

Business Law

(Volume II)

Bharat N. Basrani
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Revised
Edition



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*We dedicate
our
smallest effort to the almighty
“LORD KRISHNA” without whom
we would not have reached our destination.
He has always been a source of
strength and inspiration for us.*

PREFACE

We are glad to state that we are presenting the book related on **Business Law (Volume II)**. The book has been written with a good investment of effort by optimally utilizing the experience capital, so as to yield maximum results for the betterment of management students, commerce students, MBA students, Law students, CA students, CS students, ICWA students, business executives and public administrators.

The object of the book 'BUSINESS LAW – Volume II' is to set out the basic principles of Business Law simply and clearly. An attempt has been made to present the concepts as briefly and concisely as possible without sacrificing essential features.

While going through the book, regular and external, the students will realize that we have also provided the reference of well-known cases with their judgements. We have added short questions bank relevant with VEER NARMAD SOUTH GUJARAT UNIVERSITY for quick references of some of the vital topics asked in the final examination of T.Y.B.Com. We have also added the latest unitwise questions bank which will assist the students in their preparation for T.Y.B.Com., Semester - VI relevant with VNSGU.

We are thankful to M/s Himalaya Publishing House Pvt. Ltd., Mumbai for giving us an opportunity for exploring our knowledge relevant to Business Law and for publishing our effort as the mirror reflecting in terms of book. Suggestions for improvement of this book are most welcome and they will be incorporated in the subsequent editions.

Bharat N. Basrani
Chandresh B. Mehta

SYLLABUS

Veer Narmad South Gujarat University
(T.Y. B.Com., Sem. VI)
Business Law
(In force from academic year 2016-2017)

Objective:

The objective of this course is to provide brief idea about the framework of Indian business laws.

Course Contents

	Weightage
Unit I: Sale of Goods Act, 1930:	30%
Formation of Contract of Sale; Goods and their Classification; Price; Conditions and Warranties; Transfer of Property in Goods; Performance of the Contract of Sales; Unpaid Seller and his Rights; Sale by Auction; Hire Purchase Agreement.	
Unit II: Companies Act, 2013:	25%
Introduction of Company, Characteristics of Company, Formation of Company; Stages of Formation, Types of Companies including One Person Company, Small Company and Producer Company, Online Registration of a Company, Dormant Company, Illegal Association.	
Unit III: Companies Act, 2013:	25%
Meaning, Content and Importance of Memorandum of Association and Articles of Association, Doctrine of Constructive Notice and Indoor Management, Prospectus.	
Unit IV: Negotiable Instruments Act, 1881:	20%
Introduction, Definition, Characteristics, Presumptions, Types of Negotiable Instruments, Promissory Note, Bills of Exchange, Cheque, Parties of Negotiable Instrument, Holder and a Holder-in-due-course.	

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– UNIT I –
SALE OF GOODS ACT, 1930



Structure:

- 1.1 Introduction
- 1.2 Definitions
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- 1.7 Definition and Types of Goods
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1.1 INTRODUCTION

Sale of goods is the most common transaction in business as well as in day to day life of individuals. In law, it is regarded as a specific contract for which the Contract Act had made special provisions. But, looking at the importance and the complexities of such contracts, a separate Act entitled 'Sale of Goods Act' has been enacted which contains all rules and regulations relating to various types of contracts for the sale of goods.

The law as to the sale of goods was originally embodied in sections 76 to 123 of the Indian Contract Act, 1872. However, as the provisions of the sections 76 to 123 were found inadequate to meet the complexities of growing mercantile transactions, the said sections were repealed and Sale of Goods Act, 1930 was passed. It is well known that our Sale of Goods Act, 1930 is based upon and is largely a reproduction of the English Sale of Goods Act, 1893 and in principle the law of Sale of Goods in both the countries is now the same and, therefore, English authorities on interpretation of different sections although not technically binding in India, would have great persuasive value.

