

SYNOPSIS

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4. Sale and agreement to sell

4.1 A contract of sale of goods shall be a contract by which the seller transfers, or agrees to transfer, the property in goods to the buyer for a price, and such a contract may be made between one part-owner and another.

Section 4(1) of the Sale of Goods Act, 1930 defines the contract of sale of goods and sets out its essential elements. There must be two parties, a seller and a buyer (s. 2(1) and (13)); the subject matter must be goods, meaning movable property other than actionable claims and money (s. 2(7)); the consideration must be a price, meaning money (s. 2(10)), so that an exchange of goods for goods is barter, not sale; and the object must be the transfer of property, meaning ownership (s. 2(11)), not merely possession, so that a hire or pledge is not a sale. The words "transfers or agrees to transfer" show that the term "contract of sale" covers two forms: a sale, where ownership passes at once, and an agreement to sell, where ownership is to pass at a future time or on the fulfilment of a condition (s. 4(3)). The second sentence clarifies that a person who owns goods jointly with another may sell his share to that co-owner, so that the buyer becomes sole owner. For example, J and K jointly own a delivery van in equal shares. J agrees to transfer his half-share to K for ₹3 lakh. This is a valid contract of sale between part-owners, and when property in J's share passes, K becomes the sole owner of the van. If, instead, J had agreed to give his share to K in exchange for K's motorcycle, there would be no price in money, and the transaction would be a barter, not a sale under s. 4(1).

4.2 A contract of sale may be made either absolute or conditional.

Section 4(2) of the Sale of Goods Act, 1930 recognises that parties may make a contract of sale in either of two forms. An absolute contract is one that is unconditional: the transfer of ownership and the parties' obligations do not depend on any uncertain event, so where property passes at once it is a sale. A conditional contract is one in which the transfer of ownership, or the performance of the contract, depends on the fulfilment of some condition, such as payment of the full price, approval of the goods by the buyer, or the goods reaching a certain standard. Under s. 4(3), where property is to pass at a future time or on fulfilment of a condition, the contract is an agreement to sell, and under s. 4(4) it becomes a sale when that time elapses or that condition is fulfilled. The distinction matters because, until the condition is satisfied, the seller remains owner and generally bears the risk (s. 26), and the buyer's remedy for non-performance is a claim for damages rather than a claim to the goods as owner. For example, if J sells his bicycle to K for ₹10,000 and K pays and takes it away, the contract is absolute and K becomes owner at once. But if J agrees to sell the bicycle to K on the condition that it passes a mechanic's inspection, the contract is conditional: ownership passes to K only when the bicycle passes that inspection, and until then it remains J's.

4.3 A contract of sale shall be a sale where property in the goods passes to the buyer at once, and an agreement to sell where it is to pass at a future time or on the fulfilment of a condition.

Section 4(3) of the Sale of Goods Act, 1930 divides every contract of sale into two kinds according to when ownership is transferred. If the contract itself transfers ownership to the buyer, it is a sale: an executed contract, under which the buyer becomes owner immediately, even if payment or delivery comes later. If ownership is to pass only later, either on a future date or when some condition is met (such as payment of the price, the goods being made ready, or the goods coming into existence), it is an agreement to sell: an executory contract, which is only a promise to transfer ownership. Under s. 4(4), an agreement to sell becomes a sale when that time arrives or the condition is fulfilled. The distinction has practical consequences. Since risk generally follows ownership (s. 26), in a sale loss of the goods falls on the buyer, while in an agreement to sell it falls on the seller. In a sale, if the buyer fails to pay, the seller can sue for the price (s. 55); in an agreement to

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sell, the seller can generally sue only for damages for non-acceptance (s. 56). And if the seller becomes insolvent, a buyer under a sale can claim the goods as owner, while a buyer under an agreement to sell has only a claim for refund or damages. For example, J buys a specific laptop from K's shop for ₹60,000, agreeing to pay and collect it tomorrow. Since ownership passes immediately, this is a sale, and if the laptop is stolen from the shop overnight without K's fault, the loss is J's. But if J and K agree that the laptop will become J's only after J pays the price next week, the contract is an agreement to sell; the laptop remains K's, at K's risk, until J pays, at which point the agreement to sell becomes a sale.

