

CONTRACT OF SALE

DEFINITIONS:

- ♣ **BUYER AND SELLER:** Buyer means a person who buys or agrees to buy goods. Seller means a person who sells or agrees to sell goods.
- ♣ **GOODS AND OTHER RELATED TERMS:**
 - “**GOODS**”[section 2(7)] 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 served before sale or under the contract of sale.
 - “**ACTIONABLE CLAIMS**” are claims, which can be enforced only by an action or suit. E.g. debt.
- ♣ **EXISTING GOODS** are such goods as are in **existence at the time of the contract of sale**. The existing goods may be of following kinds:
 - **SPECIFIC GOODS** means goods **identified and agreed upon at the time a contract** of sale is made.
 - **ASCERTAINED GOODS** are those goods **which are identified in accordance with the agreement after the contract of sale** is made.
 - **UNASCERTAINED GOODS** are the **goods not specifically identified or ascertained** at the time of making of the contract.
- ♣ **FUTURE GOODS** means goods to be **manufactured or produced or acquired by the seller after making the contract** of sale.
- ♣ **CONTINGENT GOODS** the **acquisition of which by the seller depends upon an uncertain contingency (uncertain event)**. The property does not pass to the buyer at the time of making the contract.
- ♣ **DELIVERY – ITS FORMS AND DERIVATIVES:** delivery means **voluntary transfer of possession** from one person to another.
FORMS OF 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**).
 - (iii) **SYMBOLIC DELIVERY:** **Delivery of goods in the course of transit** may be made by handing over document of title to goods, like bill of lading.

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.

- ♣ **DOCUMENT OF TITLE TO GOODS:** Including bill of lading, dock warrant, warehouse keeper’s certificate, wharfinger’s 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.
- ♣ **MERCANTILE AGENT:** An agent having 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.
- ♣ **PROPERTY:** Property here means ‘**OWNERSHIP**’ or general property.
- ♣ **INSOLVENT:** When he ceases to pay his debt or cannot pay his debt as they become due.

UNIT - 1

- ♣ **PRICE:** The money consideration for a sale of goods.
- ♣ **QUALITY OF GOODS:** State or condition.

SALE AND AGREEMENT TO SALE

SALE: In sale, *the property in goods is transferred* from seller to the buyer *immediately*.

AGREEMENT TO SALE: 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*.

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:

- ♥ There must be at **least two parties**, the seller and the buyer.
- ♥ The subject matter of the contract must necessarily be **goods** covering only movable property.
- ♥ **A price in money (not in kind) should be paid or promised**. Can be partly cash and kind.
- ♥ **A transfer of property in goods from seller to the buyer must take place**.
- ♥ A contract of sale may be **absolute or conditional**.
- ♥ All the **essential elements of a valid contract must be present in the contract of sale**.

DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

BASIS		SALE	AGREEMENT TO SELL
TRANSFER OF PROPERTY	OF	<i>Immediately</i>	<i>Future date or fulfilment of some condition.</i>
NATURE OF CONTRACT	OF	It is an <i>executed contract</i> .	It is an <i>executory contract</i> .
REMEDIES FOR BREACH	FOR	The <i>seller can sue the buyer for the price</i> of the goods because of the passing of the property therein to the buyer.	The aggrieved <i>party can sue for damages only and not for the price</i> , unless the price was payable at a stated date.
LIABILITIES OF PARTIES	OF	Liability of <i>buyer</i>	Liability of <i>seller</i>
BURDEN OF RISK		Of <i>buyer</i>	Of <i>seller</i>
NATURE OF RIGHTS		Creates Jus in rem	Creates Jus in personam
RIGHTS OF RESALE		The seller <i>cannot resell</i> the goods	The seller <i>may sell the goods</i> since ownership is with the seller.

DISTINCTION BETWEEN SALE AND HIRE PURCHASE

HIRE PURCHASE: 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-

- ◆ **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**

UNIT - 1

- ◆ **The property in the goods is to pass to such person on the payment of the last of such installments, and**
- ◆ **Such person has a right to terminate the agreement at any time before the property so passes.**

BASIS	SALE	HIRE- PURCHASE
TIME OF PASSING PROPERTY	Immediately	Upon the payment of last instalment
POSITION OF THE PARTY	Buyer as a owner	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 TO 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.

DISTINCTION BETWEEN SALE AND BAILMENT

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.

BASIS	SALE	BAILMENT
TRANSFER OF PROPERTY	Transferred from seller to 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	Not possible	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
CONSIDERATION	Is the price in terms of money	May be gratuitous or non- gratuitous.

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.

UNIT - 1

CONTRACT OF SALE HOW MADE:

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

- ♣ Contract of sale is made **by an offer to buy or sell goods for a price** and acceptance of such offer.
- ♣ There may be **immediately delivery** of the goods.
- ♣ There may be **immediately payment of price**, but it may be agreed that the **delivery is to be made at some future date**, or
- ♣ There may be **immediate delivery** of goods and an **immediate payment** of price,
- ♣ It may be agreed that the **delivery or payment or both are to be made in instalments**,
- ♣ It may be agreed that the **delivery or payment or both are to be made at some future date**.

SUBJECT MATTER OF CONTRACT OF SALE

GOODS PERISHING BEFORE MAKING CONTRACT OF CONTRACT: When there is a contract for the **sale of specific goods, the contract is void** if the goods without 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.

GOODS PERISHING BEFORE SALE BUT AFTER AGREEMENT TO SALE: 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 to the buyer, the agreement is thereby avoided**.

ASCERTAINMENT OF PRICE

Price means the monetary consideration for the sale of goods. 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. valuer or**
- ♥ **Determined by the course of dealing between the parties.**

AGREEMENT TO SELL AT VALUATION

DETERMINATION OF PRICE BY A THIRD PARTY

When 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.