

BBA 2nd Sem

Business Law

By:–

Dr. Sonal Singh Sikarwar

- ▶ The term “Contract of sale of goods’ is a generic term and it includes:
 - ▶ a. **Sale and**
 - ▶ b. **An agreement to sell**
where the seller transfers the ownership rights to the buyer immediately on making the contract, it is the contract of sale, but where the ownership rights are to pass on some future date upon the fulfillment of certain conditions then it is called an agreement to sell.

SALE ` AND 'AGREEMENT TO SELL' DISTINGUISHED

Sale:

- ▶ It is a contract where the ownership in the goods is transferred by seller to the buyer immediately at the conclusion contract. Thus, strictly speaking, sale takes place when there is a transfer of property in goods from the seller to the buyer. A sale is an executed contract.
- ▶ ☐ It must be noted here that the payment of price is immaterial to the transfer of property in goods.
- ▶ **Ex -**
 - ☐ A sells his Yamaha Motor Bicycle to B for Rs. 10,000. It is a sale since the ownership of the motorcycle has been transferred from A to B.

AGREEMENT TO SELL:

- ▶ It is a contract of sale where the transfer of property in goods is to take place at a future date or subject to some condition thereafter to be fulfilled

Ex-

□ A agreed to buy from B a certain quantity of nitrate of soda. The ship carrying the nitrate of soda was yet to arrive. This is `an agreement to sale`. In this case, the ownership of nitrate of soda is to be transferred to A on the arrival of the ship containing the specified goods (i.e. nitrate of soda) [Johnson V Mcdonald (1842) 9 M & W 600, 60 RR 838]

▶ Example:-

On 1st March 1998, A agreed to sell his car to B for Rs. 80,000. It was agreed between themselves that the ownership of the car will transfer to B on 31st March 1998 when the car is got registered in B`s name. It is an agreement to sell and it will become sale on 31st March when the car is registered in the name of B.

Sale

- ▶ Ownership passes to the buyer.
- ▶ It is an executed contract.
- ▶ Risk of loss falls on the buyer.
- ▶ Seller cannot resell the goods.
- ▶ It can be in case of existing and specific goods

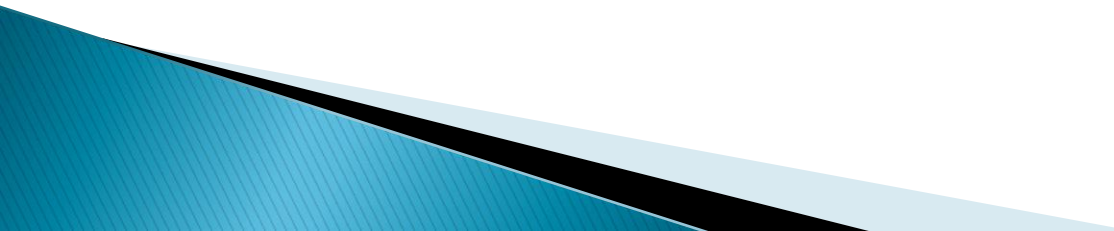
agreement to sale

- ▶ Ownership remains with the seller.
- ▶ It is an executory contract.
- ▶ Risk of loss falls on the seller.
- ▶ Seller can sell goods to third party.
- ▶ It can be in case of future and unascertained goods

- ▶ In case of breach of a contract, seller can sue for the price of the goods .
- ▶ The seller is only entitled to the ratable dividend of the price due if the buyer becomes insolvent

- ▶ In case of breach of a contract, seller can sue only for damages not for the price.
- ▶ The seller may refuse to sell the goods to the buyer w/o payments if the buyer becomes insolvent

WHICH DOCUMENTS ARE CONSIDERED AS 'DOCUMENTS OF TITLE TO GOODS

- ▶ A document of title to goods may be described as any document used as proof of the possession or control of goods, authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented
- 

- ▶ The following are documents of title to goods:
 - ▶ Bill of Lading;
 - ▶ Dock Warrant;
 - ▶ Warehouse keeper's Certificate;
 - ▶ Warfinger's Certificate;
 - ▶ Railway Receipt;
 - ▶ Warrant or order for the delivery of goods; etc
- 