

SYNOPSIS

Goods

Property

Delivery

Price

Document of title to goods

Goods

Every kind of movable property, other than actionable claims and money, shall be goods.

2(7): "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 forming part of the land which are agreed to be severed before sale or under the contract of sale;

The Sale of Goods Act, 1930 governs only contracts for the sale of goods, so this definition fixes the scope of the Act. Goods means movable property of every kind, tangible or intangible. Immovable property (land, buildings, things permanently attached to land) is outside the Act and is governed by the Transfer of Property Act, 1882.

Expressly excluded:

- **Actionable claims** — a claim to an unsecured debt, or to a beneficial interest in movable property not in the claimant's possession (s. 3, Transfer of Property Act, 1882). Example: a book debt of ₹1 lakh owed to A by a customer is an actionable claim, not goods; it is transferred by assignment, not sale of goods.
- **Money** — legal tender in circulation. But old or rare coins sold as collectors' items are goods, because they are bought as commodities, not as currency.

Expressly included:

- **Stock and shares** — movable property, though intangible. A sale of 100 shares of a company is a sale of goods.

~~~~~

- **Growing crops and grass** — a standing wheat crop sold to be harvested by the buyer is goods.
- **Things attached to or forming part of the land, agreed to be severed before sale or under the contract** — trees sold to be felled and carried away are goods; the land on which they stand is not.

**Other recognised examples:** electricity, water, gas, computer software in marketable form, and import licences have been held to be goods.

- Electricity is goods, because it can be transmitted, transferred, delivered, stored and possessed like any other movable property. [*Commissioner of Sales Tax v. Madhya Pradesh Electricity Board*, AIR 1970 SC 732]
- Standing trees sold under a contract to be cut and removed are goods. [*Badri Prasad v. State of Madhya Pradesh*, AIR 1970 SC 706]
- Freely transferable import licences (REP licences) are goods, and their transfer is a sale of goods. [*Vikas Sales Corporation v. Commissioner of Commercial Taxes*, (1996) 4 SCC 433]
- Canned (off-the-shelf) software sold on a medium is goods. [*Tata Consultancy Services v. State of Andhra Pradesh*, (2005) 1 SCC 308]
- Lottery tickets are actionable claims, not goods. [*Sunrise Associates v. Govt. of NCT of Delhi*, (2006) 5 SCC 603]

**The kind of goods decides when ownership passes, who bears the risk of loss, and what happens if the goods perish.**

The Act classifies goods by whether the seller has them when the contract is made: existing goods (specific, ascertained or unascertained) and future goods, of which contingent goods are a kind. “Ascertained” and “unascertained” are not defined in the Act but are used in ss. 18 and 19.

**Existing goods — Section 6(1)**

**Goods owned or possessed by the seller at the time of the contract shall be existing goods.**

~~~~~

~~~~~

The goods which form the subject of a contract of sale may be existing goods, owned or possessed by the seller, or future goods (s. 6(1)). “Owned” covers a seller who is the owner; “possessed” covers a seller who sells with authority but is not the owner, such as an agent, a pledgee or a finder selling lawfully. Existing goods are further divided into three kinds.

### Specific goods — Section 2(14)

**Goods identified and agreed upon at the time the contract of sale is made shall be specific goods.**

The exact goods to be delivered are fixed at the moment of the contract; no other goods will do. Example: C agrees to buy a particular car bearing a particular chassis number in a showroom. Property in specific goods passes when the parties intend (s. 19), and, unless otherwise intended, on the making of the contract if the goods are in a deliverable state (s. 20).

### Ascertained goods

**Goods identified and agreed upon after the contract of sale is made shall be ascertained goods.**

The term is not defined in the Act, but is used in ss. 18 and 19. Goods begin as unascertained and become ascertained when the particular goods are separated from the bulk and identified as the goods to be delivered, for instance by weighing, packing or marking them. Example: from 1,000 bags of rice, 100 bags are weighed out and labelled for the buyer. After ascertainment they are treated like specific goods for the passing of property (s. 19).

### Unascertained or generic goods

**Goods described only by kind, quality or quantity and not identified at the time of the contract shall be unascertained goods.**

The seller may meet the contract with any goods answering the description. Example: “100 bags of rice out of the 1,000 bags in my godown”, or “one new car of model X” from a dealer’s stock. No property passes in unascertained goods until they are ascertained (s. 18).

### Future goods — Section 2(6)

