

# **Sale of Goods Act 1930**

Till 1930, transactions relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872. In 1930, a separate Act called 'The Indian Sale of Goods Act, 1930' was passed. It came into force on 1st July, 1930. With effect from 22nd September, 1963, the word 'Indian' was also removed. Now, the present Act is called "The sales of goods act, 1930".

## **Scope of the Act**

The sale of Goods Act deals with 'Sale of Goods Act, 1930,' 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." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

## **Essential elements of Contract of sale**

### **1. Seller and buyer**

There must be a seller as well as a buyer. 'Buyer' means a person who buys or agrees to buy goods [Section 29(10)]. 'Seller' means a person who sells or agrees to sell goods [Section 29(13)].

### **2. Goods**

There must be some goods. 'Goods' means every kind of movable property other than actionable claims and money 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)].

### **3. Transfer of property**

Property means the general property in goods, and not merely a special property [Section 2(11)]. General property in goods means ownership of the goods. Special property in goods means possession of goods. Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

### **4. Price**

There must be a price. Price here means the money consideration for a sale of goods [Section 2(10)]. When the consideration is only goods, it amounts to a 'barter' and not sale. When there is no consideration, it amounts to gift and not sale.

### **5. Essential elements of a valid contract**

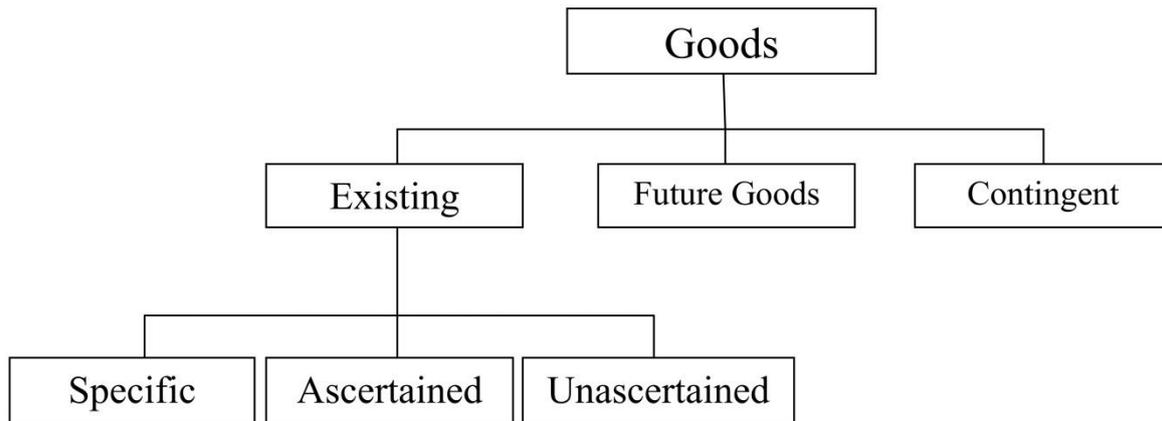
In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act, 1872 must also be present since a contract of sale is a special type of a contract.

## Meaning and types of goods

### Meaning of goods[Section 2(7)]

1. Goods means every kind of movable property other than actionable claims and money, and includes the following:
2. Stock and share
3. Growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

### Types of Goods[Section 6]



#### Existing Goods

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

##### a) Specific Goods[Section 2(14)]:

These are the goods which are identified and agreed upon at the time when a contract of sale is made-For example, specified TV, VCR, Car, Ring.

##### b) Ascertained Goods:

Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract. Thus, when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

##### c) Unascertained Goods:

These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g. goods in stock or lying in lots.

## **2. Future Goods[Section 2(6)]**

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. There can be an agreement to sell only. There can be no sale in respect of future goods because one cannot sell what he does not possess.

## **3. Contingent Goods [Section 6(2)]**

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

### **Price of Goods**

#### **Meaning[Section 2(10)]**

Price means the money consideration for a sale of goods.