The Sale of Goods Act came into force on **1st July 1930**, and it extends to the whole of India except the State of Jammu and Kashmir. Now, all the legal provisions relating to the sale of

moveable goods other than actionable claims and money are contained in the Sale of Goods Act, 1930 and not immovable properties such as the lease, gifts, etc, which are governed separately by the Transfer of Property Act, 1882.

1.2 DEFINITIONS

Under the **Sale of Goods Act, 1930**, various terms are defined under various sections, which are as follows:

1. **Buyer [Section 2(1)]:** “*Buyer means a person who buys or agrees to buy goods.*”
2. **Delivery [Section 2(2)]:** “*Delivery means voluntary transfer of possession from one person to another.*”
3. **Deliverable state [Section 2(3)]:** “*Goods are said to be in a deliverable state when they are in such state that the buyer would under the contract be bound to take delivery of them.*”
4. **Documents of title to goods [Section 2(4)]:** “*Documents of Title to Goods includes a Bill of lading, Dock warrant, Warehouse-keeper’s Certificate, Wharfinger’s Certificate, Railway Receipt, multimodal 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 authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.*”

In short, a document of title to goods is a proof of possession or control over the goods. The holder of the document of title to goods is authorized to receive the goods. He is also authorized to transfer the possession of the goods either by endorsement or by delivery.

Bill of lading, dock warrant, warehouse-keeper’s certificate, wharfinger’s certificate, railway receipt, delivery warrant are some of the documents of title to goods. Any document used in the ordinary course of business, which entitles the possessor of the document to receive the goods unconditionally is a document of title to goods.

The following are the list of documents of title to goods:

- (a) **Bill of lading:** It is a document which acknowledges receipt of goods on board and is signed by the captain of the ship or his duly authorized representative.
- (b) **Dock warrant:** It is a document issued by a dock owner, giving details of the goods and certifying that the goods are held to the order of the person named in it or endorsee. It authorizes the person holding it to obtain possession of the goods.
- (c) **Warehouse-keeper’s or wharfinger’s certificate:** It is a document issued by a warehouse-keeper or a wharfinger stating that the goods specified in the document are in his warehouse or in his wharf.
- (d) **Railway receipt:** It is a document issued by a railway company acknowledging receipt of goods. It is to be presented by the holder or consignee at the destination to obtain delivery of the goods.
- (e) **Delivery order:** It is a document containing an order by the owner of the goods to the holder of the goods on his behalf, asking him to deliver the goods to the person named in the document.

5. **Goods [Section 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.”
6. **Mercantile agent [Section 2(9)]:** Mercantile Agent, means an agent having, in the customary course of business as such agent, 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 goods.”
The words in this definition ‘in the customary course of business as such agent’ are very significant because if a person is not carrying on business as such agent, he would not fall under this definition. Thus, a contractor, a carrier or a servant, a warehouseman, and a friend would be excluded.
7. **Price [Section 2(10)]:** “Price means the money consideration for a sale of goods.”
The price of thing is its value as agreed upon between the parties, and expressed in terms of the currency of the country. No sale can take place without a price. It differentiates a sale from barter or exchange where goods of one kind are given and goods of another variety are taken in return.
8. **Property [Section 2(11)]:** “Property means the general property in goods and not merely a special property.”
General property means ownership of the goods. Special property means special interest in the goods. Under the Sale of Goods Act, property means general property and not special property. Property under the Act, therefore, means ‘ownership.’ Transfer of property is, thus, transfer of ownership in the goods and not merely specific interest in the goods. The term is important as transfer of property determines transfer of risk from the seller to the buyer. Thus, if X who owns the goods pledges them to Y, then X has the general property in the goods, while Y has a special property, i.e., special interest in them.
9. **Seller [Section 2(13)]:** “Seller means a person who sells or agrees to sell goods.”