#### **4.4 An agreement to sell shall become a sale when the agreed time elapses or the agreed conditions are fulfilled.**

This is Section 4(4) of the Sale of Goods Act, 1930. A contract of sale is either a sale or an agreement to sell (s. 4(1)). Under s. 4(3), where property in the goods passes to the buyer at once, it is a sale; where it is to pass at a future time or on fulfilment of some condition, it is an agreement to sell. Section 4(4) provides that an agreement to sell is not a permanent state: it automatically turns into a sale when the agreed time arrives or the agreed condition is met, without any fresh contract. At that moment ownership passes to the buyer. The change matters because, in general, risk passes with ownership (s. 26). The seller's remedies also change: under a sale, the seller may usually sue for the price (s. 55), whereas under an unperformed agreement to sell, the seller generally has only a claim for damages for non-acceptance (s. 56). Similarly, under a sale the buyer, as owner, may claim the goods themselves, whereas under an agreement to sell the buyer has only a personal claim against the seller. For example, J agrees on 1 March to sell his car to K for ₹4 lakh, and they agree that ownership will pass on 1 April. Until 1 April, it is an agreement to sell, and J remains owner. On 1 April the agreement becomes a sale and K becomes owner automatically. Likewise, if J agrees to sell the car on condition that he first gets it repainted, the agreement becomes a sale as soon as the repainting is done; if the car is destroyed by accident before that, the loss is J's, as the agreement had not yet become a sale.

#### **5. Contract of sale how made**

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5.1 A contract of sale shall be made by an offer to buy or sell goods for a price and the acceptance of that offer.

Section 5(1) of the Sale of Goods Act, 1930 states how a contract of sale comes into existence and gives the parties freedom over the timing of delivery and payment. Like any other contract, a sale requires an offer by one party, either to sell or to buy, and an unconditional acceptance by the other; the general rules on offer, acceptance and valid contracts in the Indian Contract Act, 1872 continue to apply, as they are not inconsistent with this Act (s. 3). The offer must relate to goods, meaning movable property other than actionable claims and money (s. 2(7)), and must be for a price, meaning consideration in money (s. 2(10)); an exchange of goods for other goods is barter, not sale. Once the offer is accepted, the contract is complete, and the parties may then arrange performance as they wish: delivery and payment may both be immediate (as in an ordinary shop purchase), either may be immediate and the other postponed, both may be postponed to a future date, or either or both may be made in instalments. The timing of delivery or payment does not affect the existence of the contract; it only fixes how the contract is to be performed. For example, J offers to sell his laptop to K for ₹30,000, and K accepts, agreeing to pay ₹10,000 now and the balance in two monthly instalments, with J handing over the laptop at once. A valid contract of sale is made on K's acceptance, even though the price is to be paid in instalments. Equally, if K had accepted on the terms that the laptop would be delivered next week and paid for on delivery, the contract would still be complete on acceptance, with both delivery and payment simply postponed.

5.2 A contract of sale may be made in any form — in writing, orally, partly in writing and partly orally, or by conduct.

Section 5(2) of the Sale of Goods Act, 1930 makes clear that no particular form is required for a contract for the sale of goods. Once there is an offer to buy or sell goods for a price and its acceptance (s. 5(1)), the contract is valid whether the terms are set down in a written document, agreed by spoken words, settled partly in writing and partly orally, or inferred from what the parties do without any words at all. A contract implied from conduct arises where the parties' actions clearly show that they have agreed to buy and sell, even though neither has expressly said so. This reflects the practical reality

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that most everyday sales take place without formal documents. The only limit is the opening phrase "subject to the provisions of any law for the time being in force": if some other law requires a particular kind of sale to be in writing, registered or made in a special form, that requirement must be complied with, and s. 5(2) does not override it. For example, when R asks a shopkeeper for two kilos of onions, the shopkeeper weighs them and names the price, and R pays and takes them, there is a valid oral contract of sale. When S picks a packet of biscuits from a supermarket shelf, places it at the billing counter and pays the displayed price without a word being said, a contract of sale is implied from conduct. And when a company sends a written purchase order for machinery and the supplier accepts it over the telephone, the contract is partly in writing and partly oral, and is equally binding.

