SALE OF GOODS ACT, 1930

- ✓ *Sale of Goods Act came into force from 1st July, 1930.*
- ✓ *The Act does not deal with the sale of immovable goods.*

Section – 1(A) of Sales of Goods Act provides that a 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.

- A contract of sale may be absolute or conditional.
- The term 'contract of sale' comprises of two things, namely –
  a. Sale
  b. Agreement to sell

Sale – where the seller transfers the property in the goods immediately to the buyer, there is a Sale

Agreement to sell – where the transfers of the property in the good is to take place at future time or subject to some condition thereafter to be fulfilled, there is an Agreement to sell.

Characteristics of Contract of sale

(a) There must be two parties, one seller and the other as buyer.
(b) The subject matter must be goods of any kind except immovable goods.
(c) Consideration must be money paid or promised.
(d) Title of the goods must be transferred from seller to buyer.
(e) All essential elements of valid contract must be present in a contract of sale.
(f) It may be express or implied.

Difference between sale and agreement to sale

	Sale	Agreement to Sale
1.	Property in the good passes from seller to buyer at the time contract is made.	**Transfer of property takes place at some further time or until some condition is fulfilled.**
2.	The buyer immediately becomes the owner of the goods and the risk passes to the buyer.	**The seller remains the owner and the risk is with him.**
3.	If the seller becomes insolvent, the buyer is entitled to recover the goods.	**If the buyer has already paid the price and the seller becomes insolvent, the buyer cannot claim the goods.**

4.	**The buyer gets an absolute right of ownership.**	**It creates a right with which only contracting parties are concerned.**

Goods: – *Section – 2(7) of Sale of Goods act defines the term goods*. Goods means the moveable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming a part of land which are agreed to be severed before sale or under the contract of sale.

Goods may be –

1) Specified goods
2) Ascertained goods
3) Unascertained goods

1) **Specified goods** – Goods which have been and agreed upon by the parties at the time of contract of sale are called specified goods.
2) **Ascertained goods** – The goods which are identified only after the formation of the contract of sale are known as Ascertained goods.
3) **Unascertained goods** – Goods which have not been identified or agreed upon by the parties at the time of contract of sale are called unascertained goods. These goods are merely described by the parties at the time of contract of sale.

Fixation of price

Price – *The term Price is defined in the section 2(16) of the Sale of Goods Act, which reads as "price means the money consideration for a sale of goods."*

Thus, the price must be expressed in terms of money.

Section 9 of the Sale of Goods Act provides the following modes for determination of price –

- The price may be expressly fixed by the contract of sale.
- The contract of sale may provide for some manner in which price is to be fixed. In such cases, the price may be fixed in the manner in which it is provided in the contract.
- Sometimes, the customs or usage of trade provides certain principles for the determination of price. In such cases, the prices may be determined from the course of dealing between the parties.

- Where the price is not determined in accordance with the above three modes, the buyer shall pay the seller the reasonable price.

Payment of price

In the absence of an agreement to the contrary, the seller is not bound to accept any kind or payment other than the currency of the country.

Transfer of ownership

The main purpose of the contract of sale is the transfer of ownership of the goods from a seller to a buyer. When the ownership of the goods is transferred to the buyer, he becomes the owner of the goods.

The following points are significant for the transfer of the ownership of the goods –

- When the property has passed to the buyer the risk of destruction or loss of goods falls on buyer not on seller. It is immaterial that the seller is in possession of the goods.
- The seller becomes entitled to recover the price of the goods from the buyer only after the ownership of the goods has been transferred to the buyer.

Rules for Transfer of Ownership

A. Transfer of ownership of specific goods

(i). **When specific goods are to be put in deliverable state** – The rule will be applicable in the case following three conditions are to fulfilled:-

- α It must relate to specific goods.
- α The contract of sale must be unconditional.
- α The goods must be in deliverable state.

(ii). **When the specific is not in the deliverable state** – This rule provides that the ownership in goods will not pass unless 'something' is done in order to put the goods in deliverable state. 'Something' means an act like collecting the goods, serving the goods, or packing or filling them in containers etc.

(iii). **When the goods have to be ascertained for the price or measured or tested etc.** – Where there is contract of sale of goods of specific goods in a deliverable state but the seller is bound to weigh, measure or test the goods or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the ownership does not pass until such act or thing is done and the buyer has given notice thereof.

B. Transfer of ownership of Unascertained goods

Section – 23 of the Sale of Goods Act provides the rule of passing of ownership in case of sale of unascertained goods. These are –

I. **Ascertainment of goods** – The term ascertainment may be defined as the process by which goods are to be delivered under the contract are identified or set apart. It is obvious that ownership cannot be transferred unless the goods are not ascertained.

II. **Delivery to the Carrier** – The general rule is that the delivery of the goods to the carrier in accordance with the terms of the contract of sale is a delivery to the buyer sufficient to pass the title of the goods. The rule will not be applicable if the seller reserves the right of disposal to himself.

III. **When the goods sold on Approval or on sale or return basis** – The ownership in such a case will pass on the following conditions:-

- When the buyer signifies his acceptance or approval to the seller.
- If he does any act which shows him adopting the contract.
- If a time has been fixed for the return of the goods, on the expiration of such time.
- If time has not been fixed, then within a reasonable time.

Reservation of right of disposal by seller

Where the goods are deliverable to a carrier and the bill of loading or the railway receipts are taken in the name of buyer but the seller draws a bill of exchange on the buyer for the price of the goods and sends the same to the buyer along with bill of loading or the railway receipts to secure the payment of the price.

In such cases, the seller is presumed to have reserved the right of disposal and the ownership of the goods is not transferred to the buyer until he accepts the bill of exchange or pays the price of the goods.

If buyer retains the documents accepting the bill of exchange or without paying the price, he cannot claim the delivery of the goods from the carrier as the ownership of the goods has not been transferred. But, as the buyer accepts the bill if exchange or tenders the price of the goods, the ownership is transferred to him.