

Scope of the Act

Contract of sale of goods is a contract whereby the seller transfers or ~~off~~ 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.

Under contract of sale, the property in goods is immediately transferred from the seller to the buyer. Suppose that today X has sold 100 bags of wheat to Y in consideration of a price of Rs 7000/- per bag. It is a contract of sale since the ownership of 100 bags of wheat has been transferred from X to Y for Rs 70,000.

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. 'Seller' means

a person who sells or agrees to sell goods.

② Goods:- There must be some goods. Goods means every kind of movable property other than actionable claims and money includes stock & 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.

③ Transfer of property :- property means the general property in goods, and not merely a special property. 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.

④ Price - There must be a price. Price here means the money consideration for a sale of goods. 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.

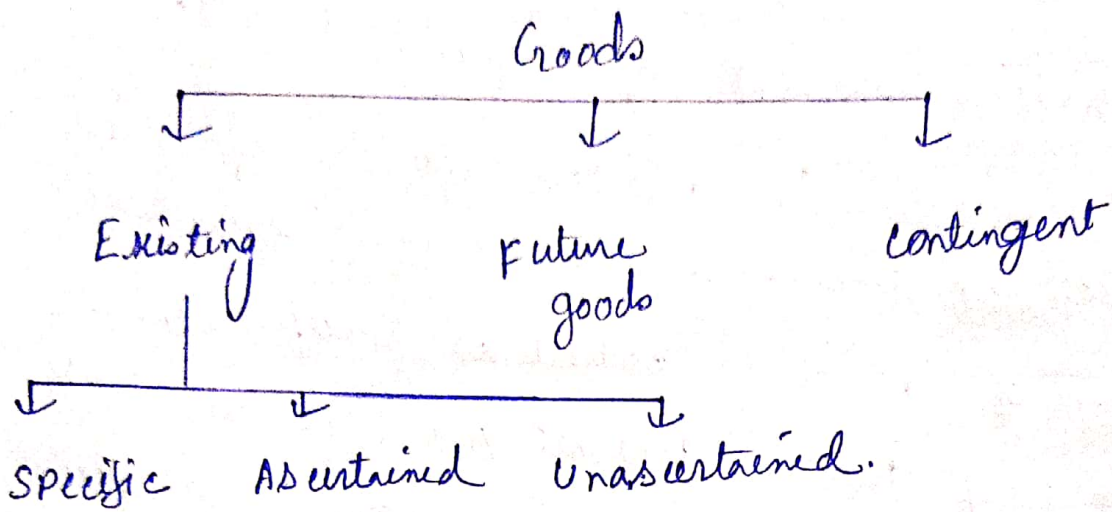
### Meaning and types of goods: ⇒

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

Goods means every kind of movable property other than actionable claims and money, and includes the following:

- Stock and share
- Growing crops, grass and thing attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

## Types of Goods.



(1) Existing goods existing goods means 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 [Sec 2(14)]  
These are the goods which are identified and agreed upon at the time when a contract of sale is made for. eg - specified TV, VCR, car, Ring.



① Ascertained Goods :- Goods are said to be ascertained when out of a mass of unascertained goods, the quantity contracted for is identified and set aside for a given contract.

② 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.

③ Future Goods [Sec 2(6)] Future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

④ Contingent Goods [Sec 6(2)] These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.  
[Sec 6(2)] - Ex -

- (a) A agrees to sell is a specific rare printing provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

## Difference between sale and Agreement to sell.

### Sale

- ① ownership passes to the buyer
- ② It is a executed contract
- ③ Risk of loss falls on the buyer.
- ④ Seller cannot resell the goods.
- ⑤ It can be in case of existing and specific goods.

### Agreement to sell

- ownership remains with the seller.
- It is a executory contract.
- Risk of loss falls on the seller.
- Seller can sell goods to third party.
- It can be in case of future and unascertained goods.



## Conditions and Warranties

### Meaning of condition :-

A condition is a stipulation

- (a) which is essential to the main purpose of the contract.
- (b) The breach of which gives the aggrieved party a right to terminate the contract.
  - It goes to the root of the contract.
  - Its non-fulfillment upsets the very basis of the contract.

Sec 12(2) of Sale of Goods Act, 1930 has defined condition as -

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated."

## Warranty

• It is a stipulation collateral to the main purpose of the contract.

• It is of secondary importance

• If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.

