The Sales of Goods Act-1930, An Introduction

Mercantile Law

MERCANTILE LAWS

- Mercantile laws are the laws that govern and regulate trade and commerce.
- These law deals with rights and obligations of parties to a mercantile agreement.

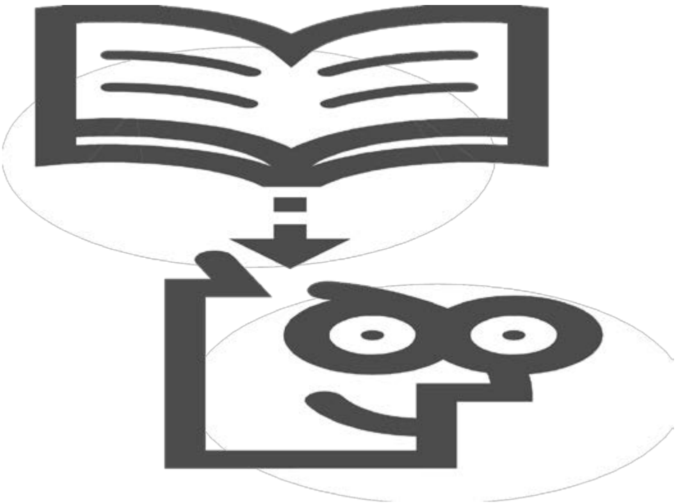
SCOPE OF MERCANTILE LAWS

Indian Mercantile Laws covers various Acts such as :

- The Indian Contract Act,1872.
- The Sales of Goods Act,1930.
- The Partnership Act,1932.
- The Companies Act,1956 .
- Copyright Act,etc.

The Sale of Goods Act,1930

- **Originally,the law relating to the sale of goods or movables was contained in the chapter VII of the Indian Contract Act,1872.**



- **The Indian Contract Act,1872 embodied the simple and elementary rules relating to the sale of goods. The developments of modern business relations found the Indian Contract Act inadequate to deal with the new regulations or give effect to the new principles.**

- **Subsequently the provisions relating to the sale of goods contained in the Indian Contract Act,1872 was repealed and re-enacted by the Sale of Goods Act,1930.**

- **This Act has seen several amendments and adaptation orders in due course.The latest one of such was the Multimodal Transportation of Goods Act,1993.**

Introduction

- **The Sale of Goods Act,1930 was laid down to define and amend the law relating to the sale of goods or movables.The Act came into force on the 1st day of July,1930.It extends to the whole of India except Jammu and Kashmir.**

- **This Act lays down special provisions governing the contract of sale of goods. The general law of contract is also applicable to contracts for the sale of goods unless they are inconsistent with the express provisions of the Sale of Goods Act.**

DEFINITIONS

- **Section 2 of the Sale of Goods Act, 1930 defines the terms which have been frequently used in the Act, which are as follows –**

- ***Buyer and Seller*: ‘Buyer’ means a person who buys or agrees to buy goods [Sub Section (1)]; ‘seller’ means a person who sells or agrees to sell goods [Sub Section (13)].**

- **Goods and other related terms**

(a)"*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; [Sub Section (7)].

(b) *Existing goods* are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller (Section 6).

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

(d) *Specific goods* means goods identified and agreed upon at the time the contract of a sale has been made [Section 2(14)].

(e) *Unascertained' goods* defined only by description and not identified and agreed upon.

(f) *Ascertained goods* have been held to mean goods identified in accordance with the agreement after the contract of sale has been made.

(g) Goods are said to be in a *deliverable state* when they are in such a condition that the buyer would, under contract, be bound to take delivery of them.

- ***Delivery* - its forms and derivatives:**

  Delivery means voluntary transfer of possession by one person to another [(Section 2(2)].

- **Delivery may be of three kinds, which may be enumerated as follows:**

(i) Actual delivery: It is actual when the goods are physically delivered to the buyer.