#### **Modes of determining Price [Section 9(1)]**

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

### **Conditions and Warranties**

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulation which may rank as condition and warranty.

#### **Meaning of Conditions [Section 12(2)]**

A condition is a stipulation Which is essential to the main purpose of the contract. The breach of which gives the aggrieved party a right to terminate the contract.

#### **Meaning of Warranty[Section 12(3)]**

A warranty is a stipulation Which is collateral to the main purpose of the contract. The breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

### **Difference between Conditions and Warranty**

<b>Sr. No.</b>	<b>Basis of distinction</b>	<b>Condition</b>	<b>Warranty</b>
1.	Essential vs. Collateral	It is a stipulation which is essential to the main purpose of the contract.	It is a stipulation which is only collateral to the main purpose of the contract.
2.	Right in case of breach	The aggrieved party can terminate the contract.	The aggrieved party can claim damages but cannot terminate contract.
3.	Treatment	A breach of condition can be treated as a breach of warranty.	A breach of warranty cannot be treated as breach of condition.

**In a contract of sale of goods, conditions and warranties may be express or implied.**

#### **1. Express Conditions and Warranties.**

These are expressly provided in the contract. For example, buyer desires to buy a Sony TV Model No. 2020. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

#### **2. Implied Conditions and Warranties**

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below:

#### **Implied Conditions**

##### **1. Conditions as to title [ Section 14 (a)]**

There is an implied condition on the part of the seller that In the case of a sale, he has a right to sell the goods, and In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

##### **2. Condition in case of sale by description [Section 15]**

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

- i. Where the buyer has never seen the goods and buys them only on the basis of description given by the seller.
- ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.
- iii. Where the method of packing has been described.

##### **3. Condition in case of sale by sample [Section 17]**

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions:

- The goods must correspond with the sample in quality.
- The buyer must have a reasonable opportunity of comparing the bulk with the sample.
- The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

#### **4. Condition in case of sale by description and sample [Section 15]**

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

#### **5. Condition as to quality or fitness [Section 16(1)]**

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

#### **Exception to this rule:**

There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

- The particular for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
- The buyer must have relied upon the seller's skill or judgement.
- The seller's business must be to sell such goods.

#### **6. Condition as to merchantable quality [Section 16(2)]**

Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

#### **7. Condition as to wholesomeness**

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

#### **8. Conditions implied by custom [Section 16(3)]**

Condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

#### **Implied warranties**

##### **a) Warranty as to quiet possession [Section 14 (b)]**

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

##### **b) Warranty of freedom from encumbrances [Section 14(c)]**

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives buyer a right to claim damages from the seller.

## **Transfer of property in goods**

### **Meaning of Passing of Property/Transfer of Property**

Passing of property implies transfer of ownership and not the physical possession of goods. For example, where a principal sends goods to his agent, he merely transfers the physical possession and not the ownership of goods. Here, the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but is not the owner.

### **Significance of Transfer of Property**

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

1. Who shall bear the risk?

It is the owner who has to bear the risk and not the person who merely has the possession.

2. Who can take action against third party?

It is the owner who can take action and not the person who merely has the possession.

3. Whether a seller can sue for price?

The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of goods from seller?

The Official Receiver or Assignee can take the possession of goods from seller only if the ownership of goods has been transferred to the buyer.

5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer?

The official receiver or assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

Rules relating to Passing of Property/Transfer of Ownership from seller to buyer

For the purposes of ascertaining the time at which the ownership is transferred from seller to the buyer, the goods have been classified into the following three categories:

a) Specific or ascertained goods

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

b) Unascertained goods

c) Goods sent 'on approval' or 'on sale on return' basis.

### **Performance of the Contract**

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

### **Delivery (Sections 33-39)**

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

1. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.

2. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the “means of obtaining possession” of goods is delivered, e.g. by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

### **Rules as to delivery**

The following rules apply regarding delivery of goods:

- (a) Delivery should have the effect of putting the buyer in possession.
- (b) The seller must deliver the goods according to the contract.
- (c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
- (d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.
- (e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.
- (f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.
- (g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.
- (h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.
- (i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

### **Acceptance of Goods by the Buyer**

Acceptance of the goods by the buyer takes place when the buyer:

- (a) intimates to the seller that he has accepted the goods; or
- (b) retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or
- (c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells. If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may: (a) reject the whole; or
- (b) accept the whole; or
- (c) accept the quantity be ordered and reject the rest. If the seller delivers with the goods ordered, goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

### **Installment Deliveries**

When there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

### **Suits for Breach of Contract**

1. Where the property in the goods has passed to the buyer, the seller may sue him for the price.
2. Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.
3. Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.
4. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.
5. Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.
6. If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

### **Anticipatory Breach**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

- (a) his right of performance on the due date in spite of his prior repudiation; or
- (b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

### **Unpaid seller and his rights**

#### **Meaning of an Unpaid Seller [Sec 45(1)(2)]**

**The seller of goods is deemed to be an ‘unpaid seller’-**

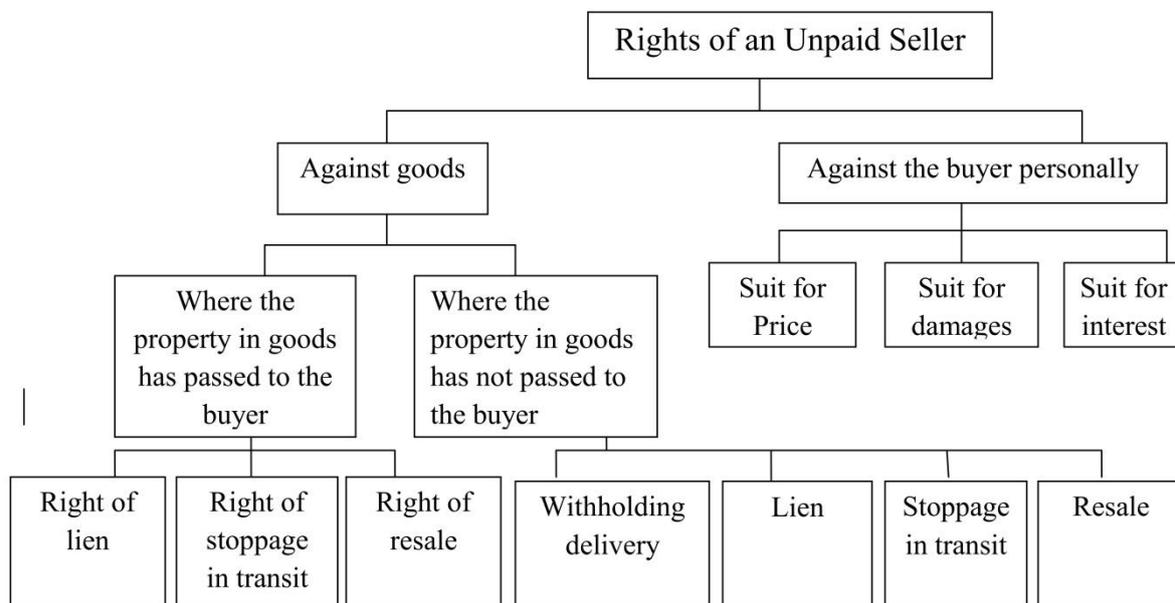
1. When the whole of the price has not been paid or tendered
  2. When a bill of exchange or other negotiable instrument(such as cheque) has been received as conditional payment,and it has been dishonoured[Section 45(1)].
  3. The term ‘seller’includes any person who is in the position of a seller(for instance,an agent of the sellerto whom the bill of lading has been endorsed,or a consignor or agent who has himself paid,or is directly responsible for the price) [Section 45(2)].
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**Rights of an Unpaid Seller [Section 46-52,54-56,60-61]**

The rights of an unpaid seller can broadly be classified under the following two categories:

1. Rights against the goods
2. Rights against the buyer personally

The various rights of an unpaid seller have been shown in Fig.