6. Existing or future goods

6.1 A contract of sale may be made for existing goods owned or possessed by the seller, or for future goods.

Section 6(1) of the Sale of Goods Act, 1930 identifies the kinds of goods that can be the subject of a contract of sale. The first kind is existing goods, which are in existence when the contract is made and are either owned by the seller (as with a shopkeeper selling his own stock) or possessed by the seller without ownership (as with an agent or pledgee authorised to sell goods belonging to someone else). The second kind is future goods, defined in s. 2(6) as goods to be manufactured, produced or acquired by the seller after the contract is made, such as crops yet to be grown, articles yet to be made, or goods the seller has yet to buy. The provision makes clear that a valid contract can be made even for goods the seller does not yet have. However, since the seller cannot pass ownership of something not yet in existence or not yet his, a contract that purports to sell future goods immediately operates only as an agreement to sell (s. 6(3)), and ownership passes only when the goods come into existence, are acquired by the seller, and are appropriated to the contract (s. 23). For example, J, a furniture dealer, sells K a dining table already in his showroom; this is a sale of existing goods owned by the seller. If J also agrees to supply K with a wardrobe that J's carpenter will make next month, that is a contract for future goods: it is valid, but K becomes owner of the wardrobe only after it

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is made and set aside for him. Likewise, a farmer may validly contract in June to sell the wheat he will harvest in March, as that wheat is future goods to be produced.

**6.2 A contract may be made for the sale of goods whose acquisition by the seller depends on a contingency that may or may not happen.**

Section 6(2) of the Sale of Goods Act, 1930 recognises contingent goods, a class of future goods (s. 6(1)), which the seller does not yet own or possess and whose acquisition depends on an uncertain event. The seller may validly contract to sell such goods even though it is not certain that he will ever obtain them. Because the goods do not yet belong to the seller, the contract cannot transfer ownership at once; under s. 6(3), even where the seller purports to make a present sale of future goods, the contract operates only as an agreement to sell. The contract is thus a contingent contract within the meaning of s. 31 of the Indian Contract Act, 1872: it becomes enforceable only if the contingency happens, and if the event becomes impossible, the contract becomes void (s. 32 of that Act), so the seller is not liable for non-delivery. For example, J agrees to sell to K a specific rare antique clock that J expects to buy at an upcoming auction, if his bid succeeds. The contract is valid as an agreement to sell contingent goods. If J wins the auction and acquires the clock, he must deliver it to K, and failing to do so would be a breach. But if another bidder buys the clock, the contingency has failed, the contract becomes void, and J is not liable to K for non-delivery.

**6.3 A contract purporting to effect a present sale of future goods shall operate only as an agreement to sell.**

Section 6(3) of the Sale of Goods Act, 1930 deals with contracts in which the seller claims to sell, here and now, goods that do not yet exist or that the seller does not yet own. Future goods are goods to be manufactured, produced or acquired by the seller after the contract is made (s. 2(6)). Since the seller cannot transfer ownership of something that does not yet exist or is not yet his, the law does not treat such a contract as a completed sale, whatever words the parties use. It treats it instead as an agreement to sell (s. 4(3)), under which ownership will pass only later, once the goods come into existence or into the seller's hands and the conditions for transfer are met,

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typically on their appropriation to the contract (s. 23). Until then the buyer does not own the goods and bears no risk of their loss, and if the seller fails to deliver, the buyer's remedy is a claim for damages for breach, not a claim to the goods as owner. For example, a farmer agrees in March to "hereby sell" to a trader the entire wheat crop he will harvest from his field in April. Although the contract is worded as a present sale, the crop does not yet exist, so the contract is only an agreement to sell. Ownership of the wheat passes to the trader only after it is harvested and appropriated to the contract; if the crop is destroyed by hail before harvest, the trader owns nothing, and his remedy depends on the contract terms rather than on any right of ownership.

7. Goods perishing before making of contract:

A contract for the sale of specific goods shall be void if, at the time it was made and without the seller's knowledge, the goods had perished or become so damaged as no longer to answer to their description.