1.3 MEANING OF A CONTRACT OF SALE

According to **Section 4(1)** of the Sale of Goods Act, “*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*”. It is a contract by which the ownership of movable goods is transferred from the seller to the buyer. The term ‘contract of sale’ is a generic term and, therefore, broader than ‘sale’. It includes ‘sale’ and ‘an agreement to sell’.

According to **Section 4(3)** of the Sale of Goods Act, “**Where under a contract of sale, the property in goods has passed from the seller to the buyer, it is called a ‘sale’, but where the transfer of property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is an ‘agreement to sell’.**

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the ownership in the goods is to be transferred [Section 4(4)].

Thus, the sale is different from an agreement to sell. An agreement to sell becomes a sale only when the ownership of the goods is transferred to the buyer. The Act provides the time at which an agreement to sell becomes a sale.

As per **Section 4(4)**:

1. Where an agreement to sell provides that the ownership of the goods shall be transferred at some future date, it becomes sale when that date arrives, and
2. Where the ownership of goods is to be transferred on the fulfillment of some conditions, the agreement to sell becomes sale when those conditions are fulfilled.

For instances,

1. Ram enters into a contract with Laxman to buy 500 quintals of potatoes, from Laxman's cold storage for ₹ 8,000. It shall amount to a sale if the seller authorizes Ram to come to his cold storage and take away the potatoes whenever he (Ram) desires.
2. Arun agrees to sell his bike to Varun after 15 days for ₹ 18,000. Varun agrees to buy it after 15 days, for ₹ 18,000. It is an **'agreement to sell'** and it will **become sale** after 15 days.

1.4 ESSENTIALS OF A VALID CONTRACT OF SALE

A contract of sale is a special type of contract; therefore all the essentials of a valid contract must be fulfilled. If any of the essential elements of a valid contract is missing, then the contract of sale will not be valid. For example, Laxmi agreed to sell his Activa to Mahalaxmi without any consideration. This contract of sale is not valid since there is no consideration. From the definition of Contract of Sale as per **Section 4** of the **Sale of Goods Act**, the following essential features must be present for a valid contract of sale:

1. **Two parties:** There must be two parties, one seller and the other buyer. A person cannot be a seller as well as a buyer. A person cannot buy his own goods. The reason for the same is that in a contract of sale, the ownership of the goods has to pass from one person to another. For example, Z is the owner of certain goods, but he is not aware of this fact. W pretends to be owner of the goods and sells them to Z. There is no sale, for Z cannot buy goods which are already his own (**Bell v. Lever Bros. Ltd.**). Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both seller and buyer. But a partner may buy goods from the firm or sell goods to the firm.
2. **Subject matter must be 'goods':** The subject matter of a contract of sale must be goods and the goods must be movable. Sale and purchase of immovable property is not covered by this Act, but is regulated by the Transfer of Property Act. Similarly, contracts relating to services are not treated as contract of sale. For instance, Savan agreed to sell to Pavan his rice crop which is grown in his (Savan's) field. They agreed that upon the payment of the price, Pavan may cut the crop and take it away. It is a valid contract of sale as the growing crop is included in the term 'goods' and can be sold validly.
3. **Transfer of general property:** In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. According to the Act, property means the general property in the goods and not merely a special property. In a contract of sale, the general property is transferred from seller to the buyer. On the other hand, when the goods are pledged, it is only the special property which is transferred, i.e., possession of the goods is transferred to the pledgee while the ownership rights remain with the

pledger. Thus, for transferring the ownership of goods, the physical delivery of the goods is not essential. If the title in the goods has been transferred to the buyer, it will be a valid contract of sale.