**I Rights against the goods where the property in the goods has passed to the buyer**

a) Right of Lien [Section 47,48 and 49]

**Meaning of Right of Lein:**

The right of lien means the right to retain the possession of the goods until the full price is received.

**Three circumstance under which right of lien can be exercised[Section 47(1)]**

1. Where the goods have been sold without any stipulation to credit;
2. Where the goods have been sold on credit, but the term of credit has expired;
3. Where the buyer becomes insolvent.

**Other provisions regarding right of lien[Sections 47(2),48,49(2)]**

1. The seller may exercise his right of lien,even if he possesses the goods as agent or bailee for buyer[Section 47(2)]

2. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show agreement to waive the lien [Section 48].

3. The seller may exercise his right of lien even though he has obtained a decree for the price of the goods [Section 49(2)].

Circumstances under which right of lien in the following cases:

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods [Section 49(1)(a)].

2. When the buyer or his agent lawfully obtains possession of the goods [Section 49(1)(b)]

3. When the seller waives his right of lien [Section 49(1)(c)].

4. When the buyer disposes of the goods by sale or in any other manner with the consent of the seller [Section 53(1)].

5. Where document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods and that person transfers the document by way of sale, to a person who takes the document in good faith and for consideration. [Proviso to Section 53(1)].

### **b) Right of Stoppage of Goods in Transit**

The right of stoppage of goods means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

#### **Conditions under which right of stoppage in transit can be exercised [Section 50]**

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are fulfilled:

1. The seller must have parted with the possession of goods, i.e. the goods must not be in the possession of seller.

2. The goods must be in the course of transit.

- The buyer must have become insolvent.

### **c) Right of Resale [Section 46(1) and 54]**

An unpaid seller can resell the goods under the following three circumstances:

1. Where the goods are of a perishable nature.

2. Where the seller expressly reserves a right of resale if the buyer commits a default in making payment.

- Where the unpaid seller who has exercised his right of lien or stoppage in transit gives a notice to the buyer about his intention to resell and the buyer does not pay or tender within a reasonable time.

## **II Rights against the goods where the property in the goods has not passed to the buyer**

### **Right of withholding delivery [Section 46(2)]**

Where the property in the goods has not been passed to the buyer, the unpaid seller, cannot exercise right of lien, but gets a right of withholding the delivery of goods, similar to and co-extensive with lien and stoppage in transit where the property has passed to the buyer.

#### **Rights of Unpaid Seller against the Buyer Personally**

The unpaid seller, in addition to his rights against the goods as discussed above, has the following three rights of action against the buyer personally:

1. Suit for price (Sec. 55). Where property in goods has passed to the buyer; or where the sale price is payable 'on a day certain', although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue the buyer for price, irrespective of the delivery of goods. Where

the goods have not been delivered, the seller would file a suit for price normally when the goods have been manufactured to some special order and thus are unsaleable otherwise.

**2. Suit for damages for non-acceptance (Sec. 56).**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in this case is a suit for damages rather than an action for the full price of the goods.

**3. Suit for Interest[Section 61(2)]**

In case of breach of the contract on the part of seller, the buyer may sue the seller for interest from the date on which the payment was made.

## SALE OF GOODS ACT 1930

### **Q.1. What do you mean by Sale of Goods Act, 1930?**

**Ans.** Sale of Goods Act, 1930 was enacted to enable the parties to know about their mutual rights and obligations in transactions that involve sale or the purchase of goods. This act helps to understand the validity of transactions and the remedies available to the aggrieved party. It deals with sale but not with mortgage.

Sale of Goods Act, 1930 is a law to govern the sale of movable property, i.e. goods and lays down:

1. The rights and duties of buyer and seller.
2. Conditions of a valid sale in the eyes of law.
3. Express and implied conditions and warranties under a contract of sale.