Section 7 of the Sale of Goods Act, 1930 deals with the case where the goods that form the subject matter of the contract have ceased to exist, in law, before the contract is made, though neither party knows it. It applies only to specific goods, meaning goods identified and agreed upon at the time of the contract (s. 2(14)), because only then can it be said that the very goods contracted for have perished; a contract for unascertained goods can still be performed from other stock. Three conditions must be met: the goods must be specific; they must have perished, or been so damaged that they are no longer the kind of goods described in the contract, at the time the contract was made; and the seller must not have known this. "Perished" covers not only physical destruction but also a change in the goods' character, such as grain rotting or fermenting so that it is no longer the grain described, and loss by theft may also be treated as perishing. When these conditions are met, the contract is void from the start, since there was never a subject matter capable of being sold; neither party can sue for performance, and any price paid is recoverable. The rule reflects the general principle that an agreement based on a mutual mistake as to a matter of fact essential to it is void (Indian Contract Act, 1872, s. 20). The rule does not apply where the seller knew of the loss; the contract is then not void under s. 7, and the seller may be liable to the buyer for fraud or misrepresentation.

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Loss after the contract is made is covered instead by s. 8. For example, J agrees to sell K a particular consignment of 200 cartons of mangoes stored in a cold storage in Patna, and K pays in advance. Unknown to J, a power failure the previous night had caused the entire consignment to rot. Since the specific goods had already perished when the contract was made and J did not know of it, the contract is void; K cannot demand delivery or damages, but can recover the price paid. If, however, J had known of the loss and still sold the mangoes, s. 7 would not apply, and K could hold J liable for fraud.

8. Goods perishing before sale but after agreement to sell:

An agreement to sell specific goods shall be avoided if the goods, without the fault of either party, perish or are damaged beyond their contract description before the risk passes to the buyer.

Section 8 of the Sale of Goods Act, 1930 deals with goods that are destroyed after an agreement to sell is made but before the sale is completed. It applies only where all of these conditions are met: the contract is an agreement to sell (not a completed sale), so property has not yet passed to the buyer; the goods are specific, that is, identified and agreed upon when the contract is made (s. 2(14)); the goods perish, or are so damaged that they no longer match their description in the agreement; neither seller nor buyer is at fault; and the loss occurs before the risk passes to the buyer, which ordinarily happens when property passes (s. 26). Where these conditions exist, the agreement is avoided: both parties are released from further performance, the seller need not deliver and the buyer need not pay, and any money already paid for goods that are never delivered can be recovered, since the purpose of the contract has failed. The provision is an application of the doctrine of frustration to the sale of goods. It is distinct from s. 7, which renders a contract void where the goods had already perished, without the seller's knowledge, when the contract was made. If the loss is caused by the fault of a party, s. 8 does not apply, and that party is liable for breach. For example, J agrees to sell to K a particular consignment of 200 mangoes kept in J's cold store, with property and risk to pass on delivery next week. Before delivery, an unexpected power failure caused by a storm spoils all the mangoes, without any negligence by J or K. Since the goods were specific, perished without fault, and the risk had not yet passed to K, the agreement is avoided: J need not supply other mangoes, K need not pay,

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and any advance paid by K must be returned. If, however, the mangoes had spoiled because J carelessly switched off the cold store, J would be liable to K for breach.

9. Ascertainment of price:

9.1 The price shall be fixed by the contract, or in the manner the contract provides, or by the course of dealing between the parties.

Section 9(1) of the Sale of Goods Act, 1930 sets out the ways in which the price, which is the money consideration for a sale of goods (s. 2(10)), may be settled. First, the parties may state the price in the contract itself, as a fixed sum or at a rate such as so much per kilogram. Second, the contract may leave the price to be fixed later by an agreed method, for instance by reference to the market rate on the date of delivery or by the valuation of a named third party (the latter being dealt with further in s. 10). Third, where the parties have traded with each other regularly, the price may be determined by their established course of dealing, so that a new order placed without mentioning price is taken to be at the rate they have customarily used. Because price is an essential element of a sale, the provision ensures that a contract is not void for uncertainty merely because no figure is written into it, so long as the price can be worked out by one of these methods. Where none of them applies, s. 9(2) steps in and requires the buyer to pay a reasonable price, which depends on the facts of each case. For example, a restaurant owner, J, has for two years bought vegetables from a wholesaler, K, every week, paying the prevailing mandi rate on the day of supply. One week J phones K and orders 200 kg of onions without discussing price. The contract is valid, and the price is determined by their course of dealing, namely the mandi rate on the day of supply. Had they expressly agreed "₹30 per kg", that fixed price would govern; had they agreed that the price would be the rate published by the local mandi board on the delivery date, the price would be fixed in that agreed manner.

