Q. Define 'Sale' and Distinguish it from 'agreement to sell'.

According to **Section 4** of the Sale of Goods Act, 193, 'A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price.'

The term 'Contract of sale' is a generic term and includes both a sale and an agreement to sell. Where under a contract of sale, the property in the goods is transferred from the seller to the buyer (i.e. at once), the contract is called a **'sale'** but where the transfer of the property in the goods is to take place at a further time or subject to some condition thereafter to be fulfilled, the contract is called an **'agreement of sell'. [Section 4(3)]**. An agreement to sell becomes a sale when the time elapses or the condition, subject to which the property in the goods is to be transferred, is fulfilled. **[Section 4(4)]**.

The essentials of a contract of sale are :-

1. **Numbers of parties – In a contract of sale, minimum two parties are** necessary namely the seller and buyer. Sale involves transfer of ownership from one to another.
2. **Goods –** The subject matter of a contract of sale must be goods. Goods mean every kind of movable property other than actionable claims and money. Transfer of immoveable property is not regulated by the Sale of goods Act.
3. **Price –** The consideration for a contract of sale is price. Price means money consideration. If it is anything other than money, it will not be sale. But if the exchange is made partly for goods and partly for price, it will still amount to sale. However, the price may be paid or promises to be paid.
4. **Transfer of property –** In a contract of sale, there must be transfer of property, from the seller to the buyer

	Sale	**Agreement to Sell**
Definition	Where under a contract of sale, the property in the goods is transferred from the seller to the buyer (i.e. at once), the contract is called a **'sale'**.	where the transfer of the property in the goods is to take place at a further time or subject to some condition thereafter to be fulfilled, the contract is called an **'agreement of sell'**
Transfer of ownership	Transfer of ownership of goods takes place immediately.	Transfer of ownership of goods is to take place at a future time or subject to fulfillment of some condition.
Executed contract or Executory contract	It is an executed contract because nothing remains to be done.	It is an executory contract because something remains to be done.
Conveyance of property	Buyer gets a right to enjoy the goods against the whole world including seller.	Buyer does not get such right.

Transfer of risk	Transfer of risk of loss of goods takes palce immediately because ownership is transferred. As a result, in case of destruction of goods, the loss shall be borne by the buyer even though the goods are in the possession of the seller.	Transfer of risk of loss of goods does not take place because ownership is not transferred. As a result, in case of destruction of goods, the loss shall be borne by the seller even though the goods are in the possession of the buyer.
Right of seller against the buyer's breach	Seller can sue the buyer for the price, even though the goods are in his possession.	Buyer can sue the seller for damages only.
Rights of buyer against the seller's breach	Buyer can sue the seller for damages and can sue the third party who bought those goods for goods.	Buyer can sue the seller for damages only.
Effect of insolvency of seller having possession of goods.	Buyer can claim the goods from the official receiver or assignee because the ownership of goods has transferred to the buyer.	Buyer cannot claim the goods, even when he has paid the price because the ownership has not transferred to the buyer. The buyer who has paid the price can only claim rateable dividend.
Effect of insolvency of the buyer before paying the price.	Seller must deliver the goods to the official receiver or assignee because the ownership of goods has transferred to the buyer. He can only claim rateable dividend for the unpaid price.	Seller can refuse to deliver the goods unless he is paid full price of the goods because the ownership has not transferred to the buyer.
Right in rem/personam	It is a ***right in rem*** i.e. right against the whole world.	It creates a ***right in personam*** i.e. right against a person.
In risk of destruction of goods.	Buyer has to bear the risk even if possession is with the seller as ownership has passed.	Seller has to bear the risk, even if possession is with the buyer, as ownership has not passed.

Q. Explain the term 'goods' under the Sale of Goods Act, 1930.

Goods is defined in **Section 2 (7)** as 'Every kind of moveable property other than actionable claims and money; and includes stocks 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.' Trade marks, copyrights, patent rights, goodwill, electricity, water and gar are all considered as goods. In the case of **Badri Prasad V.**

State of M.P., the Supreme Court went to the extent of ruling that trees which are agreed to be severed before sale or under the contract of sale are goods.

Goods may be classified into various types as under :-

1. **Existing goods –** These are goods which are owned and possessed by the seller at the time of sale. Only existing goods can be the subject-matter of a sale. The existing goods may be –

   a) **Specific goods –** These are goods which are identified and agreed upon at the time of contract of sale is made. For eg. A person visit s a Titan showroom and identifies a watch for purchase.

   b) **Ascertained goods –** Though commonly used as similar in meaning to specific goods, these are the goods which become ascertained subsequent to the formation of contract of sale. For eg. From say 10 Sony T.V. a person identifies the particular T.V.

   c) **Unascertained goods –** These are the goods which are not identified and agreed upon at the time of the contract of sale. They are defined only by description and may form part of a lot. For eg. A shopkeeper has a bag containing 50 kgs of sugar. He agrees to sell 10 kg sugar to X out of that bag The 10 kg of sugar is unascertained goods as they are yet to be identified from the bag containing 50 kg.