This act provides the basic definitions as:

1. Buyer: A person who buys or agrees to buy goods.
2. Delivery: Voluntary transfer of possession from one person to another.
3. Deliverable State: Buyer under contract is bound to take the delivery of goods.
4. Document of Title to Goods: Bill of lading, dock warrant, warehouse keeper's certificate, railway receipt, etc. used in the ordinary course of business.
5. Fault: Wrongful act or default.
6. Insolvent: Person ceased to pay his debts in the ordinary course of business.
7. Mercantile Agent: Agent authority either to sell goods or to consign goods for the purpose of sale.
8. Price: Money consideration for a sale of goods.
9. Property: General property in goods and not merely a special property,
10. Seller: A person who sells or agrees to sell goods.

### **Q.2. What do you mean by 'Contract of sale'? How is it formed?**

#### **Or Define contract of sale.(2016)**

**Ans.** 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. When one person transfers the ownership of goods to another for the consideration of a price, a sale is said to have been made. A contract of sale may be absolute or conditional.

As according to Section 5(1) of the Sale of Goods Act, 1930, 'A contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.

According to Section 5(2) of the Sale of Goods Act, 1930, A contract of sale may be made in writing or by word of mouth or partly in writing and partly by word of mouth.'

A contract of sale may be affected in any of the following ways:

1. There may be immediate delivery of the goods.
  2. There may be immediate payment of price but it is agreed that delivery is to be made at some future date.
  3. There may be immediate delivery of the goods and also the immediate payment of price.
  4. It is agreed that the delivery or payment or both are to be made in instalments.
  5. It is also agreed that the delivery or payment or both are to be made at some future date.
- So, the contract may provide for the immediate delivery of goods or immediate payment of price or both.

### **Q.3. Discuss the essential characteristics of a contract of sale of goods.**

**Ans.** The essential characteristics of a contract of sale of goods include:

**1. Two Parties:** The first essential is that there must be two distinct parties to a contract of sale, i.e. a buyer and a seller.

**(a) A buyer:** Buyer means a person who buys or agrees to buy goods.

**(b) A Seller:** Seller means a person who sells or agrees to sell goods.

**2. Transfer of Property:** 'Property' here means 'ownership'. Transfer of property in the goods is another essential for a contract of sale of goods. A mere transfer of possession of the goods cannot be termed as sale. To constitute a contract of sale the seller must either transfer or agree to danc property in the goods to the buyer.

**3. Goods:** The subject-matter of the contract of sale must be goods. 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 farming part of the land which are agreed to be served before sale or under the contract of sale.

**4. Price:** The consideration for a contract of sale must be money consideration called the price if goods are sold or exchanged for other goods.

**5. Includes Both a 'Sale' and 'an Agreement to Sell':** The term contract of sale is a generic term and includes both a 'sale' and 'an agreement to sell.

**(a) Sale:** Where under a contract of sale, the property in the goods is immediately transferred at the time of making the contract from the seller to the buyer, then a contract is called a sale.

**(b) An Agreement to Sell:** Where under a contract of sale, the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.

**6. No Formalities to be Observed:** The sale of goods act does not prescribe any particular form to constitute a valid contract of sale. A contract of sale of goods can be made by mere offer and acceptance. The offer may be made either by the seller or the buyer and some must be accepted by the other.

#### **Q.4. What is the difference between sale and agreement to sell?**

**Ans.** In sale, the transfer of ownership of goods is immediate but it takes place at a later date in an 'agreement to sell. The differences are:

1. The execution is complete in a sale but execution is yet to take place, i.e. the contract is executory.

2. In sale, the ownership of goods is transferred to the buyer at the time the contract is made but the ownership of goods is not transferred at the time of contract in agreement to sell.

3. The buyer has the right to use the goods he buys in sale but in agreement to sell, it is only a contract between the buyer and the seller. 4. The seller is required to deliver the goods to official receiver of the buyer in case of latter's insolvency in sale but if the buyer is declared insolvent for making the payment for goods the seller has the right to refuse to deliver the goods in agreement to sell.

