

Contract of Sale of Goods under Sale of Goods Act, 1930



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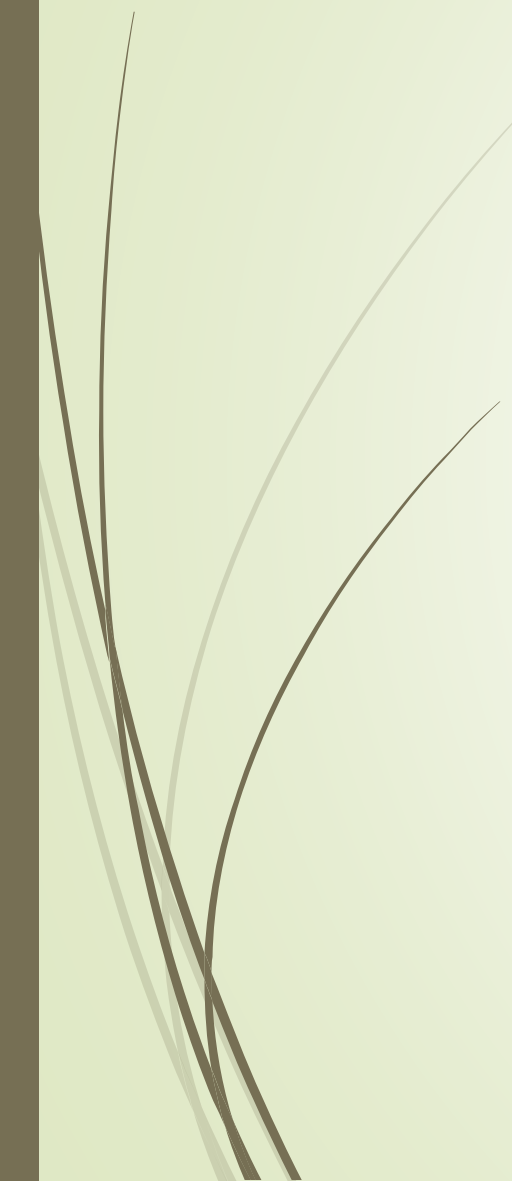


Introduction:

- **The Sale of Goods Act, 1930 is a vital piece of legislation that governs the sale of goods in India.**
- **It applies to all contracts for the sale of goods, whether they are new or second-hand, movable or immovable, except for specific exclusions mentioned in the Act.**
- **The Act aims to regulate and provide a framework for commercial transactions involving the transfer of ownership of goods from one party (seller) to another (buyer).**



Definition of Sale of Goods:

- ▶ According to Section 4(3) of the Act, a "contract of sale of goods" refers to a contract by which the seller transfers or agrees to transfer the ownership of goods to the buyer for a price.
 - ▶ Two essential elements of a contract of sale: transfer of ownership and a price paid or agreed to be paid.
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Distinction between Sale and Agreement to Sell:

- The Act differentiates between a "sale" and an "agreement to sell."
- **Sale:** The property in the goods passes to the buyer immediately upon making the contract.
- **Agreement to Sell:** The property in the goods transfers at a later date or upon the fulfilment of certain conditions.



Distinction between Sale and Agreement to Sell:

➤ 1. Definition:

- **Sale:** A "sale" refers to a contract where the seller transfers or agrees to transfer the ownership of goods to the buyer for a price. It is an executed contract, and the ownership of the goods immediately passes to the buyer upon making the contract.
- **Agreement to Sell:** An "agreement to sell" is a contract by which the seller agrees to transfer the ownership of goods to the buyer at a future date or upon the fulfillment of certain conditions. It is an executory contract, and the ownership of the goods remains with the seller until the agreed-upon conditions are met.



Distinction between Sale and Agreement to Sell:

- **2. Transfer of Ownership:**
- **Sale:** In a sale, the transfer of ownership is immediate and absolute. Once the contract is made, the buyer becomes the owner of the goods, and the seller's rights and obligations are generally terminated.
- **Agreement to Sell:** In an agreement to sell, the transfer of ownership is deferred and conditional. Ownership will pass to the buyer only when the agreed-upon conditions are fulfilled or the future date arrives.