(ii) Constructive delivery: When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)

(iii) *Symbolic delivery:* **When there is a delivery of a thing in token of a transfer of something else.**

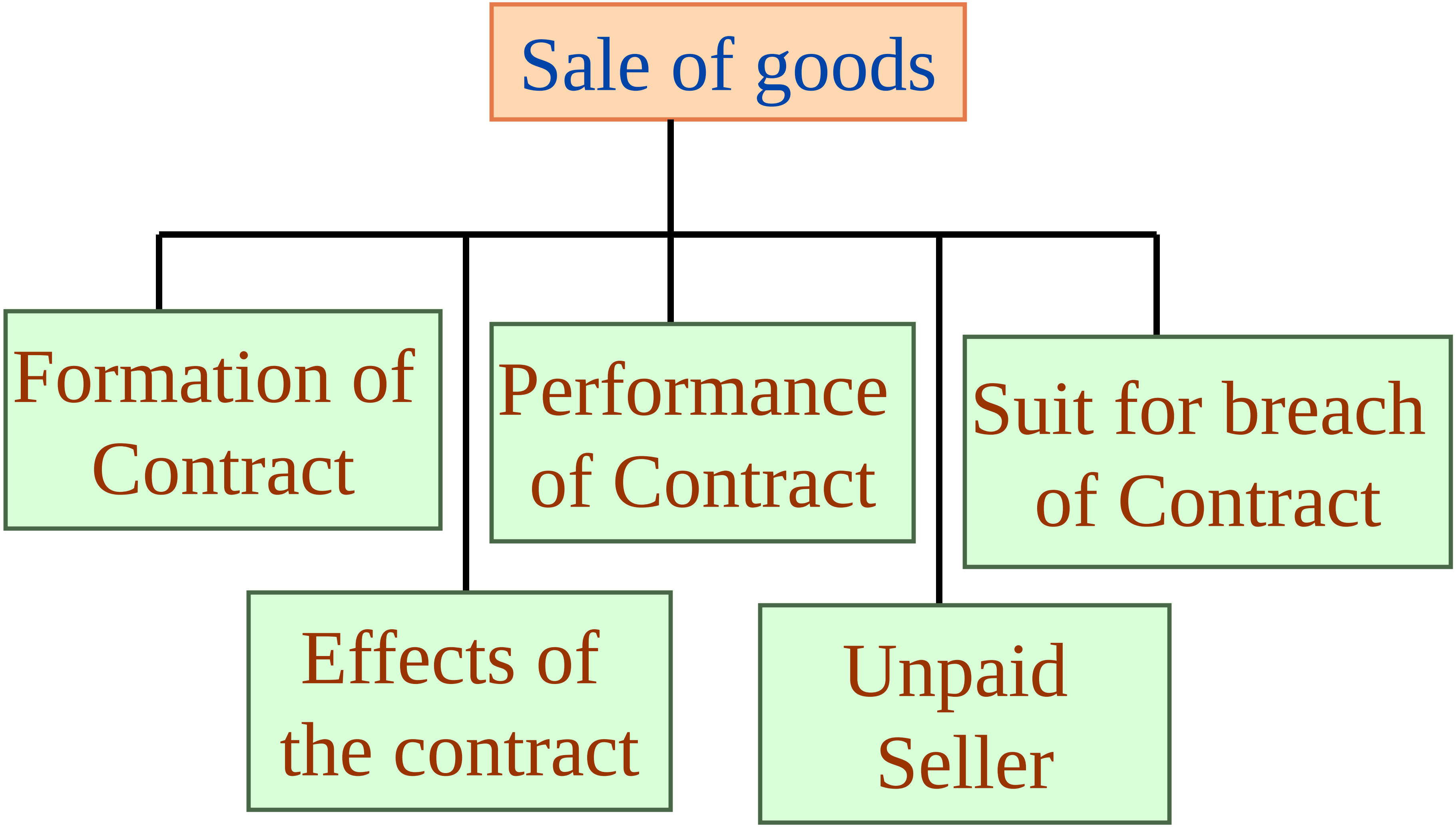
- ***"Document of title to goods"*** **includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document.**