5. Unless there is a contract to the contrary, any loss or damage to the goods is the buyer's but this damage or loss to goods is the seller's in agreement to sell.

#### **Q.5. What are the different types of goods?**

**Ans. Types of Goods:** 'Goods' form the subject into the following types:

1. Existing goods, 2. Future goods, 3. Contingent goods.

**1. Existing Goods:** Goods which are physically in existence and which are in seller's ownership and/ or possession, at the time of entering the contract of sale are called 'existing goods' where seller is the owner, he has the general property in them. Where seller is in possession say, as an agent or a pledgee, he has a right to sell them. There are two types of existing goods:

**(a) Specific Goods:** Goods identified and agreed upon at the time of making of the contract of sale are called specific goods'. It may be noted that in actual practice the term 'ascertained goods is used in the same sense as 'specific goods.

**For example:** A agrees to sell to B a particular radio bearing a distinctive number, there is a contract of sale of specific or ascertained goods.

**(b) Unascertained Goods:** The goods which are not separately identified or ascertained at the time of the making of a contract are known as unascertained goods. They are indicated or defined only by description.

**2. Future Goods:** Goods to be manufactured, produced or acquired by the seller after the making of the contract of sale are called 'future goods'.

**For example;** A agrees to sell to B all the milk that his cow may yield during the coming year then, this is a contract for the sale of future goods.

**3. Contingent Goods:** Goods, the acquisition of which by the seller depends upon an uncertain contingency are called 'contingent goods'. Obviously they are the types of future goods and therefore a contract for the sale of contingent goods also operates as an agreement to sell and not a 'sale' so far as the question of passing of property to the buyer is concerned.

**For example;** A agrees to sell to B a specific rare painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

**Q.6. What is the meaning of 'perishing' of goods under the 'Sale of Goods Act'? What is the effect of perishing of goods on a contract of sale?**

**Ans. Perishing or Destruction:** The word perishing means not only physical destruction of the goods but it also covers:

1. Damage to goods so that the goods have ceased to exist in the commercial sense.

2. Loss of goods by theft.

3. Where the goods have been lawfully requisitioned by the government.

**Effect of Destruction of Goods:** The effect of destruction of goods may be discussed under the following heads:

**1. Destruction of Specific Goods at or Before Making of the Contract:** This may again be divided into the following sub-heads:

**(a) In Case of Destruction of the whole of the Goods:** Where specific goods from the subject-matter of a contract of sale and they, without the knowledge of the seller, are destroyed at or before the time of the contract, then the agreement is void.

**(b) In Case of Destruction of only 'a Part of the Goods:** Where in a contract for the sale of specific goods, only part of the goods are destroyed or damaged, the effect of destruction will depend upon whether the contract is entire or divisible.

**2. Destruction of Specific Goods before Sale but after Agreement to Sell:** This situation amounts to a supervening impossibility as a result of which the promisor seller is in no position to perform the contract. The Contract, therefore, becomes void.

**3. Destruction of Future Goods:** If the future goods specific, the destruction of such goods will amount to supervening impossibility and the contract shall become void.

**Q.7. State the difference between "Conditions" and "Warranties"**

**Ans.** The points of distinction between a condition and a warranty may be summed up as under:

**1. As to value:** A condition is a stipulation which is essential to the main purpose of the contract whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

**2. AS TO Breach:** The breach of a condition gives the aggrieved party contract and also a claim damages, whereas the breach of warranty gives the aggrieved party the right to repudiate the contract and also a claim damages, whereas the breach of warranty gives the aggrieved party a right to claim damages only.

**3. As to Treatment:** A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

**Q.8. Under what circumstances a breach of condition is to be treated as a breach of warranty?**

Ans. As stipulated under Sec. 13 of the Sale of Goods Act, 1930 in the following cases, a contract is not avoided even on account of a breach of a condition. These are:

**1. voluntary Waiver of Condition:** Where a contract of sale is subject to any condition to fulfilled by the seller, the buyer may:

(a) Waive the condition.

(b) Elect to treat the breach of the condition as a breach of warranty.