Distinction between Sale and Agreement to Sell:

- ▶ **3. Risk of Loss:**
- ▶ **Sale:** After the sale, the risk of any damage or loss to the goods shifts to the buyer. The buyer is responsible for the goods' safety, and the seller is no longer liable for any damages.
- ▶ **Agreement to Sell:** Until the ownership is transferred to the buyer, the seller bears the risk of loss or damage to the goods. If any harm occurs to the goods before the ownership transfer, the seller will be responsible for it.



Distinction between Sale and Agreement to Sell:

- **4. Nature of Contract:**
- **Sale:** A sale creates an executed contract, meaning that all obligations are completed at the time of making the contract. The buyer has full legal title to the goods.
- **Agreement to Sell:** An agreement to sell creates an executory contract, meaning that some obligations are yet to be performed. The full transfer of ownership is pending, and the buyer has an equitable interest in the goods until the transfer occurs.



Distinction between Sale and Agreement to Sell:

➤ 5. Right to Reclaim Goods:

- **Sale:** Once the goods are sold, the seller cannot reclaim them from the buyer, except in cases where the buyer has not paid the full price and is in breach of the contract.
- **Agreement to Sell:** If the buyer defaults in paying the price or meeting other agreed-upon conditions, the seller has the right to reclaim the goods before the ownership is transferred.

➤ 6. Insolvency:

- **Sale:** If the buyer becomes insolvent after the sale but before taking delivery, the seller cannot reclaim the goods from the official receiver or assignee in the buyer's insolvency.
- **Agreement to Sell:** If the buyer becomes insolvent after the agreement but before taking delivery and paying the price, the seller can reclaim the goods from the official receiver or assignee in the buyer's insolvency.



Distinction between Sale and Agreement to Sell:

➤ 7. Legal Remedies:

- **Sale:** In case of a breach of a sale contract, the innocent party can sue for damages and claim specific performance if applicable.
- **Agreement to Sell:** If the buyer breaches the agreement to sell, the seller can sue for damages but cannot claim specific performance as the transfer of ownership is still pending.



Distinction between Sale and Agreement to Sell:

- ▶ **8. Applicability:**
- ▶ **Sale:** Sale applies when there is an immediate transfer of ownership of the goods to the buyer.
- ▶ **Agreement to Sell:** Agreement to sell applies when the transfer of ownership is contingent on certain conditions being fulfilled or at a future date.
- ▶ **In conclusion, the key distinctions between "Sale" and "Agreement to Sell" lie in the timing of the transfer of ownership, risk of loss, nature of the contract, right to reclaim goods, insolvency implications, and legal remedies available in case of a breach. Understanding these differences is crucial for businesses and individuals engaged in commercial transactions involving the sale of goods under the Sale of Goods Act, 1930.**



CASE LAW –

- ▶ **1) New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax AIR 1963 SC 1207.** In this case, Supreme Court held that the essential elements of sale are - i) goods, ii) seller and purchaser, iii) agreement between them for sale and purchase, iv) transfer of property in the goods from seller to buyer as a result of the agreement between them, and v) the price being the consideration for the transfer of property under the agreement.
- ▶ **District Board, Hoshiarpur Vs. Hira Singh Jagat Singh AIR 1968 Punj: 289.** It was held by the Court that a sale can be complete without effecting immediate delivery and even without immediate payment.

Essential Elements of a Contract of Sale:

- Under the Sale of Goods Act, 1930, a contract of sale is legally binding and enforceable if it satisfies certain essential elements. These essentials are crucial for the validity of the contract and must be present for it to be considered a valid contract of sale. The five essential elements for a contract of sale under the Sale of Goods Act, 1930 are as follows:
- **1. Offer and Acceptance (Mutual Consent):**
- **2. Goods:**
- **3. Price**
- **4. Transfer of Ownership:**
- **5. Intention to Create Legal Relations:**




1. Offer and Acceptance (Mutual Consent):

- 1. Offer and Acceptance (Mutual Consent):
- The first essential element of a contract of sale is the presence of a valid offer and acceptance between the parties involved.
- The seller must make a clear and unequivocal offer to sell the goods at a certain price, and the buyer must accept the offer as it is or with modifications.
- The acceptance must be communicated to the seller, and both parties must agree on the essential terms of the sale.

