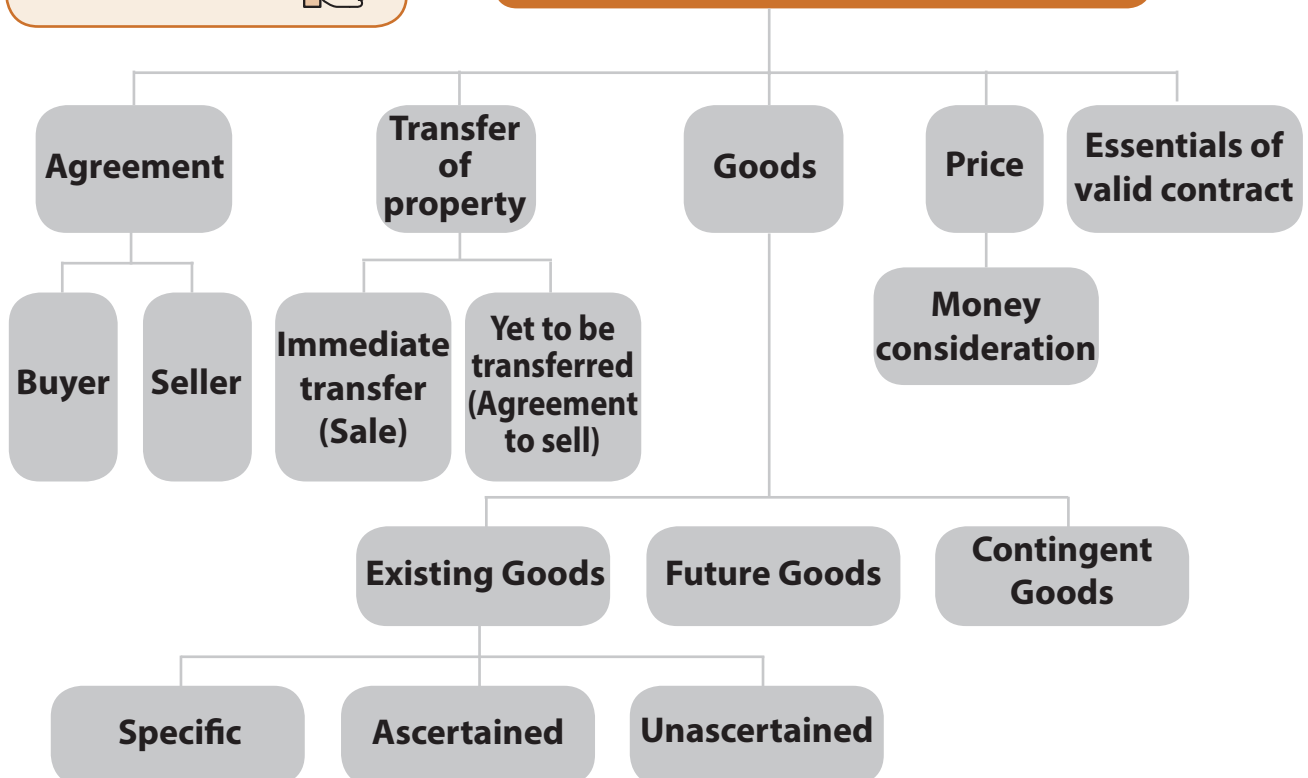
LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ♦ Definitions of certain terms.
- ♦ Meaning of contract of sale.
- ♦ Distinctions of sale from other similar contracts.
- ♦ Formalities of contract of sale.
- ♦ Subject matter of contract of sale.
- ♦ Ascertainment of price for the contract of sale.

UNIT OVERVIEW

Contract of Sale



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 places this freedom is severely restricted.

Sale of Goods Act, 1930 is the Act to define and amend the law relating to the sale of goods. It extends to the whole of India except the State of Jammu and Kashmir. It came into force on 1st July, 1930.

1.1 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’ means a person who buys or agrees to buy goods [Section 2(1)]. **‘Seller’** means a person who sells or agrees to sell goods [Section 2(13)]. 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. 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.