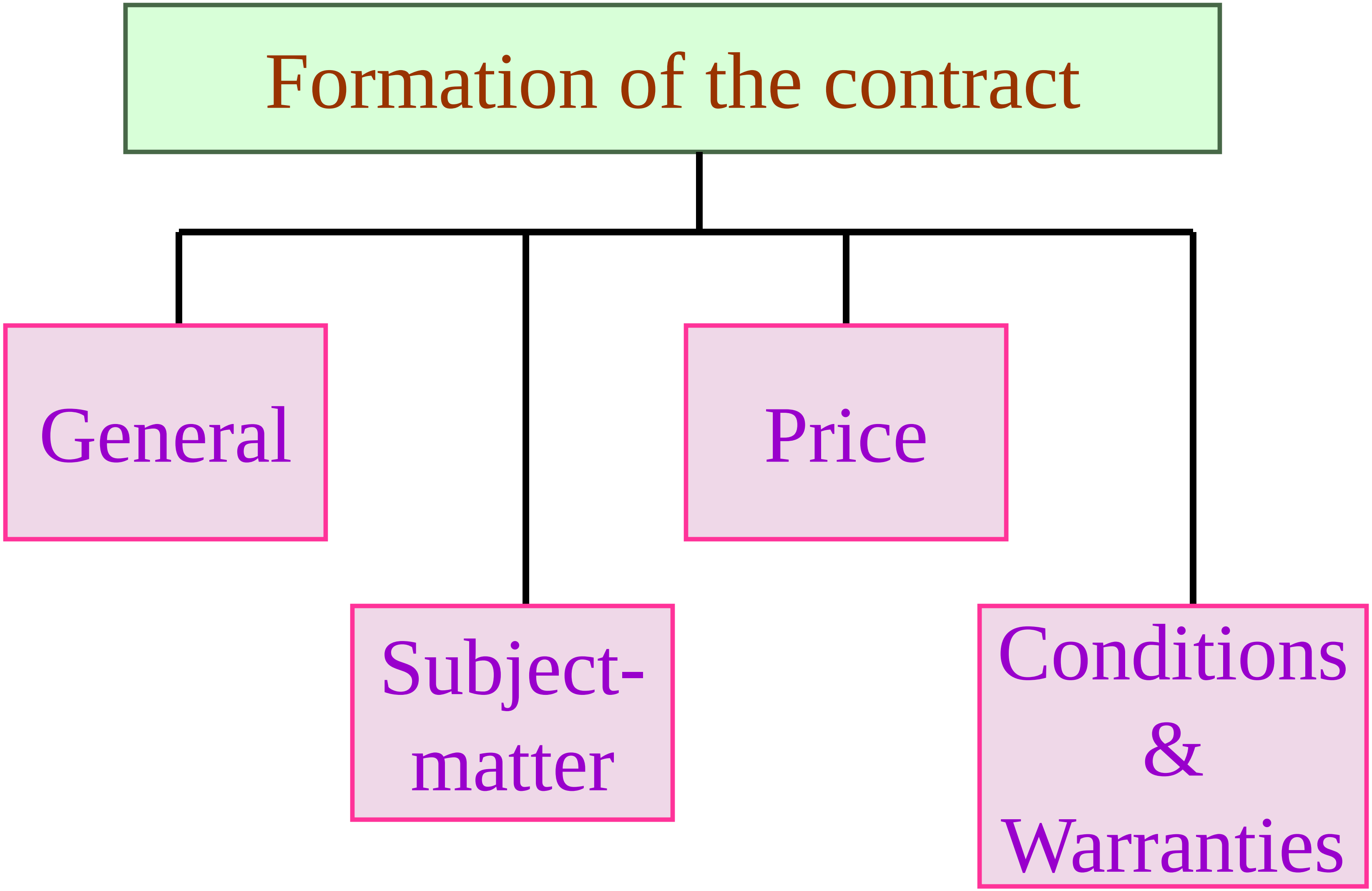
- **It is used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;**