If the buyer once decides to waive the condition, he cannot afterwards insist on its fulfilment.

**2. Acceptance of Goods by Buyer:** Where a contract of sale is not severable and the buyer has accepted the goods or part thereof the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to the contrary.

**3. Conversion of Condition into Warranty:** As was stated above, the buyer may choose to treat the condition in the contract as a warranty only and demand damages for the loss suffered on account of violation of condition while continuing with the contract.

**Q.9. Discuss in detail the implied warranties.**

**Or Explain the implied warranties in a 'Contract of sale.'(2015)**

Ans. Unless otherwise agreed, the law also incorporates into a contract of sale of goods the following implied warranties:

**1. Warranty of Quiet Possession:** In every contract of sale, the first implied warranty on the part of the seller is that 'the buyer shall have and enjoy quiet possession of the goods'. If the quiet possession of the buyer is in any way disturbed by a person having a superior right than that of the seller, the buyer can claim damages from the seller.

**2. Warranty of Freedom from Encumbrances:** The second implied warranty on the part of the seller is that 'the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made'. If the goods are afterwards found to be subject to a charge and the buyer has to discharge the same, there is breach of warranty and the buyer is entitled to damages.

**3. Warranty of Disclosing the Dangerous Nature of Goods to the Ignorant Buyer:** The third implied warranty on the part of the seller is that in case the goods sold are of dangerous nature he will warn the ignorant buyer about the probable danger. If there is breach of this warranty the buyer is entitled to claim compensation for injury caused to him.

**Q.10. NemeDet Quod Non Habet (No one can give who possess not). Comment giving exception if any to this rule with suitable examples.**

**Or What are the exceptions to the transfer of title by non-owners?**

Ans. NemeDet Quod Non Habet means No one can give a better title than what he himself has if the seller has not title or he has defective title the buyer's title will be equally defective though he has purchased in good faith and for value.

To this rule, there are exceptions under which a non-owner may confer a good title on the transferee. These exceptions are as follows:

**1. Sale by a Mercantile Agent:** If a mercantile agent with the consent of owner sells the goods in the ordinary course of business, the buyer gets a good title to the goods provided he buys them in good faith.

**2. Sale by a Joint Owner:** Any purchases from the joint owners for value without notice at that time of the seller's want of authority to sell acquires a good title against other joint owners.

**3. Sale by a Person in Possession Under a Voidable Contract:** A person who has obtained possession of goods can convey a good title provided the sale takes place before the voidable contract is avoided.

4. Sale by a Seller in Possession of Goods After Sale: Such a person will pass a good title to the transferee if such latter person is a bonafide purchaser for value and without notice of the previous sale.

5. Sale by An Unpaid Seller: An unpaid seller resell the goods and convey a valid title to another buyer though no notice of resale has been given to the original buyer.

6. Sale by a Buyer in Possession of Goods: Sale by such a person is valid and effective if the person receiving the same acted bonafide and without notice of the seller's lie, if any.

**Q.11. What do you mean by performance of contract of sales? Explain delivery of goods.**

**Ans.** Performance of contract of sales implies the delivery of goods by the seller and acceptance of the delivery of goods and payment for them by the buyer in accordance with the contract.

According to Section 2(2) of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. It is the voluntary transfer of the possession of goods from seller to buyer and there is no delivery if the transfer of possession of goods is not voluntary.

Delivery has the effect of putting the buyer in possession of the goods so that he acquire the position of exercising degree of control over the goods either directly or through the representatives. Such a delivery may be made by doing anything that the parties agree shall be treated as delivery and by doing anything that has affect of putting goods into the buyer's or the authorised agent's possession. This delivery may occur in any of these modes:

**1. Actual Delivery:** Here, the goods are handed over by the seller to the buyer or his duly authorised agent. Such a delivery may also be made by doing anything that has effect of putting the goods in the possession of the buyer.