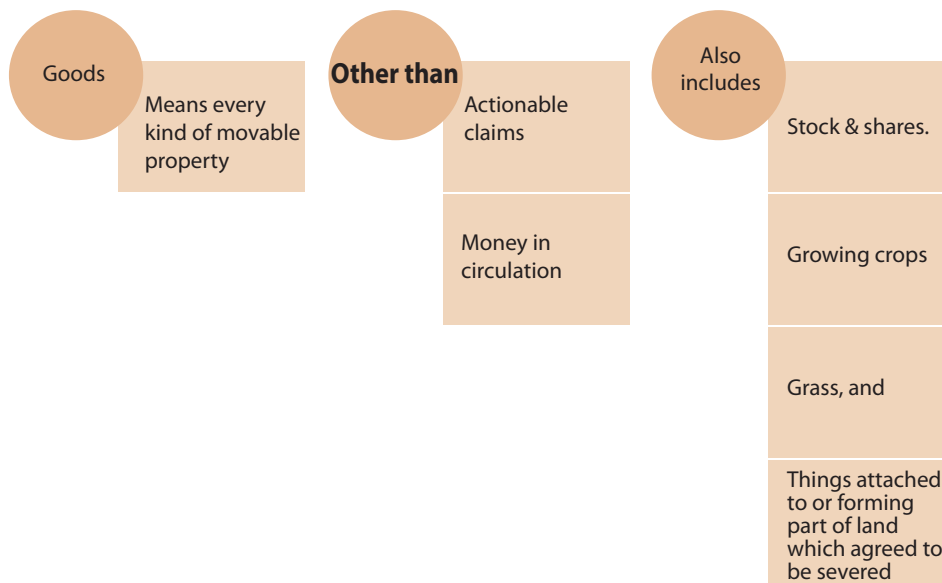


(B) Goods and other related terms:

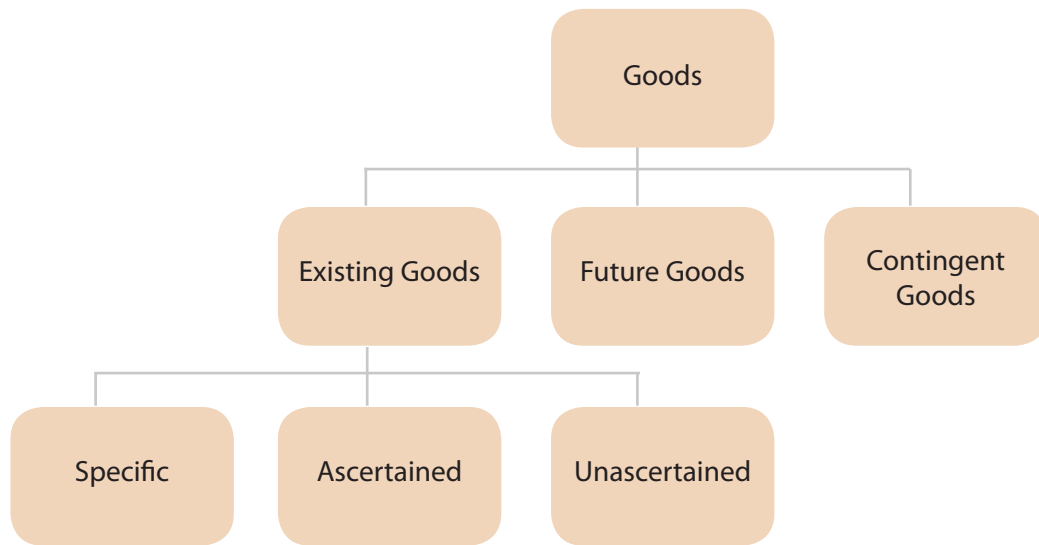
“Goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7)]

This is a wider definition than contained in the English law, which does not consider ‘stock’ and ‘shares’ as goods, though it includes a ship.

‘Actionable claims’ 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.



Classification of Goods



- (i) **EXISTING GOODS** are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller at the time of contract of sale (Section 6).

The existing goods may be of following kinds:

- (a) **Specific goods means goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].**

Example 1: Any specified and finally decided goods like a Samsung Galaxy S7 Edge, Whirlpool washing machine of 7 kg etc.

Example 2: 'A' had five cars of different models. He agreed to sell his 'fiat' car to 'B' and 'B' agreed to purchase the same 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 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.

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 becomes 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.

(ii) **FUTURE GOODS** means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)].

A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a man cannot transfer what is not in existence.

Example 1: 1,000 quintals of potatoes to be grown on A's field, is not illegal, though the actual sale of future goods is not possible. This is an example of agreement to sell.

Example 2: 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.

Example 3: 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.'

(iii) **CONTINGENT GOODS:** The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods' [Section 6(2)].

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. 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.

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.

(C) **Delivery - its forms and derivatives:** 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.

Forms of delivery: Following are the kinds of delivery for transfer of possession:

Delivery of goods		
Voluntary transfer of possession by one person to another		
Actual delivery	Constructive delivery	Symbolic delivery

(i) **Actual delivery:** When the goods are physically delivered to the buyer.

(ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

(iii) **Symbolic delivery:** 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.

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)]. For 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.

(D) **“Document of title to goods”** includes 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 document used in the ordinary course of business as proof of the possession or control of goods or 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)]

Examples: Bill of lading, dock warrant, warehouse keeper’s certificate, wharfinger’s certificate, railway receipt, warrant, an order of delivery of goods. 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.

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.