9.2 Where the price is not fixed under the contract, the buyer shall pay the seller a reasonable price.

Section 9(2) of the Sale of Goods Act, 1930 fills a gap that arises when the parties have agreed on a sale but have not settled the price. Under s. 9(1), the price may be fixed by the contract itself, left to be fixed in a manner the

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contract provides, or determined by the course of dealing between the parties. Where none of these methods yields a price, the contract does not fail for uncertainty; instead the law implies an obligation on the buyer to pay a reasonable price. What counts as reasonable is not a fixed formula but a question of fact, decided on the circumstances of each case, such as the market rate at the time and place of sale, the quality and quantity of the goods, any trade usage, and previous dealings between the parties. The rule usually applies where goods have been supplied and accepted without the price being agreed; it cannot be used to override a price the parties have actually fixed, and if the parties intended the price to be agreed later but failed to agree, the question whether a contract exists at all must be considered first. For example, a restaurant owner, J, orders 20 kg of fresh fish from a supplier, K, by phone, and K delivers it without either side mentioning the price or any past rate. J uses the fish but later disputes the bill. Since no price was fixed by the contract, by an agreed method or by past dealing, J must pay a reasonable price, which a court would likely decide by reference to the prevailing wholesale market rate for that fish in the locality on the date of delivery.

## **10. Agreement to sell at valuation**

**10.1 An agreement to sell goods at a price to be fixed by a third party's valuation shall be avoided if the third party cannot or does not make the valuation, but the buyer shall pay a reasonable price for any goods delivered to and appropriated by him.**

Section 10(1) of the Sale of Goods Act, 1930 deals with a particular way of fixing the price. Ordinarily the price may be fixed by the contract itself, left to be fixed in an agreed manner, or determined by the course of dealing between the parties (s. 9(1)). Section 10 covers the case where the parties agree that the price will be fixed by the valuation of a named third party, such as an expert valuer. Since the parties have made that person's valuation the only agreed basis for the price, the agreement depends on it being made. If the third party is unable to value the goods (for instance, because of death, illness or lack of expertise) or simply does not do so, there is no price and no means of fixing one, and the agreement comes to an end. Neither party can then enforce it, and the court will not substitute its own valuation. The proviso prevents unjust enrichment: if the goods, or part of them, have

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already been delivered to the buyer and the buyer has appropriated them (by using, consuming, selling or otherwise treating them as his own), the buyer must pay a reasonable price for them, since he cannot keep the benefit without paying. The provision should be read with s. 10(2), under which, if the third party is prevented from making the valuation through the fault of the seller or the buyer, the party not at fault may sue the other for damages. For example, J agrees to sell his stock of antique furniture to K at a price to be fixed by V, a named antique valuer. Before V inspects the furniture, V dies. The agreement is avoided, and neither J nor K can compel the other to go ahead with the sale. However, if J had already delivered two of the pieces to K, and K had placed them in his showroom and sold one of them, K must pay J a reasonable price for those two pieces.

10.2 A party who prevents the third-party valuer from fixing the price shall be liable in damages to the other party.

Section 10(2) of the Sale of Goods Act, 1930 applies to an agreement to sell goods at a price to be fixed by the valuation of a third party. Under s. 10(1), if that third party cannot or does not make the valuation, the agreement is avoided, because an essential term, the price, is never settled; but if the buyer has already received and appropriated all or part of the goods, he must pay a reasonable price for them. Section 10(2) deals with the case where the valuation fails not by chance but through the fault of the seller or the buyer, for instance by refusing the valuer access to the goods, withholding necessary documents or otherwise obstructing him. In that case the defaulting party cannot escape the bargain without consequence: the innocent party may sue the party at fault for damages for the loss caused by the failure of the contract. The provision rests on the principle that no one may take advantage of his own wrong. For example, J agrees to sell his stock of antique furniture to K at a price to be fixed by V, an independent valuer. Before V can inspect the furniture, J, having received a better offer elsewhere, locks his warehouse and refuses V entry, so no valuation is made. The agreement cannot proceed because the price was never fixed, but since the failure was due to J's fault, K may sue J for damages, such as the extra amount K must pay to buy similar furniture elsewhere. If instead V had simply fallen ill and been unable to value the goods, with no fault on

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either side, the agreement would be avoided under s. 10(1) and neither party could claim damages.