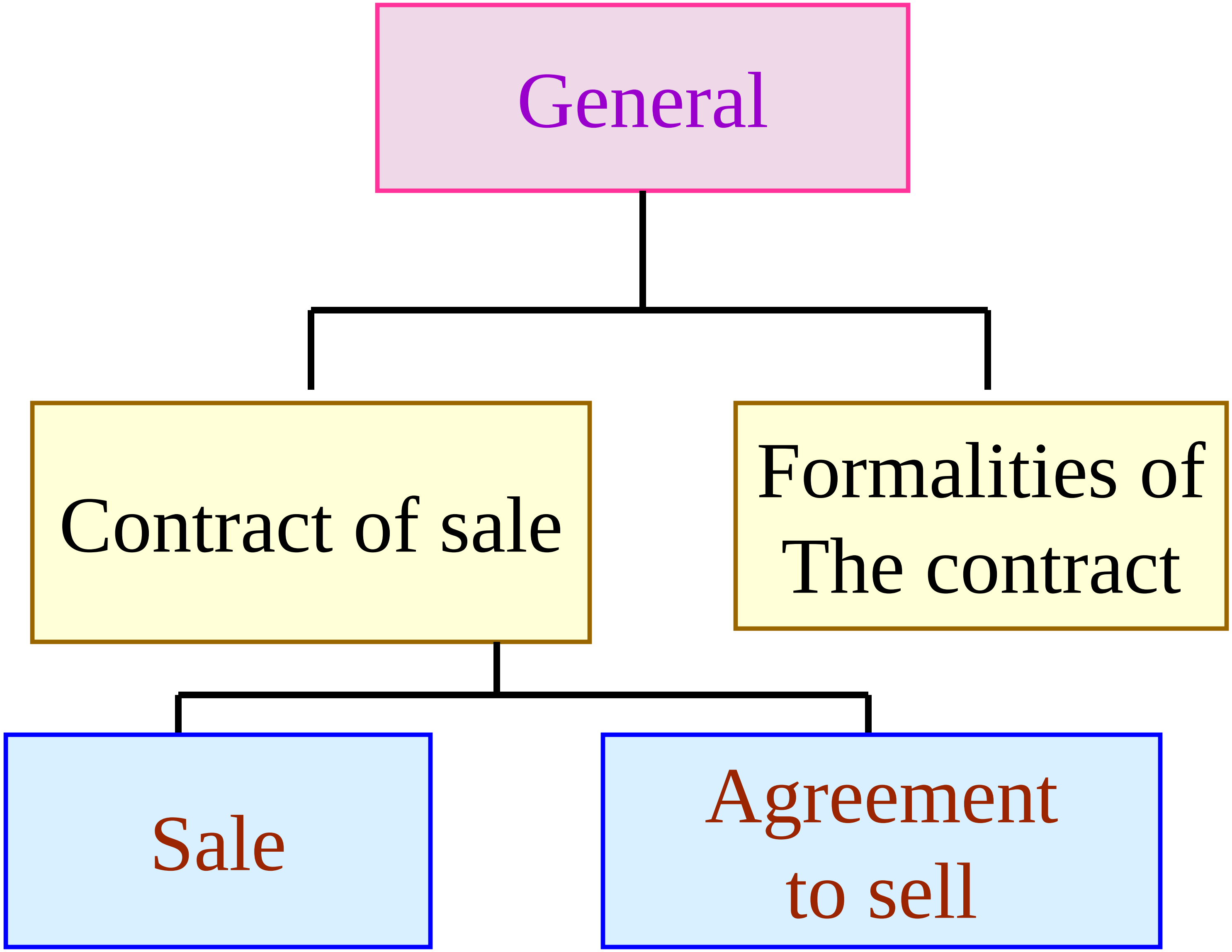
- ***Mercantile Agent* [Sub-section (9)]: It means an agent having in the customary course of business as such agent an authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods**

- ***Property* [Sub-section (11)]: It means the general property (right of owner-ship-in goods) and not merely a special property.**

Flow chart


Sale of goods
Formation of Contract
Performance of Contract
Suit for breach of Contract
Effects of the contract
Unpaid Seller


Formation of the contract
General
Subject-matter
Price
Conditions & Warranties


General
Contract of sale
Formalities of The contract
Sale
Agreement to sell

Subject- matter

- Existing or future goods
- Goods perishing before making of contract
- Goods perishing before sale but after agreement to sell

The Price

- Ascertainment of price
- Agreement to sell at valuation

CONTRACT OF SALE

- **Section 4 (1) of the Sale of Goods Act, 1930 defines the term 'Contract of Sale' as – 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.***

- ***Essentials of contract of sale:-***

(i) There must be at least two parties .

(ii) The subject matter of the contract must be goods.

(iii) price

(iv) transfer of property in goods

(v) absolute or conditional .

(vi) All other essential elements of a valid contract

- **SALE AND AN AGREEMENT TO SELL**

The term Sale is defined in the Section 4(3) of the Sale of Goods Act, 1930 as – "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale."