(E) **Mercantile Agent [Section 2(9)]:** It means an agent having in the customary course of business 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.

Examples of such kind of agents are auctioneers, factors, brokers, etc.

(F) **Property [Section 2(11)]:** ‘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.

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 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 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.

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.

(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.

(I) **Quality of goods** includes their state or condition. [Section 2(12)]

1.2 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.

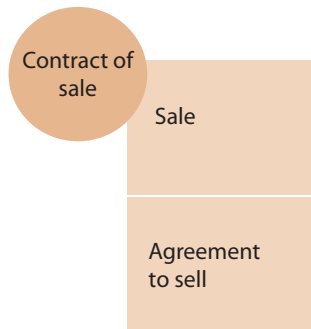
A contract of sale may be absolute or conditional. **[Section 4(2)]**

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, the contract 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)]**

Analysis

A contract for the sale of goods may be either sale or agreement to sell.



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 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.”

Agreement to Sell: 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, the contract is called an agreement to sell.”

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.

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.
- (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. competency of parties, legality of object and consideration etc.

1.3 DISTINCTION BETWEEN SALE AND 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 buyer immediately.	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.
Remedies for breach	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.
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 the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

1.4 SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

- (i) **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; None the less 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:

Basis of difference	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 the last installment.
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 installment.
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 installments.
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 installment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a <i>bona fide purchaser</i> from him.	The hirer cannot pass any title even to a <i>bona fide purchaser</i> .
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

(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 to the bailor or are to be disposed off 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.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
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	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

(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.

1.5 CONTRACT OF SALE HOW MADE (SECTION 5)

According to section 5(1), a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Further, as per sub-section (2) of section 5, subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Analysis:

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

1.6 SUBJECT MATTER OF CONTRACT OF SALE

Existing or future goods (section 6):

- (1) The goods which form the subject of a contract of sale may be either existing goods, 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) Where by a contract of sale the seller purports to effect a present sale of future goods, the 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 as no longer to answer to their description 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 as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

1.7 ASCERTAINMENT OF PRICE (SECTION 9 & 10)

Ascertainment of price (Section 9):

- (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
- (2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Analysis:

'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):

- (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

- (2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in default.

Analysis

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



SUMMARY

In nutshell, contract of sale of goods is a contract where the seller transfers or agrees to transfer the property in goods to the buyer for a price. Where, however, the transfer of property in goods is to take place at a future date or subject to some conditions to be fulfilled, the contract is called 'agreement to sell'. The subject matter of such contract must always be goods. Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

- A contract for the sale of goods where property would pass to the buyer on payment of total price would be;
 - sale
 - agreement to sell
 - hire-purchase contract.
 - sale on approval.
- The term "goods" under Sale of Goods Act, 1930 does not include
 - goodwill.
 - actionable claims.
 - stocks and shares.
 - harvested crops.
- A contract for the sale of "future goods" is
 - sale
 - agreement to sell.
 - void.
 - hire-purchase contract.
- The sale of Goods Act, 1930 deals with the
 - movable goods only.
 - immovable goods only.
 - both movable and immovable goods.
 - all goods except ornaments.
- Under Sale of Goods Act, 1930 the terms "Goods" means every kind of movable property and it includes
 - stock and share.
 - growing crops, grass
 - both (a) and (b).
 - none of the above
- The Sale of Goods Act, 1930 deals with
 - sale
 - mortgage.
 - pledge.
 - all of the above.
- Which one of the following is true?
 - the provisions of Sale of Goods were originally with the Indian Contract Act, 1872.
 - the Sale of Goods Act, 1930 deals with mortgage.
 - the Sale of Goods Act restricts the parties to modify the provisions of law.
 - none of the above.

8. Goods which are in existence at the time of the Contract of Sale is known as
- (a) present Goods. (b) existing Goods.
(c) specific Goods. (d) none of the above.
9. Which of the following is not a form of delivery?
- (a) constructive delivery. (b) structured delivery.
(c) actual delivery. (d) symbolic delivery.
10. Which one of the following is/are document of title to goods?
- (a) railway receipt. (b) wharfinger's certificate.
(c) warehouse keeper's certificate. (d) all of the above
11. Which one of the following is not true?
- (a) document showing title is different from document of title.
(b) bill of lading is a document of title to goods.
(c) specific goods can be identified and agreed upon at the time of the Contract of Sale.
(d) none of the above.
12. Mercantile Agent is having an authority to
- (a) sell or consign goods. (b) raise money on the security of goods.
(c) sell or buy goods. (d) any of the above.
13. Contract of Sale is
- (a) executory Contract. (b) executed Contract.
(c) both of the above. (d) none of the above.
14. In which form of the contract, the property in the goods passes to the buyer immediately:
- (a) agreement to sell. (b) hire purchase.
(c) sale (d) installment to sell.
15. In case of hire purchase the hirer can pass title to a bona fide purchaser.
- (a) true. (b) false.
16. In a contract of sale, the agreement may be expressed or implied from the conduct of the parties.
- (a) true. (b) false.
17. In a contract of sale, subject matter of contract must always be money.
- (a) true. (b) false.
18. Selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer is known as
- (a) distribution. (b) appropriation.
(c) amortization. (d) storage.