2. **Future Goods –** These are goods which a seller does not possess at the time of the contract but which will be manufactured, or produced, or acquired by him after the making of the contract of sale. [Section 2(6)]. A contract of present sale of future goods, though expresses as an actual sale, purports to operate as an agreement to sell the goods and not a sale. This is because the ownership of a thing cannot be transferred before that thing comes into existence.

3. **Contingent Goods –** It is a type of future goods but these are goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Q. Define 'Condition' and 'Warranty'. Distinguish between Condition and Warranty.

Section 12(2) states that a condition is a stipulation which is essential to the main purpose of the contract. The breach of a condition gives rise to a right to treat the contract as repudiated or broken.

Example – *A buys from B a hair oil advertised as pure coconut oil. The oil turns out to be mixed with herbs. A can return the oil and claim the refund of price.*

Section 12(3) states that a warranty is a stipulation which is collateral to the main purpose of the contract. The breach of a warranty gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated.

***Example –** A while selling his car to B, stated the car gives a mileage of 12 kms per litre of petrol. The car gives only 10 kms per litre. B cannot reject the car. It is breach of warranty. He can only claim damages for the loss due to extra consumption of petrol.*

	Condition	**Warranty**
Definition	A stipulation which is essential to the main purpose of the contract.	A stipulation which is collateral to the main purpose of the contract.
Remedy	The aggrieved party can terminate the contract, claim damages or treat it as breach of warranty	The aggrieved party cannot terminate the contract but can only claim damages
Treatment	A breach of condition can be treated as a breach of warranty	A breach of warranty cannot be treated as breach of condition.

Q. Enumerate implied warranties and implied conditions.

Implied conditions

1. **Condition as to title –** In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that –

(a) in the case of a sale, he has a right to sell the goods and

(b) in the case of a agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

2. **Sale by description –** Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description **(Section 15).** If you contract to sell peas, you cannot oblige a party to take beans.

3. **Sale by sample –** In a case of a contract for sale by sample, there is an implied condition –

(a) that the bulk shall correspond with the sample in quality

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(c) that the goods shall be free from any defect, rendering them unmerchantable.

4. **Sale by description as well as sample – Section 15** further provides that if the sale is by sample as well as by description, the goods must correspond both with the sample and with the description.

5. **Condition as to quality or fitness –** Normally, in a contract of sale there is no implied condition as to quality or fitness of goods for a particular purpose. The buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying them. However, in the following instances, the condition as to quality or fitness applied –

(a) Where the buyer, expressly or by implication makes known to the seller the particular purpose for which he needs the goods and depends upon the skill and judgement of the seller whose business it is to supply goods of that description, there is an implied condition that the goods are reasonable fit for that purpose. **[Section 16(1)].** For eg. An order was placed for some lorries to be used "for heavy traffic in a hilly area". The lorries supplied were unfit and broke down. ***Held***, there is a breach of condition as to fitness.

(b) An implied condition as to quality or fitness for a particular purpose may also be annexed by the usage of trade. **[Section 16(3)]**

6. **Condition as to merchantability –** Where goods are bought by description from a seller who deals in goods of that description, here is an implied condition that the goods are of merchantable quality. This means that the goods should be such as are commercially saleable under the description by which they are known in the market at their full value. Thus a watch that will not keep time, a pen which cannot write and tobacco that will not smoke, cannot be regarded as merchantable under such names.

7. **Condition as to wholesomeness –** In the case of eatable and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome. For eg. C bought a bun containing a stone which broke one of C's teeth. Held, he could recover damages.

8. **Condition implied by custom –** An implied condition as to quality or fitness for a particular purpose may also be annexed by the usage of trade in the locality concerned.

Implied warranties

1. **Warranty of quiet possession –** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If buyer's possession is disturbed because of some defect in seller's title, he can claim damages from the seller.

2. **Warranty of freedom from encumbrances –** The buyer is entitled to a further warranty that the goods are not subject to any charge or right in favour of a third party.

3. **Warranty to disclose dangerous nature of goods –** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable for damages.

Q. Explain the term 'Caveat Emptor'.

The term 'Caveat Emptor' means 'buyer beware' i.e. in sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a buyer buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his own skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

For eg. H bought oats from S a sample of which had been shown to H. H erroneously thought that the oats were old. However the oats were new. Held, H could not avoid the contract. **(Smith vs. Huges)**

The doctrine of Caveat Emptor has certain important exceptions as under –

1. **Fitness for buyer's purpose –** Where the buyer, expressly or by implication makes known to the seller the particular purpose for which he needs the goods and depends upon the skill and judgement of the seller whose business it is to supply goods of that description, there is an implied condition that the goods are reasonable fit for that purpose. **[Section 16(1)].** For eg. An order was placed for some lorries to be used "for heavy traffic in a hilly area". The lorries supplied were unfit and broke down. ***Held***, there is a breach of condition as to fitness.

2. **Sale under a patent or trade name –** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.