4. **Price:** Consideration in a contract of sale has necessarily to be money. Thus, if for instance, goods are offered as consideration for goods, it will not amount to sale, but it will be called 'barter'. Similarly, in case there is no consideration, it amounts to gift and not sale. However, the consideration may be partly in money and partly in goods. For instance, where an old Television is returned to the dealer for a new one and the difference is paid in cash that should also be a sale. Similarly, A delivered to B, 52 bullocks valued at ₹ 1,000 per bullock. In exchange of it, B delivered to A 100 quintals of barley valued at ₹ 300 per quintal and paid the difference in cash. This is a contract of sale (**Aldridge v. Johnson, 1857**).

1.5 SALE AND AGREEMENT TO SELL

Contract of sale is a generic term and includes both sale and an agreement to sell. The two, however, have different legal effects. The rights and obligations of the parties vary with the fact whether the transaction is a sale or an agreement to sell. Distinction between the two is, therefore, of prime importance. The vital point of distinction between the two is that in a sale the buyer becomes the owner of the goods as soon as the contract of sale is made, whereas in an agreement to sell, the seller continues to be the owner of the goods agreed to be sold, till it becomes a sale and an agreement to sell becomes a sale on the expiry of the stipulated time or when the conditions are fulfilled subject to which the property in goods is to be transferred. Other points of distinction between the two may be noted as under:

Difference points	Sale	Agreement to sell
1. Definition	Where under a contract of sale, the property in goods has passed from the seller to the buyer; it is called a 'sale.'	Where the transfer of property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is an 'agreement to sell.'
2. Nature	A 'sale' is an executed contract. Executed means that the ownership of the goods has been transferred to the buyer. It is related with present sale.	An agreement to sell is always an executory contract. Executory means that something remains to be done, i.e., ownership shall pass on some future date. It is a future sale.
3. Right	It creates <i>jus in rem</i> , i.e., the right to claim the goods. It gives right to the buyer to enjoy the goods as against the whole world including the seller.	It creates <i>jus in personam</i> , i.e., the right against the particular person. This means that the buyer gets the rights against the seller only.
4. Ownership	The ownership of the goods is transferred to the buyer immediately.	The ownership of the goods is transferred to the buyer at some future date.

5. Types of goods	A sale can only be in case of existing and specific goods only.	An agreement to sell is mostly in case of future and contingent goods.
6. Risk of loss	In case of 'sale', if there is any loss to the goods, the loss will fall on the buyer, even though the goods are in the possession of the seller.	In case of 'an agreement to sell', the loss shall be borne by the seller, even though the goods are in the possession of the buyer. This is because the ownership in the goods has not passed to the buyer.
7. Consequences	In a sale, if the buyer fails to pay the price of the goods or if there is a breach of contract by the buyer, the seller can sue for the price even though the goods are still in his possession.	In an agreement to sell if there is a breach of contract by the buyer, the seller can only sue for damages and not for the price even though the goods are in the possession of the buyer.
8. Insolvency of seller	If in a sale, the seller becomes insolvent while the goods are still in his possession, the buyer shall have a right to claim the goods from the Official Receiver or Assignee because the ownership of goods has passed to the buyer.	In case of an agreement to sell, the buyer cannot claim the goods even when he has paid the price. Buyer's only remedy in this case is to claim rateable dividend for the money paid from the estate of the insolvent seller.
9. Insolvency of buyer	In case of sale, if the buyer becomes insolvent before paying the price, the ownership having passed to the buyer, the seller shall have to deliver the goods to the Official Assignee or Receiver. For the unpaid price, the seller will rank as an unsecured creditor and thereby entitled to rateable dividend out of the estate of the insolvent buyer.	In case of an agreement to sell, where the seller continues to be the owner of the goods, the seller can refuse to deliver the goods to the Official Assignee or Receiver unless he is paid full price of the goods.
10. Right to re-sell	In a sale, the seller cannot re-sell the goods subject to certain exceptions such as a sale by an unpaid seller under section 54. If he sells, then the subsequent buyer acquires title to the goods.	In an agreement to sell, if the seller makes re-sell, the buyer, who takes the goods for consideration and without notice of the prior agreement, gets a good title. The original buyer can only sue the seller for damages.
11. Remedy against buyer	In a sale, if the buyer wrongfully refuses to accept the goods, and pay the price, the seller can sue for the price, even if the goods are in his possession and he can exercise the right of lien, stoppage of goods in transit and of resale. For	In an agreement to sell, only remedy available to the seller is to sue for damages if buyer fails to accept and pay for the goods. For example, X sells 25 bags of wheat to Y for ₹ 10,000. If Y refuses to accept the goods, then X's only