Sec 12(3) of Sale of Goods Act, 1930 has defined warranty as:

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to only claim for damages but not to a right to reject the goods or treat the contract as repudiated"



## Distinction between 'condition and Warranty'

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Condition	Warranty
<p>① A condition is a stipulation which is essential to the main purpose of the contract</p>	<p>① A warranty is a stipulation, which is only collateral or subsidiary to the main purpose of the contract.</p>
<p>② A breach of condition gives the aggrieved party a right to sue for damages as well as the right to repudiate the contract.</p>	<p>② A breach of warranty gives only the right to sue for damages. The contract cannot be repudiated.</p>
<p>③ A breach of condition may be treated as a breach of warranty in certain circumstances.</p>	<p>③ A breach of warranty cannot be treated as a breach of contract.</p>

Express and implied conditions and warranties

- conditions and warranties may be either express or implied.
- They are said to be express when they are expressly provided by the parties.
- They are said to be implied when the law deems their existence in the contract even without their actually having been put in the contract sec (14 to 17).

### Doctrine of CAVEAT EMPTOR

- CAVEAT EMPTOR is a fundamental principle of the law of sale of goods.
- It means 'caution Buyer' i.e. 'Let the buyer beware.'
- It is the duty of the buyer to be careful while purchasing goods of his requirement and in the absence of the enquiry from the buyer, the seller is not bound to disclose every defect in the goods of which he may be cognizant.



The principle of caveat emptor applies in case of purchase of specific goods where he can use his own judgement and can buy goods in his own responsibility. eg. - purchase of a painting. ~~The~~

The doctrine of caveat emptor has certain exceptions which are as follows:-

- (a) Implied condition as to quality or fitness for buyer's purpose
- (b) Merchantable quality of goods.
- (c) Goods sold by description.
- (d) Goods purchased under brand name.
- (e) Sale by sample
- (f) Usage of trade.
- (g) Fraud or misrepresentation by the seller.

Solved question on Doctrine of Caveat

Emptor.

Q. While selling mangoes to A, the seller B did not mention that these mangoes will not ripen. This meant A could not make ice cream

for his restaurant the next day. Is the seller at fault?

Ans: ⇒ NO, the seller is not at fault. A did not mention his reason for buying the mangoes. Here the rule of 'let the buyer beware' will apply.

### Transfer of property or ownership.

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer property in goods to the buyer for a price. There are three stages in the performance of a contract of sale by the seller which are as follows —

- (a) Transfer of property in goods.
- (b) delivery of goods or transfer of possession of goods
- (c) The passing of the risk.

It is very important to know the exact moment of time as to when the ownership or property in goods passes from the seller to the buyer for the following reasons.



- (i) Risk of the property
- (ii) Insolvency
- (iii) Damages
- (iv) Suit for price.

### Performance of Contract of Sale.

Performance of the contract of sale means the delivery of goods to the buyer. The seller promises to deliver the goods while the buyer promises to pay for the goods and to accept the delivery of goods.

(i) Delivery of goods:- Delivery means voluntary transfer of possession of goods from one person to another [Section 2(2)]. Thus it is the voluntary transfer of the possession of goods from seller to buyer. If the transfer of possession of goods. Delivery may be of following types.

- (a) Actual delivery
- (b) Symbolic delivery.

(c) constructive delivery.

(2) Rules regarding delivery of goods.

(a) Mode of delivery.

(b) Delivery of goods and payment of price are concurrent conditions.

(c) effect of part delivery of goods

(d) buyer to apply for delivery.

(e) place of delivery of goods.

(f) Risk of delivery.

(g) Time of delivery.

(h) Goods in possession of a third person or party.

(i) cost of delivery of goods.

~~(j)~~



## Rights of Unpaid Seller and Remedial measures

A Seller is deemed to be an unpaid seller within the meaning of this Act, when (a) the whole of the price has not been paid or tendered. (b) the bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

### (1) Rights of an unpaid seller and Remedial measures.

Under the Sale of Goods Act, the unpaid seller gets certain rights which can be broadly classified under the following two heads:-

- (A) Rights against goods and
- (B) Rights against the buyer personally.

### (2) Rights of an unpaid seller against the goods.

#### (A) Rights of lien [Section 47 to 49]

A lien is a right to retain the possession of goods until the payment of



the price of such goods. If the seller loses the possession of the goods, he also loses the rights of lien. Rights of lien is available to the unpaid seller who is in possession of goods where (a) the goods have been sold without any stipulation as to credit (b) the goods have been already sold on credit but the term of credit is expired, (c) the buyer has become insolvent.

- (i) Termination of lien (Sec 49)
- (ii) Rights of Stoppage of goods in transit.
- (iii) Duration of transit (Sec 51)
- (iv) How Stoppage in transit is affected [Sec 52]

(B) Effect of Pledge or sub sale by the buyer [Sec 53]

(C) Rights of resale [Sec 54]

(D) Right to withhold the deliver of goods [Sec 46(2)]

(3) Rights of an unpaid seller against the buyer personally.

(4) Sale by Auction [Sec 64]