3. **Merchantable quality** - Where goods are bought by description from a seller who deals in goods of that description, here is an implied condition that the goods are of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regard defect which such examination ought to have revealed. **[Section 16(2)]**

4. **Usage of trade** – An implied warranty or condition as regards quality or fitness for a particular purpose may be annexed by the usage of trade. **[Section 16(3)]**

5. **Consent by fraud –** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowing conceals a defect which could not be discovered on a reasonable examination, the doctrine of Caveat Emptor does not apply.

Q. Define 'Unpaid Seller'. What are the rights available under the Sale of Goods Act to an unpaid seller?

Section 45 define an unpaid seller as "One who has not been paid or tendered the whole of the price or one who receives a bill of exchange or other negotiable instrument as conditional payment and the condition on which it was received has not been fulfilled by reason of dishonour of the instrument or otherwise."

The following conditions must be fulfilled before a seller can be deemed to be an unpaid seller –

a) He must be unpaid and the price must be due.
b) He must have an immediate right of action for the price.
c) A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

The rights of an unpaid seller can be broadly divided under 2 main headings –
I] Rights against the goods and
II] Rights against the buyer

I] Rights against the goods

A] Where the property in the goods has passed to the buyer – Where the ownership in the goods has already been transferred to the buyer the following rights are available to an unpaid seller –

1. **Right of Lien –** The right of lien means the ight to retain the possession of goods until the full price is paid or tendered.

   When can lien be exercised :

   (a) Where the goods have been sold without any stipulation as to credit.
   (b) Where the goods have been sold on credit, but the term of credit has expired, and
   (c) Where the buyer becomes insolvent.

   The right can be exercised even if the seller holds the goods as an agent or bailee. Where part delivery of goods has been made, it can be exercised on the remaining goods, unless circumstances show he has waived his right.

   Termination of lien – The right gets terminated under following circumstances:

   (a) When the goods are delivered to a carrier or bailee but without reserving the right of disposal.
   (b) When the possession is acquired by the buyer or his agent lawfully.
   (c) When the right of lien is waived by the seller.
   (d) When the buyer has disposed of the goods by sale of in any manner with the consent of the seller.

2. **Right of stoppage of goods in transit –** The right of stoppage in transit means the right to stopping the goods while they are in transit, to regain possession and to retain them until the price is paid. The essential feature of stoppage in transit is that the goods should be in the possession of someone intervening between the seller and the buyer.

   The unpaid seller can exercise the right of stoppage in transit if:

   (a) The seller has parted with the possession of the goods.
   (b) The buyer has not taken possession of goods.
   (c) Buyer has become insolvent.

   The unpaid seller may exercise the right to stoppage in transit in any one of the following 2 ways :

   (a) by taking actual possession of the goods, or
   (b) By giving notice of his claim to the carrier or other bailee in whose possession the goods are.

   The right to stoppage in transit is lost under the following circumstances:

   (a) If the buyer or his agent obtains possession.
   (b) If after arrival of the goods at the appointed destination, the carrier or the bailee acknowledges to the buyer that he holds the goods on his (buyer's) behalf.
   (c) If the carrier or bailee wrongfully refuses to deliver the goods to the buyer or his agent.
   (d) Where the part delivery of the goods has been made to the buyer or his agent, the remainder of goods may be stopped in transit. But if such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods the transit comes to an end at the time of part delivery.

For eg. A, in Mumbai sends goods to a buyer in Pune through a carrier. The goods are in transit when it leaves A's possession and B or his agent has not taken possession

3.

4. **Right of resale –** Where the unpaid seller has exercised his right of lien or resumes possession of the goods by exercising his right of stoppage in transit upon insolvency of the buyer, he can re-sell the goods under the following circumstance –
   (a) where the goods are of perishable nature.
   (b) Where the seller has given notice of his intention to re-sell the goods and yet the price remains unpaid.
   (c) Where the seller expressly reserves a right of resale if the buyer commits a default in making the payment.

B] Where the property in the goods has not passed to the buyer – Where the property in the goods has not passed to the buyer, the unpaid seller can exercise the right to withholding delivery of the goods. This right is similar to and co-extensive with the right of lien and stoppage in transit where the property has passed to the buyer. Other remedies may include the right to claim damages for the loss suffered, special damages, etc.

II] Rights of an unpaid seller against the buyer personally

In addition to the unpaid seller's rights against the goods, he has rights even against the buyer personally. They are as follows :

1. **Suit for Price –** Generally the seller can sue for the price of the goods only when the property in the goods has passed to the buyer and the price is not paid as per the terms of the contract. In cases where the property in the goods has not passed to the buyer, suit for price generally, cannot be maintained, unless under the contract, price is payable on a certain date irrespective of the delivery of passing of the ownership of the goods.
2. **Suit for damages –** The unpaid seller can bring an action for damages where the buyer wrongfully refuses to accept the goods or repudiates the contract.

3. Suit for interest – In case of breach of contract on the part of the buyer, the unpaid seller can claim for interest from the date of tender of the goods or from the date, the price becomes payable along with a suit for price.