	example, X sells 25 bags of wheat to Y for ₹ 10,000. If Y refuses to accept the goods, X can file a suit against Y for price even though the goods are in X's possession.	remedy is to claim damages from Y because the ownership has not yet passed to Y.
12. Remedy against seller	In a 'sale', breach by the seller gives the buyer a double remedy; a suit for damages against the seller, and the right to follow property in the hands of the subsequent buyer. Thus, in sale if the goods are resold, the buyer can recover them as the owner from the subsequent purchaser. For example, P sells a particular horse to Q for ₹ 25,000 and subsequently it is sold to R for ₹ 35,000, Q shall have the right to recover the horse from R, because at the time of sale P was no longer the owner of the said horse. Q can also claim damages from P for wrongful conversion.	In an agreement to sell, the seller being still the owner, he can dispose of the goods as he likes and the buyer's remedy against the seller's breach is a suit for damages. For example, P agreed to sell a particular horse to Q for ₹ 25,000. Subsequently, P sells the same horse to R for ₹ 35,000. Q's remedy is to claim damages from P. Q cannot recover the horse from R.

1.6 SALE AND HIRE-PURCHASE AGREEMENTS

A transaction of sale has to be distinguished from another apparently similar but different transaction, called hire-purchase 'agreement'. A hire-purchase agreement is an agreement under which the owner delivers his goods on hire basis to a person called 'hirer' and the hirer has the option to buy the goods by paying the agreed amount in specified installments.

The hirer, under this agreement, is required to pay every month a particular sum of money, and if he pays in that way for an agreed number of months, the hirer will become the owner of the goods on the payment of the last installment. But if the hirer fails to pay any particular installment, the owner can terminate the contract and take away the goods because the ownership continues to remain with him. The hirer has two options:

1. He may buy the goods after paying all the agreed installments or
2. He may return the goods at any time. In case he decides to return the goods, he shall not be liable for further payment of installments; the amount already paid is treated as hire charges for the use of goods.

A hire-purchase agreement, therefore, entitles the hirer only to possession of the goods. He cannot accordingly pass a good title to any buyer from him. A hire-purchase agreement is distinct from 'sale' in which price may be payable by installments. In case of sale, the property in goods passes as soon as the contract is made, though price may not yet have been paid. A hire-purchase agreement, on the other hand, does not result in passing of the property unless the option to purchase is exercised, usually by payment of all the installments. Till such time, it continues to be a bailment. Thus, it is primarily the option on the part of the hirer to buy or to terminate the hiring

that marks the distinction. The following are the points of difference between sale and hire-purchase agreement:

