

SALES OF GOODS ACT 1930

CHAPTER I - INTRODUCTION TO SALES OF GOODS ACT

Definitions

1. Buyer [Section 2(1)]	Means a person who buys or agrees to buy goods.
2. Seller [Section 2(13)]	Means a person who sells or agrees to sell goods.
3. Goods [Section 2(7)]	<p>"Goods" means every kind of movable property and It includes</p> <ul style="list-style-type: none">→ 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. <p>other than</p> <p>"Goods" include both tangible goods & intangible goods like goodwill, copyrights, patents, trademarks etc. Gas, steam, water & electricity are also considered to be goods.</p> <p>"Actionable claims" are claims, which can be enforced only by an action or suit, e.g. debt. A debt is not movable property or goods. Even the FD Receipts (FDR) are considered as goods.</p>

4.

Delivery [Section 2(2)]

Sale → ownership / general property

Delivery → Possession

- Delivery means voluntary transfer of possession from one person to another.
- 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.

5.

Mercantile Agent [Section 2(9)]

Business

- It means an agent who in the ordinary course of business has an 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
- Such kind of agents are auctioneers or brokers, etc.

6.

Property [Section 2(11)]

Ownership

- 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 to ownership-in-goods) & is not merely a special property.

Bailment - Transfer of possession in goods from one person to another for a particular purpose or time after completion of which goods are returned to its owner (specific / special property)

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→ Bailment may be gratuitous (free) or non Gratuious (non free)

- Note that the 'general property' in goods it is to be distinguished from a 'special property'. It is quite possible that the general property in a thing may be in one person & a special property in the same thing may be in another e.g. when an article is pledged.
- 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.

7. Insolvent

[Section 2(8)]

cease → stop
being → stand by

- 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.

8. 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.

9. Quality of

goods [Section 2(12)]

- includes their state or condition

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CLASSIFICATION OF GOODS

Existing Goods Future Goods Contingent Goods

Specific

Ascertained

Unascertained

Existing goods are such goods as 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.

2. Future Goods means goods to be to be manufactured or produced or acquired by the seller after making the contract of sale. A contract for the sale of future goods is always an agreement to sell.

e.g. 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.

e.g. 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.

3. Contingent Goods : The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods'. A contract for the sale of contingent goods is always an agreement to sell.

Eg. 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.

Eg. 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 sales of contingent goods.

The Existing Goods May Be of following kinds.

Specific Goods	Ascertained Goods	Unascertained Goods
means goods are those goods which are identified and agreed upon at the time a contract of sale is made.	which are identified in accordance with the agreement after the contract of sale is made.	are the goods which are not specifically identified or indicated or defined only by description or sample.

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

Eg.

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 good 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 specified goods.

Eg.

X has ten houses. He promises to sell one of them but does not specify which house he will sell. It is a contract of sale of unascertained goods.

Eg.

A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales & 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 & 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.

Q

Differentiate between Ascertained & Unascertained goods with example. (4M)

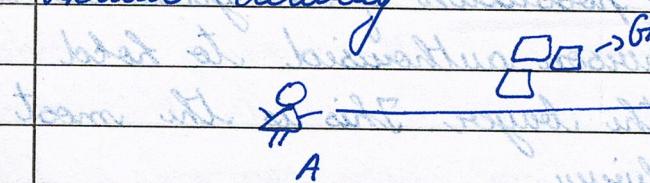
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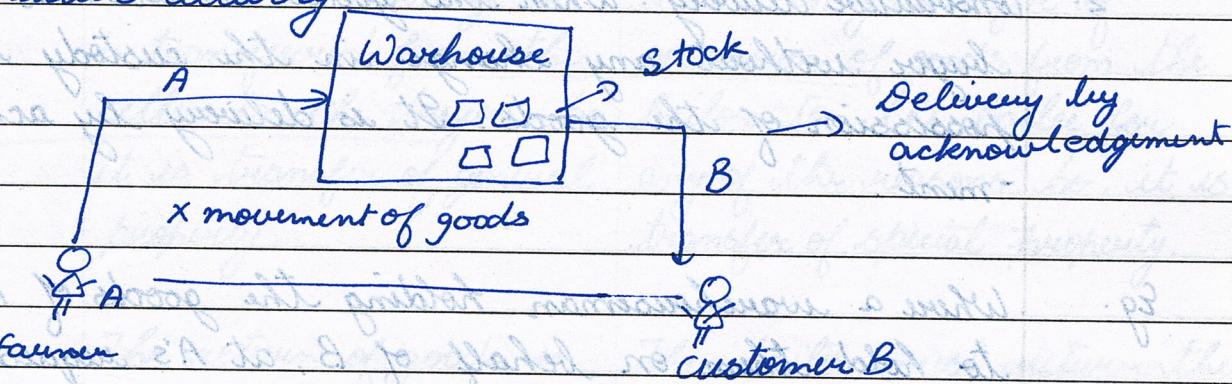
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FORMS OF DELIVERY