~~~~~

~~~~~

**Goods to be manufactured, produced or acquired by the seller after the contract of sale is made shall be future goods.**

The seller neither owns nor possesses the goods when the contract is made. They are of three kinds:

- **To be manufactured** — a carpenter agrees on 1 October to make and deliver a dining table by 1 November.
- **To be produced** — a farmer agrees to sell the mangoes his orchard will yield next summer.
- **To be acquired** — a dealer agrees to sell a car he will import next month.

### **Contingent goods — Section 6(2)**

**Goods whose acquisition by the seller depends upon a contingency which may or may not happen shall be contingent goods.**

Contingent goods are a kind of future goods: the seller's ability to deliver depends on an uncertain event. Example: A agrees to sell B a particular painting if A succeeds in buying it at next week's auction. If A fails to buy it, the contract becomes void and A is not liable, since the contingency has failed (s. 32, Indian Contract Act, 1872).

## **Property**

**"Property" in the Sale of Goods Act shall mean the general property in goods, that is, full ownership, and not a mere special or limited interest in them.**

Section 2(11) of the Sale of Goods Act, 1930 defines what the Act means each time it speaks of "property" passing from seller to buyer, as in ss. 4, 18 and 19. It means the general property, which is the full ownership of the goods, together with the right to use them, transfer them and dispose of them. It does not mean a special property, which is a limited interest that someone holds in goods owned by another. A pledgee (pawnee) holding goods as security for a loan, or a bailee such as a repairer holding goods under a lien, has a special property. Because a sale is a transfer of property in goods for a price (s. 4(1)), a transaction is a sale only if general property,

~~~~~

~~~~~  
meaning ownership, is transferred. A transaction that creates only a special property is a pledge or bailment, governed by the Indian Contract Act, 1872. For example, A pledges his gold watch with B, a moneylender, as security for a loan of ₹20,000. B gets possession and a special property in the watch: he may keep it until he is repaid, and on default he may sell it after giving reasonable notice. A still holds the general property, so this is not a sale. If A later sells the watch to C for ₹50,000, A transfers the general property to C, and that is a sale under the Act. C takes the watch subject to B's special property and must clear the loan before taking possession.

## Delivery

**Delivery shall mean only a voluntary transfer of possession from one person to another.**

Section 2(2) of the Sale of Goods Act, 1930 defines delivery by two elements. First, there must be a transfer of possession: control over the goods must move from one person to another, such as from seller to buyer, or to someone holding for the buyer. Delivery transfers possession, not ownership. Under the Act these are separate: property may pass before delivery (s. 20), and a buyer may receive the goods while the seller still owns them. Second, the transfer must be voluntary: the person giving possession must do so willingly. Goods taken by theft, force, fraud on the holder or without the holder's consent are not delivered, even if they end up with the buyer. The Act does not require physical handing over. Under s. 33, delivery may be made by anything the parties agree to treat as delivery, or by anything that puts the goods in the possession of the buyer or a person authorised by the buyer. Delivery can therefore take three forms:

- **Actual delivery:** the goods are physically handed over.
- **Symbolic delivery:** something that gives control is handed over, such as the keys to a godown or a railway receipt.
- **Constructive delivery (attornment):** a third party holding the goods, such as a warehouseman, acknowledges to the buyer that he now holds them on the buyer's behalf.

**Example:** S sells 100 bags of rice stored in his godown to B. S may deliver by loading the bags onto B's truck (actual delivery). He may instead hand B the godown keys so B can remove the rice when he wishes (symbolic

~~~~~

BL 3.1.1n Definitions

~~~~~  
delivery). If the rice is in a warehouse run by W, and W confirms to B that he now holds it for B, that is constructive delivery. But if B takes the rice from the godown at night without S's consent, there is no delivery, because the transfer of possession was not voluntary. B cannot rely on it as delivery under the contract, even if he has paid the price.

## Price

**The consideration for a sale of goods shall be money.**

2(10): "price" means the money consideration for a sale of goods;

Section 2(10) of the Sale of Goods Act, 1930 defines "price" as the money consideration for a sale of goods. This definition is central to the Act, because a contract of sale exists only where the seller transfers, or agrees to transfer, property in goods to the buyer "for a price" (s. 4(1)). The consideration must therefore be expressed and paid in money. If goods are exchanged only for other goods, the transaction is a barter or exchange, not a sale, and falls outside the Act. Similarly, a transfer of goods for services, or without any consideration (a gift), is not a sale. Money here means legal tender, and payment may be made through accepted modes such as cash, cheque, draft or bank transfer. Where the consideration is partly money and partly goods, courts have generally treated the transaction as a sale, for example where an old article is traded in and the balance is paid in cash. The price may be fixed by the contract, left to be fixed in an agreed manner, or determined by the course of dealing between the parties. Where none of these applies, the buyer must pay a reasonable price (s. 9). The price may also be left to a third party's valuation (s. 10). For example, if A agrees to sell his bicycle to B for ₹5,000, the consideration is money and the contract is a sale governed by the Act. But if A gives his bicycle to B in exchange for B's sewing machine, no money passes, so there is no "price" and the transaction is a barter, not a sale. If A instead gives his old bicycle plus ₹3,000 to a dealer for a new one, money forms part of the consideration, and the transaction is ordinarily treated as a sale.

## Document of title to goods

**A document used in the ordinary course of business as proof of possession or control of goods, or that enables its holder to transfer or**