19. If a seller handed over the keys of a warehouse containing the goods to the buyer results in
- (a) constructive delivery
 - (b) actual delivery
 - (c) symbolic delivery
 - (d) none of the above
20. If A agrees to deliver 100 kg of sugar to B in exchange of 15 mts of cloth, then it is
- (a) Contract of sale.
 - (b) Agreement to sell.
 - (c) Sale on Approval.
 - (d) Barter.
21. In a hire-purchase agreement, the hirer
- (a) has an option to buy the goods.
 - (b) must buy the goods.
 - (c) must return the goods.
 - (d) is not given the possession of goods.
22. A agrees to deliver his old car valued at ₹ 80,000 to B, a car dealer, in exchange for a new car, and agrees to pay the difference in cash it is
- (a) Contract of sale.
 - (b) Agreement to sell.
 - (c) Exchange.
 - (d) Barter.
23. Legally, a contract of sale includes
- (a) sale.
 - (b) agreement to Sell.
 - (c) barter.
 - (d) both (a) and (b)
24. The Sale of Goods Act, 1930 came into force on
- (a) 15th March, 1930.
 - (b) 1st July, 1930.
 - (c) 30th July, 1930.
 - (d) 30th June, 1930.
25. The person who buys or agrees to buy goods is known as
- (a) consumer.
 - (b) buyer.
 - (c) both (a) and (b)
 - (d) none of the above.
26. Voluntary transfer of possession by one person to another is popularly known as
- (a) transfer.
 - (b) possession.
 - (c) delivery.
 - (d) none of the above.
27. The aggrieved party can claim only damages in case of breach of warranty.
- (a) true.
 - (b) false.
28. If X commissioned Y, an artist, to paint a portrait of A for 200 dollars & Y uses his own canvas & paint then it is
- (a) Contract of sale.
 - (b) Contract of work & materials.
 - (c) Sale on approval.
 - (d) Hire-Purchase agreement.
29. The property in the goods means the
- (a) possession of goods.
 - (b) custody of goods.
 - (c) ownership of goods.
 - (d) both (a) and (b)

30. The goods are at the risk of a party who has the
- (a) Ownership of goods. (b) Possession of goods.
(c) Custody of goods. (d) both (b) and (c)
31. In case of sale of standing trees, the property passes to the buyer when trees are
- (a) felled and ascertained. (b) not felled but earmarked.
(c) counted and ascertained. (d) both (b) and (c)
32. In case the delivery of goods is delayed due to the fault of party, the goods shall be at the risk of defaulting party even though the ownership is with the other party.
- (a) True, as there is a provision to this effect.
(b) False, as it is against the general rule.
33. Which of the following modes of delivery of goods is considered effective for a valid contract of sale?
- (a) Actual delivery. (b) symbolic delivery.
(c) Constructive delivery. (d) all of these.

Answers to MCQs

1.	(b)	2.	(b)	3.	(b)	4.	(a)	5.	(c)
6.	(a)	7.	(a)	8.	(b)	9.	(b)	10.	(d)
11.	(d)	12.	(d)	13.	(c)	14.	(c)	15.	(b)
16.	(a)	17.	(b)	18.	(b)	19.	(c)	20.	(d)
21.	(a)	22.	(a)	23.	(d)	24.	(b)	25.	(b)
26.	(c)	27.	(a)	28.	(b)	29.	(c)	30.	(a)
31.	(a)	32.	(a)	33.	(d)				

Theoretical questions

1. What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.
2. In what ways does a "Sale" differ from "Hire-Purchase"?
3. State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act.

Answer to Theoretical Questions

1: Destruction of Goods-Consequences:

- (i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

- (ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

2: Distinction between 'Sale' and 'Hire Purchase'

1. In case of hire purchase, the agreement is that the hirer regularly pays the various installments agreed between the parties. In Sale the payment may be made cash -down or through installments.
2. The subject matter of the hire, on payment of the last installment, shall become the property of the hirer, if such installments are not paid, the article will remain the property of the hire-vendor (seller) and the hire vendor will be entitled to regain possession thereof. In Sale, the property in goods is transferred to the buyer immediately on signing the contract.
3. A hire purchase agreement is both a bailment and an option to buy. In case of Sale it is not so.
4. In case of hire purchase the hirer cannot sell the article to a third party. In Sale the purchaser can do so. This is based on the concept of ownership.

3: Essentials of Contract of Sale

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
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.