Example

- **A sells his Yamaha motorcycle to B for Rs.10,000. It is sale since the ownership of the motorcycle has been transferred from A to B.**

- **The term "Agreement to sell" is defined in Section 4(3) of the Sale of Goods Act, 1930, as – where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.**

Example

X agrees with Y on 10th of April that he will sell his house to Y on 10th of May for a sum of Rs.3 lakhs. It is an agreement to sell .Since X agrees to transfer the ownership of his house to Y in future.

Differences

Basis	Sale	Agreement to sell
Nature of Contract	Sale is an executed contract.	Agreement to sell is an executory contract

Basis	Sale	Agreement to sell
Transfer of Owner-ship	Sale gives to the buyer absolute ownership of the goods.	An agreement to sell secure to the buyer only the right against a particular individual.

Basis	Sale	Agreement to sell
Subject matter	Goods may be ascertained or specific	The goods will be unascertained.

Basis	Sale	Agreement to sell
Remedy for breach	In case of breach,the seller can only sue for the price of the goods	In case of breach,the seller can only sue for damages

Sale distinguished from other similar contracts

- **Sale and Hire Purchase:**

The hire purchase contract is a development of modern commercial transactions.Here the owner of goods delivers the goods to a person who agrees to pay certain stipulated periodical payments as hire charges.

Distinction between the 'sale' and 'hire-purchase'

Basis	Sale	Hire purchase
Transfer of ownership	Property in the goods is transferred to the buyer immediately at the time of contract	The goods passes to the hirer upon payment of the last installment.

Basis	Sale	Hire-purchase
Position	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last installment

Basis	Sale	Hire purchase
Terminatio-n	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may,terminate the contract,by returning the goods to its owner without any liability to pay the remaining installment

Sale and Bailment

- **A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned to the bailor or are to be disposed of according to the directions of the bailor.**

Difference

Basis	Sale	Bailment
Transfer of ownership	The property in goods is transferred from the seller to the buyer	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.

Basis	Sale	Bailment
Return of goods	The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.

Basis	Sale	Bailment
Considera-tion	The consideration is the price in terms of money	The consideration may be gratuitous or non-gratuitous

Sale and contract for work and labour

- A contract of sale of goods is one in which some goods are sold or are to be sold for a price. But where no goods are sold, and there is only the doing or rendering of some work of labour, then the contract is only of work and labour and not of sale of goods

Example

- **where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture, even when he himself arranges for all colours etc is a contract for work and labour.**

Formalities of contract of sale

- **Section 5 of the Sale of Goods Act, 1930 lays down the rule as to how a contract of sale may be made and has nothing to do with the transfer or passing of the property in the goods.**

- **A contract of sale may be made in any of the following modes :**

(i) There may be immediate delivery of the goods; or

(ii) There may be immediate payment of price, but it may be agreed that the delivery is to be made at same future date; or

(iii) There may be immediate delivery of the goods and an immediate payment of price; or

(iv) It may be agreed that the delivery or payment or both are to be made in installments; or

(v) It may be agreed that the delivery or payment or both are to be made at some future date.

Subject matter of contract of sale

- **The subject matter of contract of sale is always the goods. This is enshrined in the Sale of Goods Act, 1930 under Sections 6,7 and 8. Thus every type of movable property falls with in the definition of the"goods" given under section2(7)of the Sales of goods.**

- **Goodwill,patents,trademark,copy, rights etc. are considered as movable properties. Though actionable claims and money have been excluded. Money here means current money,but not the rare or old coins which may be treated as goods bought and sold as such.**