**2. Symbolic Delivery:** Delivery is symbolic where some symbol of the real possession is handed over to the buyer.

**3. Constructive Delivery:** Here, a person who is in possession of the goods acknowledges holding of the goods on behalf of the buyer.

**Q.12. What are the unpaid seller's rights against the buyer? Ans. Right of Unpaid Seller Against the Buyer:** These are the rights that and unpaid seller enforce against the buyer personally. Such rights of the seller against the buyer are called rights in personam as against the against the rights in rem, i.e. right against the goods.

These rights are:

**1. Suit for the Price:** Here, the property in the go neglected or refused to pay for the goods according to the terms of the contract that the seller may sue for the price of goods.

So, according to Section 55, if the ownership of goods has been transferred to the buyer and he refuses to make the payment for the goods the seller has the right that he can fill a suit against the buyer.

**2. Suit for Damages:** According to Section 56. if the buyer refuses to accept the good in making the payment for them with a malafide intention or refuses to accept the goods or to pay for the same, the seller has got the right to file a suit against the buyer for such damages, i.e damages for non-acceptance.

**3. Repudiation of Contract before Due Date:** According to Section 60, if the buyer repudiates the contract before the due date for the delivery of goods and the seller does not accept the repudiation and waits for the due date to make the delivery, he reserves the right to sue the buyer for repudiating the contract

**4. Suit for Interest:** According to Section 61(2)(a) Where there is specific agreement between the buyer as to interest on the price of the goods from the date on which payment becomes

Due, the seller may recover interest from the buyer. If there is no specific agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

**Q.13. What is the difference between ‘Right of lien’ and ‘Right of stoppage-in-transit’?**

**Ans. Difference between ‘Right of Lien’ and ‘Right of Stoppage-in-transit’**

S.No.	Basis of difference	Right of lien	Right of stoppage-in-transit
1.	Possession of goods	The goods must be in actual possession of the seller.	The goods must be in the possession of a carrier or other bailee who is acting as an independent person.
2.	Solvency	The right can be exercised even when the buyer is solvent but refuses to pay the price.	The right can be exercised only when the buyer has become insolvent.
3.	End commencement delivery to carrier	The right comes to an end when the seller delivers the goods to a carrier.	This right commences only when the seller delivers the goods to a carrier.
4.	Purpose	The purpose of this right is to retain possession of the goods.	The purpose of this right is to regain the possession of the goods.
5.	Mode of exercising the right	This right can be exercised by the seller himself.	This right can be exercised by the seller through the carrier or the other bailee.

**Q.14. What do you understand by sale by auction?**

**Or Explain sale by auction.(2016)**

**Ans. Sale by Auction:** It is a public sale where the goods are offered to be sold to the buyer who offers the highest price for the goods or makes the highest bid. The person inviting the bid is called the auctioneer who acts as an agent of the seller.

Sale by auction is a public proceeding in which the auctioneer invites the prospective buyers to compete for the purchase of goods that is being auctioned by giving successive offers of the price they are willing and are ready to pay for the goods. Salient features of an auction are:

1. The auctioneer invites the prospective buyers to make a bid for the goods being auctioned.
2. Invitation to bid is made in a public gathering.
3. Description of goods being auctioned is announced prior to the auction,
4. Offers made by the prospective buyers are done by bidding.
5. Auctioneer makes contract of sale with highest bidder

Rules regulating the sales by auction are as under:

(a) In Section 64(1), if the goods offered for sale are in lots, each lot is deemed to be the subject-matter of a contract of sale.

(b) According to section 64(2), the sale is deemed to be complete when the auctioneer announces its completion by the fall of a hammer.

(c) According to section 64(3), the right to bid may be reserved expressly by or on behalf of seller.

(d) According to section 64(4), Where the sale is not notified to be subject to a right to bid by the seller, it will be deemed to be a fraudulent act.

(e) According to Section 64(5), an announcement may be made before the auction about the reserved or upset price of the goods.

(f) According to Section 64(6), if the seller makes use of pretended bidding, the buyer reserves the right to repudiate the sale.