

## Sale of Goods Act, 1930

This act came into force on July 1, 1930 and applies to whole of India except Jammu and Kashmir.

**Meaning of Contract of Sale:** According to section 4(1) “ a contract of sale is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price”.

### **Explanation:**

- 1) **Contract of sale must have two parties a seller and a buyer.** A person cannot enter into a contract of sale with himself.
- 2) **Goods:** Under this act goods mean only movable goods. Immovable property doesn't fall within the scope of this act. Shares, stocks, debentures fall within the meaning of goods within this act. Standing crops which are to be separated from the land before the contract of sale is completed also fall within the meaning of goods under this act. Goodwill, trademarks, patents also fall within the meaning of goods under this act. However money, and actionable claims do not fall within the meaning of goods. Money means, money which is currently in circulation, while old coins and currency will be considered as goods.
- 3) **Transfer of Ownership:** The purpose of contract of sale is the transfer of ownership of goods from seller to the buyer. If the goods are handed by one party to another for some other purpose and not with an object of transferring the ownership, then it is not a contract of sale of goods.
- 4) **Price:** For a contract of sale of goods it is also essential that the transfer of ownership of the goods is made for a price. If the ownership of goods is transferred without any consideration, then it is a contract of gift and not a contract of sale of goods. Not only this

the price must be paid in money in circulation. If the goods are exchanged for goods it is a barter contract and not a contract for sale of goods. However where the goods are exchanged partly for goods and partly for money, then it is a contract of sale of goods.

5) **Contract of sale can be either in the form of Sale or Agreement to sell.**

At the time when the contract is entered into if the ownership is transferred immediately by the seller to the buyer it is sale. If the seller at the time of contract only promises to transfer the ownership of the goods later on, it is an agreement to sell.

**Difference between Sale and Agreement to Sell**

| Basis of Difference            | Sale  | Agreement to sale  |
|--------------------------------|---|--|
| Transfer of ownership          | Ownership is transferred immediately when the contract is made  | Ownership is to be transferred later on and not transferred immediately when the contract is made                                  |
| Nature of Contract             | It is an executed contract  | It is an executory contract  |
| Nature of Rights               | Buyer gets right in <i>rem</i> in respect of the goods.   | Buyer gets right in personam against the buyer.  |
| Goods                          | Specific goods and ascertained goods can be the subject matter of sale. Unascertained goods cannot be subject matter of sale. | Specific, ascertained, and unascertained goods can be subject matter of agreement to sell.   |
| Risk of loss                   | The risk of loss of goods passes with the ownership and after the contract the buyer has to bear this risk.                   | Seller has to bear this risk irrespective of the fact whether the goods are in possession of the seller, buyer or any third party. |
| Buyer failure to pay the price | If the buyer fails to pay the price, the seller can file a suit against him for recovery of the price.                        | If the buyer fails to pay the price, the seller can only file a suit against him for damages.                                      |

|                                      |  |  |
|--------------------------------------|--|--|
| Seller failures to deliver the goods | If the seller fails to deliver the goods the buyer can request the court to recover the goods for him.   | If the seller fails to deliver the goods the buyer can only ask for damages.   |
| Right of resale                      | The buyer has the right to resell the goods as he is the owner of the goods after contract of sale.  | The seller has the right to resell the goods because even after the contract, he is the owner of the goods.  |
| Insolvency of Buyer                  | If the buyer becomes insolvent and is therefore unable to pay the full price , still the seller will have to give the goods to the official receiver of the buyer, | If the buyer becomes insolvent and is therefore unable to pay the full price , the seller can refuse to give the goods to the official receiver of the buyer,  |
| Insolvency of the seller             | The official receiver of the seller will be liable to handover the goods to the buyer because buyer has already become the owner of the goods before insolvency.   | The official receiver of the seller will not deliver the goods to the buyer because the goods were under the ownership of seller when he was declared insolvent. Even if the buyer has paid the full price already , he will only be entitled to recover the amount proportionately. |

### **Kinds of Goods:**

Goods can be of the following kinds:

- 1) Existing Goods
- 2) Future Goods
- 3) Contingent Goods

**Existing Goods:** Goods which physically exist and are under the ownership of the seller at the time when the contract of sale is made are called existing goods. Existing goods can further be of following types:

- 1) **Specific Goods:** The goods which are specifically identified at the time of formation of the contract for sale of goods are called specific goods. In case of specific goods the contract of sale is in respect of only those goods and the same goods are to be delivered by the seller to the buyer and not the similar one.
- 2) **Ascertained goods:** The goods which are identified and agreed upon after the formation of contract of sale of goods are called ascertained goods.
- 3) **Unascertained goods:** The goods which are not identified and agreed upon at the time when the contract of sale is made are called unascertained goods.

**Future Goods:** The goods which are to be produced, manufactured or acquired by the seller after the contract of sale is made are called future goods.

**Contingent Goods:** The acquisition of which is dependent upon happening or non-happening of some future event are called contingent goods. Example: The agreement by the seller to sell the goods if the goods reach safely at his destination is a contract of sale of contingent goods.

### **Effect of Perishing of goods on contract of sale:**

- 1) **Specific Goods perishing before contract of sale:** If the contract of sale is in respect of specific goods and they have already perished or damaged before the contract but the seller had no knowledge of this, the contract of sale is void.
- 2) **Specific Goods perishing after agreement to sale but before contract of sale:** If the specific goods perish or are damaged without the fault of either the seller or the buyer after the agreement to sell but before the contract of sale, the contract becomes void.

**Fixation of Price:** For the fixation of price following rules apply:

- 1) Price is fixed by the mutual consent of buyer and seller.
- 2) Price maybe fixed by the course of dealings between the buyer and the seller. Course of dealings means the old history of transactions between the buyer and the seller. Therefore, if it is agreed between

the buyer or the seller that the goods will be sold at a discount of 5% from the list price, then the price will be determined accordingly.

- 3) Price may be fixed according to the manner provided in the contract. For example, if it is agreed that the price will be charged as prevailing on the date of delivery then the price on that date will be the price at which the goods will be sold.
- 4) If the price is not fixed under any of the three above, then the buyer will have to pay to the seller a reasonable price.
- 5) Fixation of price by the third party. If according to the terms and conditions of contract of sale, the price is to be fixed by the third party then whatever price the third party fixes will be the price. If the third party refuses to fix the price, the contract becomes void. However, if the third party refuses to fix the price because of fault of any party then the party not in fault can file a suit for damages against the other party, If the price is not fixed by the third party and the goods are already delivered or consumed by the buyer then the buyer will have to pay a reasonable price.

### **Stipulation of Time in a contract of sale of Goods**

- 1) **Stipulation relating to time of delivery of goods:** Stipulation relating to time of delivery of goods is considered essential for the contract and therefore if the goods are not delivered by the seller to the buyer in time, the buyer can later on refuse to accept the goods.
- 2) **Stipulation regarding time of payment of price:** In a contract of sale, stipulation regarding time of payment of price is important but not essential. Therefore if the buyer fails to pay the price, the contract of sale will remain valid though the seller can claim damages for delayed payment of price.