Existing or future goods

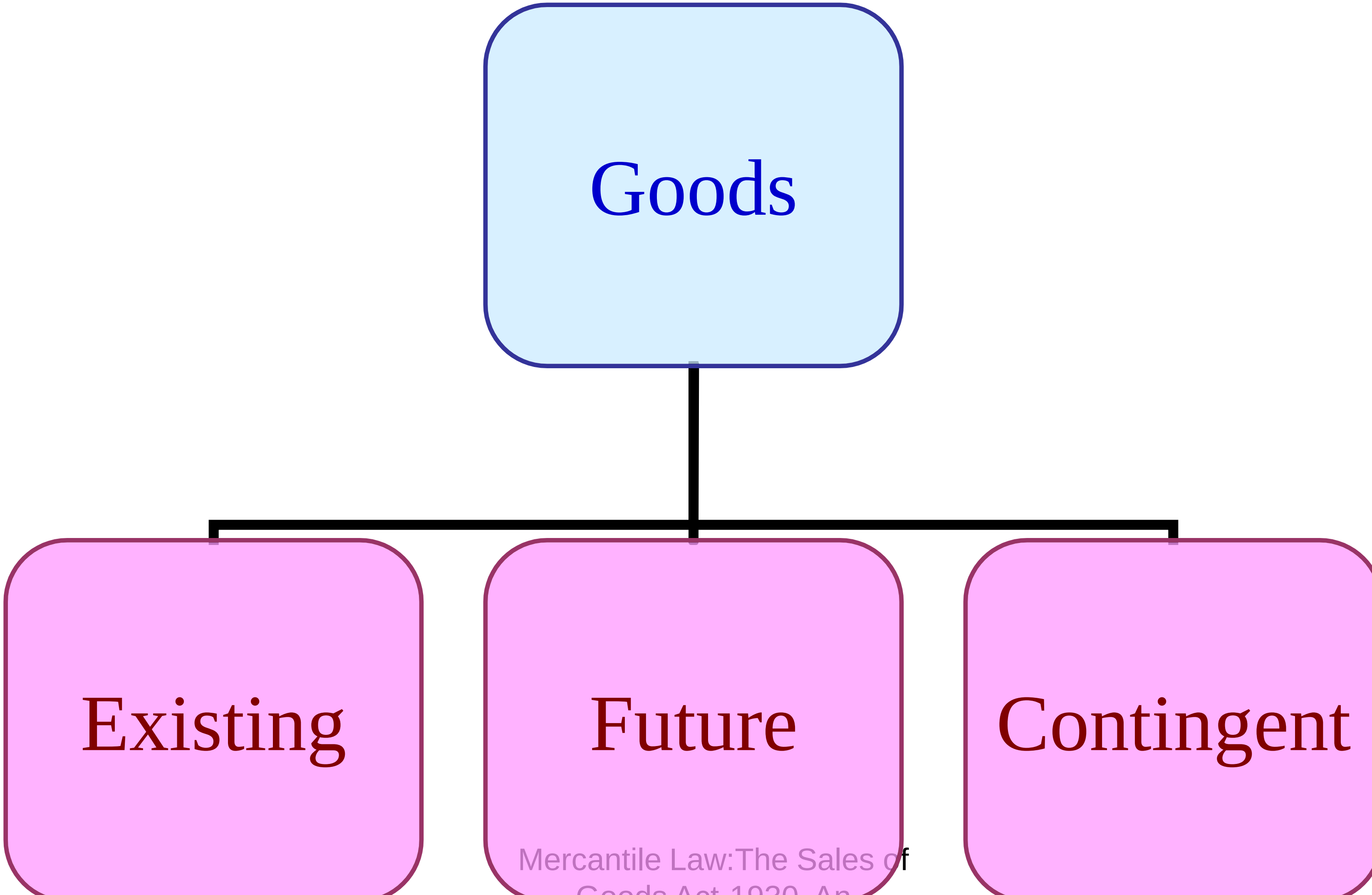
- **The subject matter of contract must always be goods. The goods may be existing or future goods Section 6).**