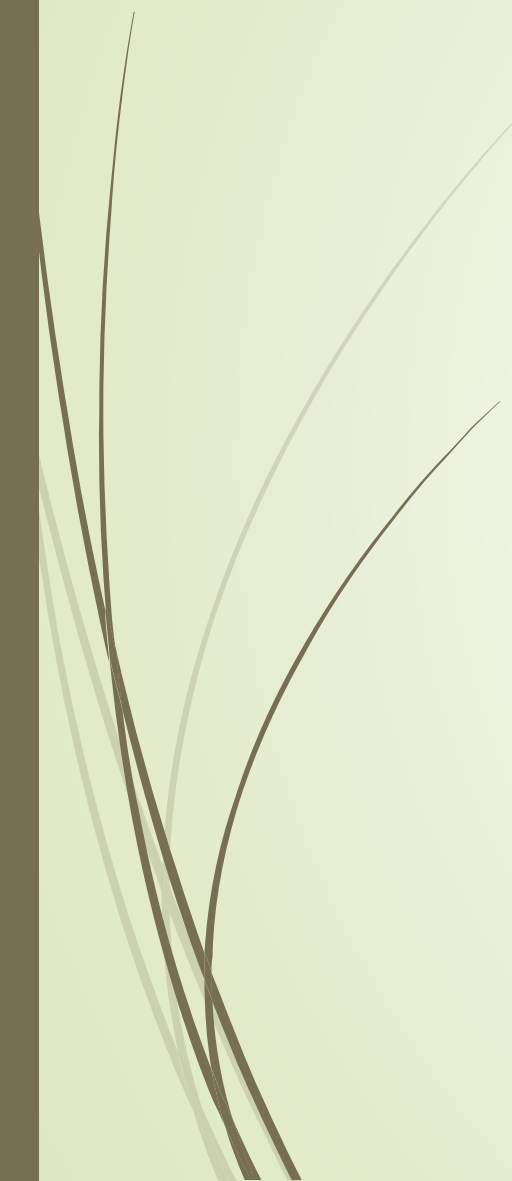


2. Goods:

- ▶ The subject matter of the contract must be "goods" as defined under the Sale of Goods Act, 1930.
 - ▶ Goods refer to movable property that can be bought and sold. It includes all tangible, movable items except money, actionable claims, and certain specific items excluded by law.
 - ▶ The goods must be existing and identifiable at the time of making the contract.
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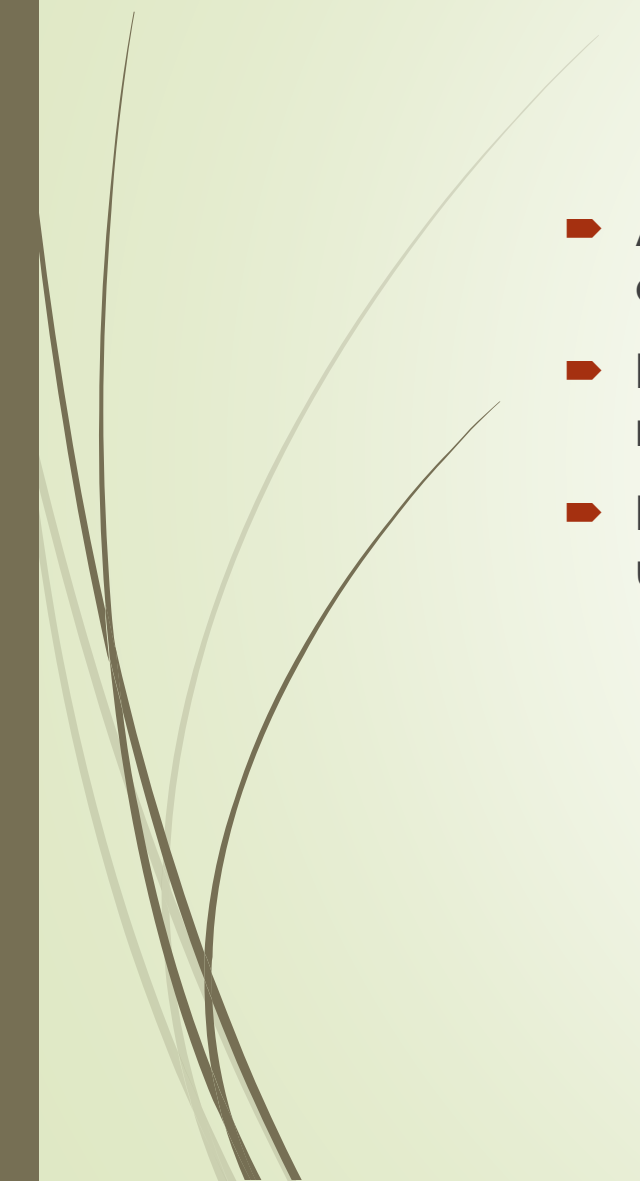