~~~~~

~~~~~  
**receive those goods by endorsement or delivery, shall be a document of title to goods.**

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimode transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

Section 2(4) of the Sale of Goods Act, 1930 defines a document of title to goods. The definition is inclusive. It names common examples: a bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, multimodal transport document, and a warrant or order for the delivery of goods. It then adds a general test so that any other document can qualify if it meets it. A document qualifies if, in the ordinary course of business, it is used either (i) as proof that the holder possesses or controls the goods, or (ii) to authorise, or appear to authorise, the holder to transfer or receive the goods it represents, simply by endorsing or handing over the document. The document therefore stands in for the goods themselves. While the goods are with a carrier or warehouse keeper, the owner can sell or pledge them just by dealing with the paper, without physically delivering the goods. The definition matters because several provisions give special effect to transferring such a document:

- A buyer or seller in possession can pass good title to a bona fide purchaser by transferring the document (s. 30).
- A seller can reserve the right of disposal by keeping the document (s. 25).
- The unpaid seller's lien and right of stoppage in transit are defeated once the document is lawfully transferred to a person who buys in good faith and for consideration (s. 53(1)).
- Under the Indian Contract Act, 1872, a mercantile agent or a seller or buyer in possession can validly pledge goods by pledging the document (ss. 178 and 178A).

~~~~~

A document that only records a transaction, such as a cash memo or an ordinary receipt, is not a document of title, because it is not used in trade to transfer or receive the goods.

For example, A, a cotton dealer in Mumbai, ships 100 bales by sea to B in Kolkata and receives a bill of lading from the shipping company. While the ship is still at sea, A endorses and delivers the bill of lading to B. B can now claim the bales from the carrier on arrival. B can also sell them to C mid-voyage just by endorsing the bill of lading to C, without the bales ever being physically handed over. Similarly, if goods are sent by rail and the railway receipt is pledged with a bank as security for a loan, the bank gets control of the goods, because only the holder of the receipt can take delivery from the railway.

“Document showing title” — distinction

A document of title to goods and a document showing title are different in nature and effect. A document of title, defined in s. 2(4) of the Sale of Goods Act, 1930, represents the goods themselves. Whoever lawfully holds it controls the goods and can transfer or receive them simply by endorsing or delivering the document. A document showing title is not a term the Act defines; textbooks use it for ordinary documents that only prove ownership of goods or that a transaction took place, such as a cash memo, sale invoice, purchase receipt or bill of sale. The first answers the question "who can deal with or take delivery of the goods?", while the second only answers "who owns the goods?"

The difference shows most clearly in transferability and legal effect. A document of title is usually issued by a bailee who holds the goods, such as a carrier, warehouse keeper or wharfinger. Endorsing or delivering it passes control of the goods to the transferee, who can then claim them from the bailee. The holder does not even need to be the owner; a bank holding a railway receipt as a pledgee, for instance, controls the goods without owning them. The law also gives such documents special effects. Transferring one to a good-faith buyer for value can defeat the unpaid seller's lien and right of stoppage in transit (s. 53). A seller or buyer left in possession can pass good title through it (s. 30). A seller can reserve the right of disposal by keeping it (s. 25). It can also be validly pledged (Indian Contract Act, 1872, ss. 178

~~~~~

~~~~~  
and 178A). A document showing title has none of these effects. Handing it to another person passes neither the goods nor any power over them; it remains only evidence of ownership.

For example, X buys 50 bags of rice from Y and receives a cash memo, then stores the rice in a warehouse and gets a warehouse receipt. The cash memo is a document showing title: it proves X bought and owns the rice, but if X gives it to Z, Z cannot collect the rice from the warehouse. The warehouse receipt is a document of title: if X endorses and delivers it to Z, Z can collect the rice. If Z buys in good faith and for value, Z can also get good title through it, even where the seller's own rights were limited.