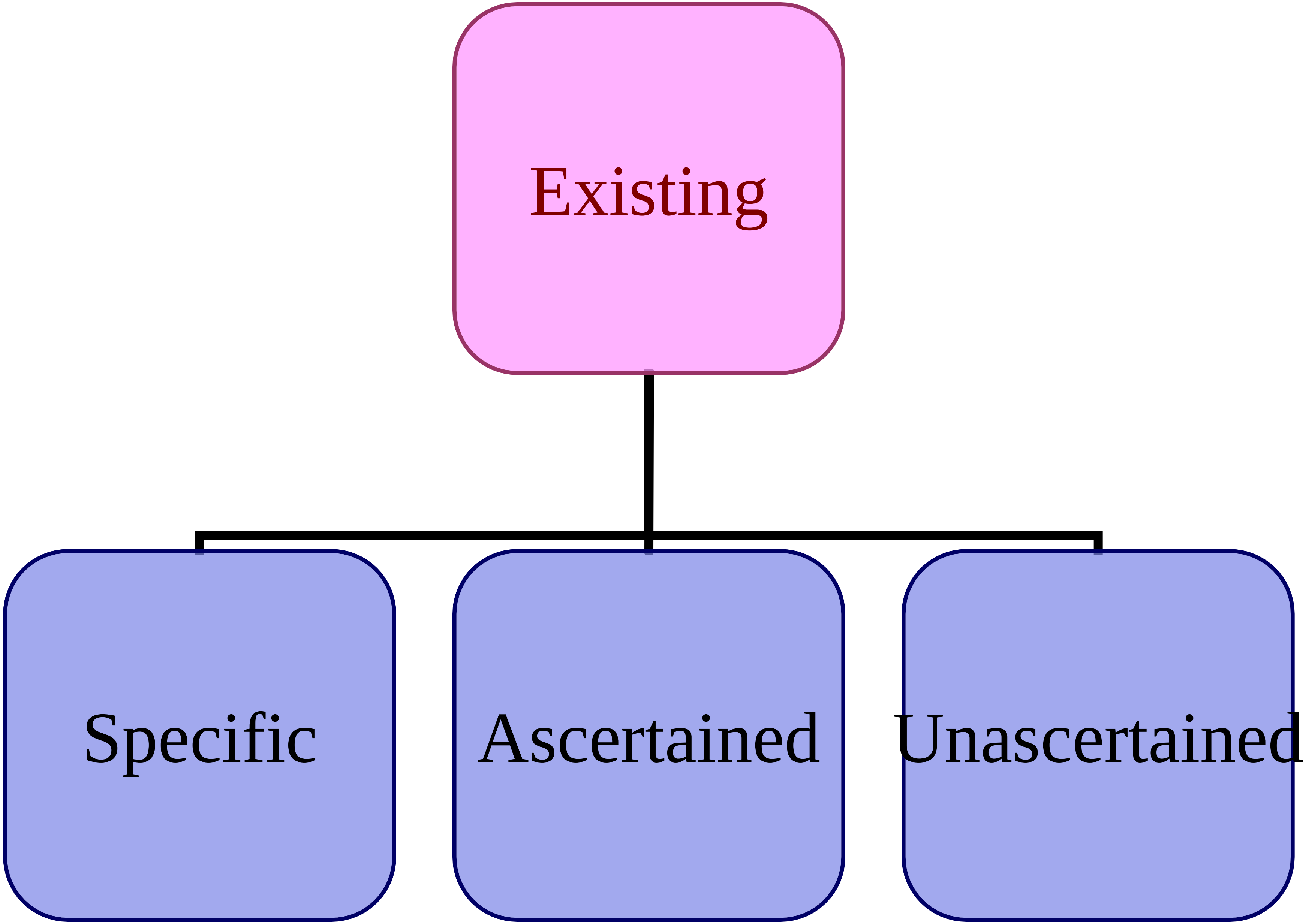
Destruction of subject matter of a contract

(i) Goods *not existing at the time of contract:* **If at the time a contract of sale is entered into, the subject-matter of a contract being specific goods, which without the knowledge of the seller have been destroyed or so damaged as not to answer to the description in the contract, and then the contract is void ab initio(Section 7).**

(ii) **Goods *perishing after the contract is made:*** **Where there is an agreement to sell specific goods and the goods, subsequently without any fault of the seller or the buyer perish or suffer such damages in the agreement before the risk passes to the buyer, the agreement becomes void (Section 8).**

Types of Goods




Existing
Specific
Ascertained
Unascertained

Existing Goods

- **Goods which are owned or possessed by the seller at the time of making the contract of sale are called existing goods**

Example

- **Where A agrees to sell his horse to B, believing that it exists ,When in fact the horse is dead ,no contract will arise.**

- **The existing goods may be:**

(a) Specific goods: goods identified and agreed upon at the time of making of the contract of sale.

(b) Ascertained goods: Goods identified subsequent to the formation of the contract of sale is known as ascertained goods.

Example

- **X goes to Maruti car centre to purchase a car.The dealer has 20 models in his shop.These 20 cars shall be called unascertained goods.Now,'X" selects a particular car of a specific model and the dealer agrees to deliver the same.The car so selected and approved by X shall be called as ascertained Goods.**

- **Unascertained or generic goods:**

  goods which are not specifically identified by the buyer, but are contracted on the basis of description.