3. Price:

- The third essential element is the determination of a price for the goods.
 - The price may be fixed or determined in a manner agreed upon by the parties. It is not necessary to express the price in money; it can be payable in other forms, including goods or services.
 - The price should be certain and definite or should be capable of being ascertained with reference to an agreed-upon method.
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4. Transfer of Ownership:

- ▶ Another vital element is the transfer or agreement to transfer the ownership of the goods from the seller to the buyer.
 - ▶ In a sale, ownership is immediately transferred to the buyer upon the making of the contract.
 - ▶ In an agreement to sell, ownership is intended to pass at a future date or upon the fulfilment of specific conditions.
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5. Intention to Create Legal Relations:

- ▶ The parties must have a clear intention to create legal relations through the contract of sale.
- ▶ An informal arrangement or social agreement between friends or family members, where the intention is not to be legally bound, would not qualify as a valid contract of sale.
- ▶ The presumption is that commercial transactions intend to create legal relations, but in some cases, this intention may need to be explicitly expressed.
- ▶ **These five essentials are fundamental to the formation of a valid contract of sale under the Sale of Goods Act, 1930. Each element must be present for the contract to be legally enforceable, and any deficiency in these essentials may result in the contract being deemed void or unenforceable. It is essential for parties involved in the sale of goods to understand these elements to ensure compliance with the law and avoid potential disputes.**



Definition of Goods (Section 2(7)):

- ▶ **Definition of Goods (Section 2(7)):**
- ▶ Section 2(7) of the Sale of Goods Act, 1930, provides the definition of "goods." It states:
- ▶ "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.



Key Elements of the Definition:

- **Movable Property:** Goods, as per the Act, must be movable property. This means that they can be physically moved from one place to another without any damage or alteration to their nature. Immovable property, such as land and buildings, is not considered goods under the Act.
- **Exclusion of Actionable Claims and Money:** The Act specifically excludes actionable claims and money from the definition of goods. Actionable claims refer to rights that can be enforced through legal action, such as debts, contracts, or other legal entitlements. Money, as the medium of exchange, is also excluded from the definition of goods.
- **Inclusion of Stock and Shares:** The Act explicitly includes stock and shares as goods. This means that shares in a company and other financial instruments that represent ownership interests can be bought and sold as goods under the Act.
- **Growing Crops and Grass:** The Act considers growing crops and grass as goods. These are items attached to the land, but if they are agreed to be severed (harvested or cut) before the sale or under the contract of sale, they fall under the definition of goods.
- **Things Forming Part of the Land:** The Act includes things attached to or forming part of the land if they are agreed to be severed before sale or under the contract of sale. This refers to fixtures that can be removed from the land and treated as goods.



Examples of Goods:

- ▶ **Tangible Items:** Goods include tangible, movable items such as furniture, vehicles, machinery, electronic devices, clothing, etc.
- ▶ **Stocks and Shares:** Shares in a company or other securities traded in the stock market fall under the definition of goods.
- ▶ **Growing Crops:** Crops that are planted and growing on land, and intended to be harvested, are considered goods.
- ▶ **Minerals:** Minerals extracted from the earth and intended for sale, such as coal, iron ore, or precious metals, are also goods.
- ▶ **Fixtures:** Fixtures attached to land, such as lighting fixtures, can be goods if they are agreed to be severed before sale.

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- **To Conclude**
 - **Understanding the concept of "goods" under the Sale of Goods Act, 1930, is essential for all commercial transactions involving the transfer of ownership of movable property. It encompasses a wide range of tangible items, financial instruments like stocks and shares, growing crops, and certain fixtures. Being familiar with this definition helps businesses and individuals ensure compliance with the Act's provisions and facilitates smooth and legally valid transactions in the sale of goods.**



Conditions and Warranties:

- The Act distinguishes between "conditions" and "warranties."
- **Conditions:** These are essential terms that go to the root of the contract. A breach of condition entitles the innocent party to repudiate the contract and claim damages.
- **Warranties:** These are less vital terms, and a breach of warranty allows the innocent party to claim damages but not repudiate the contract.