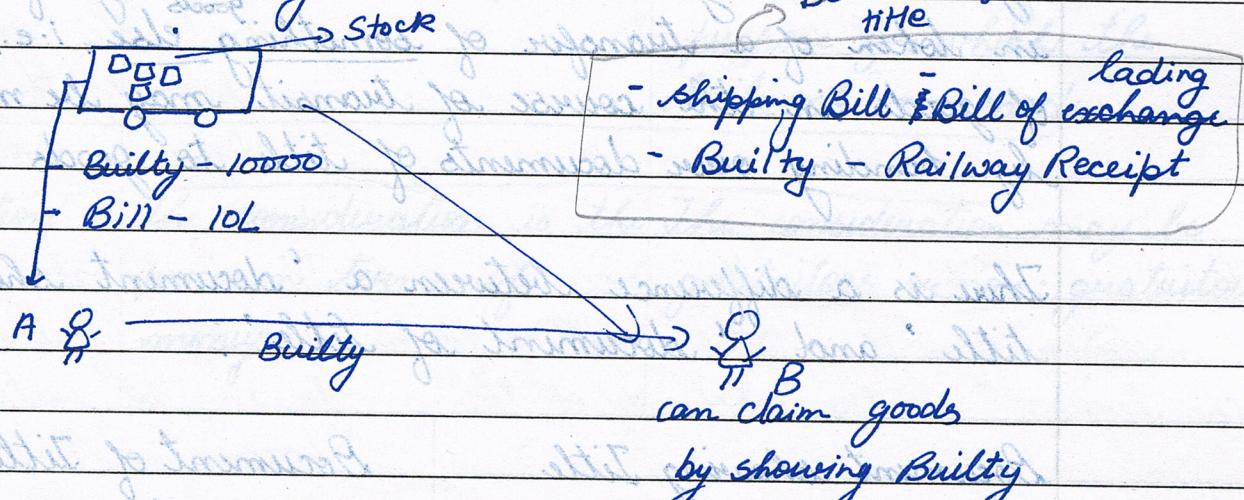
1. Actual delivery



2. Constructive delivery



3. Symbolic delivery



1. **Actual delivery**: When the goods are physically delivered to the buyer. Actual delivery takes place where 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.
2. **Constructive delivery**: When the goods are delivered to the buyer without any change in the custody or actual possession of the goods. It is delivery by acknowledgement.

Eg. Where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

3. **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.

There is a difference between a 'document showing title' and 'document of title'.

Document showing Title	Document of Title
→ Means a document which shows ownership in goods. It does not allow the person to transfer the goods mentioned therein by merely delivery of the document.	Means a document which allows the person to transfer the goods mentioned therein by merely delivery of the document.

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e.g.

Share certificate, insurance papers.

HIRE PURCHASE

Bill of lading, dock warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document.

BASIS

SALE

BAILMENT

Transfer of property

The ownership 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. 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

The consideration is the value in terms of money.

The consideration may be gratuitous or non-gratuitous.

DIFFERENCE B/W SALE AND HIRE - PURCHASE

BASIS	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 that 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 & 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 w/o 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 bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser.
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

DIFFERENCE b/w SALE AND AGREEMENT TO SELL

BASIS OF SALE	AGREEMENT TO SELL
Transfer of property	The property in the goods passes to the buyer immediately.
Nature of contract	It is an executed contract i.e. contract for which consideration has been paid.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.
Right of resale	The seller cannot resell the goods.
In case of insolvency of seller	The official assignee will not be able to take over the goods but will recover the price from the buyer.
In case of insolvency of buyer	The official assignee will have control over the goods.

ASSESSMENT OF PRICE (SECTION 9&10)

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 -

- fixed by the contract, or
- agreed to be fixed in a manner provided by the contract, e.g. Cost + 20% or
- determined by the course of dealings between the parties.

Section 10 - Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party & 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.

eg. 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 2nd bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the 2nd bike, the contract can be avoided.

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Essential elements of Contract of Sale of Goods

1. There must be at least two parties, the seller & the buyer and the two must be different persons. A person cannot be both the seller & the buyer & sell his goods to himself.
2. The subject matter of the contract must be goods covering only movable property.
3. Goods may be either existing goods, owned or possessed by the seller or future goods.
4. A price in money (not in kind) should be paid or promised.
5. A transfer of property in goods from seller to the buyer must take place.
6. A contract of sale may be absolute (unconditional) or conditional.
7. 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 & consideration etc.

however, partial barter system is valid. e.g. Old car in exchange of new & difference is paid.

Contract of Sale How Made (Section 5)

A contract of sale may be made in any of the following modes:

1. There may be immediate delivery of the goods; or
2. There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or

3. There may be immediate delivery of the goods & an immediate payment of price; or
4. It may be agreed that the delivery or payment or both are to be made in installments; or
5. It may be agreed that the delivery or payment or both are to be made at some future date.

Imp.

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.

Eg.

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.

Imp.

Goods perishing before sale but after agreement to sell (Section 8):

There is an agreement to sell specific goods, & subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged, then the agreement is thereby avoided or becomes void.

Q.

A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next 2 months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the SOGA, 1930?

Ans.

Section 8

So, In the case B the buyer has no right against A the seller.

All the following conditions required to treat it as a void contract are fulfilled in the above case:

- There is an agreement to sell between A & B
- It is related to specific goods
- The goods are lost because of the sinking of ship before the property or risk passes to the buyer.
- The loss of goods is not due to the fault of either party.

Q.

X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the SOGA, 1930?

Ans.

Payment of the price by the buyer is an imp. ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain & invalid agreement. It will neither be a valid contract & the buyer shall pay a reasonable price. In the given case, X & Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X & X can recover a reasonable price of the car from Y.

Q. A agrees to buy a new TV from a shop keeper for Rs 30,000 payable partly in cash of Rs 20,000 & partly in exchange of old TV set. Is it a valid contract of sale of goods? Give reasons for your answer.

Ans. It is necessary under the Sale of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods & partly in cash is held to be a contract of Sale of Goods.
 In the given case, the new TV set is agreed to be sold for ₹ 30,000 & the price is payable partly in exchange of old TV set and partly in cash of ₹ 20,000. So in this case, it is a valid contract of sale under the SOGA, 1930.