Difference Points	Sale	Hire-purchase Agreement
1. Meaning	Where under a contract of sale, the property in goods has passed from the seller to the buyer; it is called a sale.	A hire purchase agreement is an agreement under which the owner delivers his goods on hire basis to a person called 'hirer' for his use, and he has the option to purchase the goods by paying the agreed amount in specified installments.
2. Formation	It may be made either orally or in writing.	It must be in writing.
3. Ownership	The ownership of the goods is transferred from the seller to the buyer as soon as the contract is made.	The ownership of the goods is transferred from the seller to the hirer only when all the agreed numbers of installments are paid.
4. Termination	The buyer has no option to return the goods. i.e., he has no right to terminate the contract to sale. He is bound to take delivery of goods.	The hirer has an option to terminate the agreement at any stage. He may or may not buy the goods. On termination, the hirer cannot be compelled to pay the remaining installments.
5. Rights	The buyer becomes the owner and gets all the rights of an owner such as right to resale, pledge, etc.	The hirer does not become the owner. His position is that of a bailee only. He becomes the owner, only when all the installments are paid.
6. Good Title	Since buyer is the owner, he can transfer a good title to the third party.	Hirer cannot transfer a good title to the third party since he is not the owner.
7. Sales Tax	Sales tax is payable on the goods sold.	Sales tax is not payable on hire purchase until it becomes sale.
8. Applicable Law	It is governed by the Sale of Goods Act, 1930.	It is governed by the Hire Purchase Act, 1972.
9. Installments	In case of payment of price in installments, each installment is regarded as part payment of the price	The installment is regarded as the hire charges for the use of the goods. However, if the hirer exercises the option to purchase the goods, then each installment is regarded as the part payment.
10. Illustration	X enters into a contract with Y to buy 300 quintals of potatoes, from Y's cold storage for ₹ 9,000. It shall amount to a sale if the seller authorizes X to come to his cold storage and take away the potatoes whenever he (X) desires.	P, a shopkeeper, delivered his new bike to R. They agreed that R will pay ₹ 5,000 on the 1st day of every month for 12 consecutive months. After making all payments regularly for 12 months, he (R) will become the owner of the bike. It was also agreed that R may return the bike at any time and stop the payment of further installments. This is a hire-purchase agreement.

1.7 DEFINITION AND TYPES OF GOODS

The Sale of Goods Act does not extend to the sale and purchase of immovable property. The subject matter of a contract of sale is goods.

1.7.1 Definition of Goods

Section 2(7) of Sale of Goods Act defines Goods as “**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.**”

Stock and Shares have been expressly included in the definition of goods primarily to avoid any misunderstanding because they are excluded from the term ‘goods’ under English Law. ‘Money’ and ‘actionable claims’ have been expressly excluded from the term ‘goods’. ‘**Money**’ here means the legal tender of money, i.e., the recognized circulation in the country; it excludes old rare coins and foreign currency, as they can be sold or bought as goods. Sale and purchase of foreign currency is, however, regulated by the Foreign Exchange Management Act. ‘**Actionable claims**’ like debts are things which a person cannot make use of, but which can be claimed by him by means of a legal action. Actionable claims cannot be sold or purchased like goods, they can only be assigned.

Thus, **goods include every kind of movable property**, i.e., things which can be carried from one place to another. However, all such things which form part of the land itself but are agreed to be severed from the land under the contract of sale, are considered as goods. Thus, grass, growing crops, trees to be cut and their log wood to be delivered are ‘goods’ as per the above definition. Similarly, things like goodwill, copyright, trademark, patents, water, gas, electricity are all goods and may be the subject matter of a contract of sale. A ship has also been considered to come within the definition of the word goods. Even lottery tickets are ‘goods’ and not actionable claim (**Harrison v. Luke, 1945**).

1.7.2 Types of Goods

The goods forming subject matter of the contract of sale may be classified into following types as shown under:

1. Existing goods
2. Future goods
3. Contingent goods

(A) Existing goods: As per Section 6 of the Sale of Goods Act, ‘**existing goods**’ are those goods which are owned or possessed by the seller at the time of contract of sale. The seller is either the owner of goods or he is in possession of goods. For instance, Avinash, a manufacturer of radios, sells a radio to Prakash. It is a contract of sale of existing goods because Avinash owns the radio. Similarly, when a person sells goods possessed by him and not owned by him such as sale by an agent, it is also a sale of existing goods. For instance, in the above example, if the manufacturer sends the radios to his agent in Delhi and sells them through the agent, it is a sale of

existing goods because the dealer possesses the goods, although he is not the owner of them, at the time of the contract of sale. The existing goods may be either:

1. Specific goods or ascertained goods or
 2. Unascertained goods.
- 1. Specific goods or ascertained goods:** *These are the goods which are identified and agreed upon by the parties at the time a contract of sale is made [Section 2(14)].* For instance, a specified watch, a diamond ring or a car. Similarly, Sahil had 5 different brands bike. He agreed to sell his 'Yamaha' bike to Rahil, and Rahil agreed to purchase the same bike. In this case, the sale is for specific goods as the bike has been identified and agreed at the time of the contract of sale.