Express Conditions:

- Express conditions are specific terms that are explicitly agreed upon and mentioned by the parties in the contract.
- These terms are essential to the contract and go to the root of the agreement.
- If an express condition is breached, the innocent party may have the right to repudiate the contract and claim damages.
- Example: In a contract to sell a car, the express condition may be that the car has never been involved in an accident. If it is later discovered that the car was in an accident, the buyer can reject the car and claim damages.



Express Warranties:

- ▶ Express warranties are promises made by the seller regarding the quality, performance, or condition of the goods.
- ▶ Unlike conditions, warranties are not essential to the main purpose of the contract.
- ▶ If an express warranty is breached, the innocent party can claim damages but cannot repudiate the contract.
- ▶ Example: The seller of a laptop may provide an express warranty of one-year free service. If the laptop malfunctions within one year and the seller refuses to provide service, the buyer can claim damages.

Implied Conditions and Warranties:

➤ Implied Conditions:

- Implied conditions are not expressly mentioned in the contract but are automatically included in certain types of contracts by operation of law or custom.
- They are deemed to be a fundamental part of the contract regardless of whether they are explicitly stated.
- If an implied condition is breached, the innocent party may repudiate the contract and claim damages.
- Examples:
 - The condition that the seller has the right to sell the goods (Section 14(1) of the Sale of Goods Act).
 - The condition that the goods are of merchantable quality (Section 16(2) of the Sale of Goods Act).



Implied Warranties:

- ▶ Implied warranties are also not expressly mentioned in the contract but are assumed to exist due to law or custom.
- ▶ These warranties do not go to the root of the contract and are less vital than express conditions.
- ▶ If an implied warranty is breached, the innocent party can claim damages but cannot repudiate the contract.
- ▶ Examples: The seller of a laptop may provide an express warranty of one-year free service. If the laptop malfunctions within one year and the seller refuses to provide service, the buyer can claim damages.



□ Caveat Emptor

- is a Latin term that translates to "Let the buyer beware." It is a fundamental principle in the sale of goods, which places the responsibility on the buyer to examine the goods and ensure they are fit for their intended purpose before making a purchase. The principle implies that the seller is not obligated to disclose any defects or shortcomings in the goods unless there is active concealment or misrepresentation.



Meaning of Caveat Emptor:

- ▶ Under the principle of Caveat Emptor, the buyer is expected to be cautious and diligent in inspecting the goods before finalizing the purchase.
- ▶ It means that the buyer must take reasonable steps to satisfy themselves about the quality, condition, and suitability of the goods before making the deal.
- ▶ If the buyer fails to examine the goods and later discovers defects, the seller generally will not be liable for those defects, and the buyer cannot claim damages.



Exceptions to the Rule of Caveat Emptor: (5)

- **1) Sale by Description (Section 15):** If the goods are sold by description, the buyer relies on the description provided by the seller. In such cases, the buyer does not have the opportunity to inspect the goods before the purchase. If the goods do not correspond with the description, the buyer can reject the goods and claim damages.
- **2) Sale by Sample (Section 17):** If the goods are sold by sample, the buyer has the right to inspect the sample before the purchase. The sale is on the basis that the bulk will correspond with the sample. If the bulk of the goods does not match the sample, the buyer can reject the goods and claim damages.



Exceptions to the Rule of Caveat Emptor

- ▶ **3) Sale of Goods by a Merchant (Section 16(2)(a)):** If the seller is dealing in goods of that description (e.g., a seller of new electronic gadgets), there is an implied condition that the goods are of merchantable quality. It means that the goods should be reasonably fit for the purpose for which they are commonly bought and should be in a condition acceptable to the average buyer.
- ▶ **4) Sale of Goods by Sample as well as by Description (Section 15 and 17):** If the goods are sold both by sample and description, the buyer can rely on both the sample and the description. If the goods do not correspond to either the sample or the description, the buyer can reject the goods and claim damages.