Example

- **X has ten horses. He promises to sell one of them but does not specify which horse he will sell.It is a contract of sale of ‘ unascertained goods.’**

Future Goods

- **Those goods which a seller does not possess or own at the time of the contract. It is to be manufactured or produced or acquired by the seller after making the contract of sale.**

Example

- **C agrees to buy the entire production of cotton that would yield in D's farm,at the rate of Rs.1000 per quintal.This is an agreement of sale of future goods not in possession of the seller at the time of contract,they can become the subject matter of an agreement to sell only and not of sale.**

Contingent Goods

- **Goods the acquisition of which by the seller depends upon a contingency which may or may not happen [(Section 6(2)].**

Example

- **P contracts to sell 50 pieces of particular article provided the ship which is bringing them reaches the port safely. This is an agreement for the sale of contingent goods.**

The Price

- **'Price'** means the monetary consideration for sale of goods [Section 2 (10)]. Money means legal tender or money in circulation. Old and rare coins not come under the scope of this definition.
- **Price** must be either certain and definite or must be determined .

Conditions and warranties

- **These are the stipulations in a contract of sale with reference to subject-matter of sale.These stipulations forms a part of the contract of sale and breach of it provides a remedy to the buyer against the seller.**

Summary

Contract of sale of goods

- is either sale or an agreement to sell.
- Subject-matter must always be movable goods.
- Consideration may be price in terms of money.

Differences

Contract of sale	Contract for work and labour	Hire purchase agreement
It contemplates the delivery of goods.	Here the substance of the contract is the exercise of skill or labour. Goods delivery is subsidiary.	Here property passes only after the payment of all hire-instalments.

MULTIPLE CHOICE QUESTIONS

(1) The Sales of goods act governs -------------------

a.contract of sale of goods

b.general law of contract

c.law of partnership

d.hire purchase contracts

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(2) The sales of goods act deals with------------------

a. movable property

b. mortgage

c. pledge

d. actionable claim

(2) The sales of goods act deals with-----------------

a.movable property

b.mortgage

c. pledge

d.actionable claim

(3) The main object of a contract of sale is-

a.transfer of possession of goods

b. transfer of property in goods

c.delivery in goods

d.payment in price

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(4) A contract whereby the seller transfers the property in goods to the buyer for a price, is a-

a.barter system

b.exchange

c.sale

d.mortgage

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a. barter system

b. exchange

c.sale

d.mortgage

(6) A Corn was delivered on terms that on demand either the price would be paid or an equal quantity of corn would be returned.This is held to be-

a. **agreement to sell**
b. **Sale**
c. **Barter**
d. **exchange**

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a. agreement to sell

b. sale

c. barter

d. exchange

(7) Goods which are in existence at the time of the Contract of Sale is known as

a. present Goods.

b. existing Goods.

c. specific Goods.

d. none of the above

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d.none of the above

(8) A contract for the sale of future goods is-

a. sale

b. void

c. hire purchase contract

d. agreement to sell

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a. sale

b. void

c. hire purchase contract

d. agreement to sell

(9) The goods identified and agreed upon at the time of the contract of sale is ------------

a. existing goods

b.future goods

c.specific goods

d.unascertained goods

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(10) In a hire purchase agreement ,the hirer-

a.has an option to buy the goods

b.must buy the goods

c.is not given the possession of goods

d.must return the goods

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(11) Consideration in the contract of sale may be in terms of-

a. price

b. kind

c. exchange of the goods

d.all of the above

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b.kind

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d.all of the above

(12) Contract of sale of goods must constitute-

a.atleast two parties

b. subject matter must be the goods

c. transfer of ownership

d. all the above

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(13) If P makes an agreement with Q, an artist, to paint a portrait of P for 200 dollars & Q uses his own canvas & paint.Here it is--

a.Contract of sale.

b.Contract of work & materials.

c.Sale on approval.

d.Hire-Purchase agreement.

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b. Contract of work & materials.

c. Sale on approval.

d.Hire-Purchase agreement.

(14) R agrees to deliver his old motorcycle valued at Rs.25000 to S in exchange for a new motorcycle and agrees to pay the difference in cash it is-

a. contract of sale

b. agreement to sell

c. exchange

d.barter

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(15) X, the owner of certain goods, being not aware of this fact.A pretending to be an owner of the goods sells them to X .This constitutes -

a.sale

b.agreement to sell

c.no sale

d.none of the above

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c. no sale

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THE END

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