Though normally used as synonym for specific goods, ascertained goods are intended to include goods which have become ascertained after to the formation of the contract. ***It means "identified in accordance with the agreement after the time a contract of sale is made."*** When the 'unascertained goods' are identified and agreed upon by the parties, the goods are called 'ascertained'.

For example, Urvi had 200 bales of cotton lying in her godown. She agreed to sell 120 bales of cotton to Purvi, who agreed to purchase the same. After making the contract, the cotton bales to be delivered to Purvi were identified and kept separate by Urvi and Purvi agreed to take the delivery of the same. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract. It should be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods. Thus, when out of a mass of unascertained goods, the quantity contracted for is identified and set aside for a given contract, the goods are said to be ascertained.

2. **Unascertained goods:** *These are the goods which are not identified and agreed upon at the time when the contract is made.* They are identified only by description. For example, Amit, who owns 'Fiat' car showroom, has 80 cars and agrees to sell any one of them to Sumit. The contract is for unascertained goods, because which particular car shall be sold to Sumit has not been identified at the time of contract of sale. Similarly, Khan had 15 horses. He agreed to sell any one horse to Pathan. This is a case of contract for the sale of unascertained goods as the horse has not been identified at the time of contract of sale.

(B) Future goods: As per Section 2(6) of the Sale of Goods Act, ***'future goods'*** means **goods to be manufactured or produced or acquired by the seller after making the contract of sale.** Thus, future goods are goods which are not in existence at the time of contract of sale or they may be in existence when the agreement of their sale is entered upon but have not yet been acquired by the seller by that time. For example, Sushant agrees to buy the entire crop of rice that would yield in Prashant's farm, at the rate of ₹ 500 per quintal. This is an agreement of sale of future goods. As future goods are not in the possession of the seller at the time of contract, they can become the subject-matter of an agreement to sell only and not the contract of sale.

(C) Contingent goods [Section 6(2)]: ***'Contingent goods'*** are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. These are the goods which are also not in existence at the time of making a contract of sale. The contingent goods are a type of future goods. Thus, the acquisition of goods depends upon the uncertain events which may or may not happen. For example, Om agrees to sell to Jay a certain painting

only if Jagdish, its present owner, sells it to him. Here, the contract is for the sale of contingent goods as the availability of the painting depends on its sale by Jagdish. Similarly, Arun agreed to sell to Varun, certain goods which are to be arrived by a ship. In this case, the contract is for the sale of contingent goods the availability of the goods depends upon the arrival of the ship.

1.8 EXERCISE

1. Define contract of sale. Explain the essentials of a valid contract of sale.
2. Define sale and agreement to sell under Contract of Sale of Goods Act. Distinguish between sale and agreement to sell.
3. Define goods. Discuss the types of goods.
4. Explain the meaning of existing goods and future goods.
5. Explain ascertained and unascertained goods.
6. Define sale and distinguish between sale and hire-purchase agreement.
7. Explain the term 'price'.
8. Explain in detail the definition of 'goods'.
9. Explain the meaning of sale and agreement to sell.
10. Explain documents to title to goods.
11. Explain specific goods and unspecific goods.
12. Write short notes on:
 - (a) Mercantile agent
 - (b) Future goods and existing goods
 - (c) Documents of title to goods
 - (d) Types of goods
 - (e) Contingent goods.
 - (f) Ascertained and unascertained goods