Exceptions to the Rule of Caveat Emptor

- ▶ **5) Seller's Fraudulent Misrepresentation:** If the seller actively conceals defects or provides false information about the goods with the intent to deceive the buyer, the principle of Caveat Emptor may not apply. The buyer can then seek remedies, including rescission of the contract and claiming damages.
- ▶ **It is essential for buyers to be aware of the principle of Caveat Emptor and exercise due diligence when purchasing goods, especially when there are exceptions that might grant them protection in specific situations. Similarly, sellers should be honest and forthright in their dealings to avoid potential disputes and legal issues.**



Transfer of Ownership and Delivery:

- The Act deals with the transfer of ownership and the rules regarding the delivery of goods.
- The ownership of the goods passes to the buyer when the parties intend it to pass (as per Section 19).
- Delivery of goods is essential to transfer possession and ownership. The rules for delivery are specified in Sections 31 to 40 of the Act.



Rights and Duties of the Seller and Buyer:

- Both the seller and the buyer have certain rights and duties under the Act.
- Rights of the Seller include the right to sue for the price, stoppage of goods in transit, etc.
- Rights of the Buyer include the right to reject the goods, right to specific performance, etc.
- Duties of the Seller include the duty to deliver the goods, the duty to transfer ownership, etc.
- Duties of the Buyer include the duty to accept the goods and pay the price, etc.



Remedies for Breach of Contract:

- ▶ When there is a breach of contract, the injured party may have several remedies available under the Act, such as:
 - ▶ **Damages:** Monetary compensation for the loss suffered due to the breach.
 - ▶ **Specific Performance:** Compelling the defaulting party to fulfil their obligations as per the contract.
 - ▶ **Repudiation:** Terminating the contract due to the other party's breach.



1. Auction Sale Defined (Section 2(2)):

- ▶ Auction sales play a significant role in the sale of goods under the Sale of Goods Act, 1930. They offer a unique method of selling goods, where potential buyers compete to make the highest bid, and the goods are sold to the highest bidder. The Act contains specific provisions to regulate auction sales and ensure fairness and transparency in the process. Here are some key points related to auction sales under the Sale of Goods Act:
- ▶ **1. Auction Sale Defined (Section 2(2)):**
- ▶ According to the Act, an "auction sale" is a public sale where goods are sold to the highest bidder.
- ▶ **2. Reserve Price:**
- ▶ In an auction, the seller may set a reserve price, which is the minimum price below which the goods will not be sold.
- ▶ If the bidding does not reach the reserve price, the seller is not obligated to sell the goods.



Auction Sale

- **3. Withdrawal of Goods:**

- Before the auctioneer's hammer falls and the goods are declared sold, the seller has the right to withdraw the goods from the auction.
- However, once the auctioneer announces the completion of the sale by the fall of the hammer, the seller cannot withdraw the goods.

- **4. Bidding:**

- Bids made during an auction are considered offers, and the auctioneer acts as the agent of the seller to accept those offers.
- The highest bid is accepted as soon as the auctioneer's hammer falls, and a binding contract of sale is formed between the highest bidder (buyer) and the seller.



Auction Sale



- **5. Competing Bids:**

- If there are competing bids, the auctioneer has the discretion to decide whose bid to accept, and they may choose not to accept the last and highest bid.

- **6. Fall of the Hammer:**

- The fall of the auctioneer's hammer signifies the completion of the contract of sale between the highest bidder and the seller.
- From that moment, the highest bidder is legally bound to buy the goods, and the seller is bound to deliver them.



Auction Sale

- ▶ **. Payment and Delivery:**

- ▶ The buyer must pay the purchase price and take delivery of the goods within the time specified in the auction conditions or as agreed upon.
- ▶ The seller must deliver the goods to the buyer within the agreed-upon time or as required by law.

- ▶ **8. Seller's Right to Rescind:**

- ▶ If there is any mistake or fraud in conducting the auction, or if the buyer fails to pay or take delivery, the seller may have the right to rescind the sale and re-auction the goods.



Auction Sale

- **9. Liability of Auctioneer:**

- The auctioneer, as the agent of the seller, is not personally liable for any defects or representations made regarding the goods unless they expressly represent themselves as the owner of the goods.
- It is essential for both buyers and sellers participating in an auction sale to be aware of their rights and obligations under the Sale of Goods Act. The Act provides a legal framework to ensure fair and transparent auction sales and to protect the interests of both parties involved in the transaction.



Conclusion:

- ▶ **The Sale of Goods Act, 1930, plays a crucial role in regulating commercial transactions involving the sale of goods.**
 - ▶ **Understanding the provisions and concepts of this Act is essential for businesses and individuals engaged in buying and selling goods.**
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