Sale and Agreement to sell

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| Sale | Agreement to Sell |
| 1. Transfer of property | |
| The property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. | The transfer of property is to take place at a future time or when the conditions are fulfilled. |
| 1. Type 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. It may also refer to unascertained existing goods. |
| 1. Risk of loss | |
| In a sale, if the goods are destroyed, the loss falls on the buyer even though the goods are in the possession of the seller. | If the goods are destroyed, the loss falls on the seller, even though the goods are in the possession of the buyer. |
| 1. Consequences of breach | |
| 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. | If there is a breach of contract by the buyer, the seller can sue only for damages and not for the price even though the goods are in the possession of the buyer. |
| 1. Right to re-sell | |
| In a sale, the seller cannot resell the goods. If he does so, the subsequent buyer does not acquire title to the goods. | In an agreement to sell, in case of re-sale, the buyer, who takes the goods for consideration and without notice of the prior agreement, gets a good title. In such a case, the original buyer can only sue the seller for damages. |
| 1. General and particular property | |
| A sale creates jus in rem, i.e., gives right to the buyer to enjoy the goods as against the world at large including the seller. | An agreement to sell creates only jus in personam, i.e., gives a right to the buyer against the seller to sue for damages. |
| 1. Insolvency of buyer | |
| In a sale, if the buyer becomes insolvent before he pays, the goods must to be returned to Official Receiver. Seller can claim only rateable dividend. | In agreement to sell, if the buyer becomes insolvent, the seller need not hand over the goods because the property over the goods is not transferred yet. |
| 1. Insolvency of seller | |
| In a sale, if the seller becomes insolvent before giving delivery of the goods, the buyer can claim the goods from the official receiver. | In agreement to sell, if the seller becomes insolvent, the buyer can claim only rateable dividend because the property of the goods is not transferred yet. |

Sale and hire purchase agreement:

A hire purchase agreement is a contract where the owner of the goods lets them on hire to another person called hirer or hire purchaser on payment of rent to be paid in instalments and upon the agreement that when the instalments are paid, the property in the goods will pass to the hirer and the hirer will have an option to terminate the contract at any point of time.

Distinction between Sale and a hire purchase agreement:

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| S.No | Sale | Hire purchase agreement |
| 1. | Ownership is transferred from the seller to the buyer as soon as the contract is entered into. | Ownership is transferred from the seller to the hire purchaser only when a certain agreed number of instalments is paid. |
| 2. | The position of the buyer is that of the owner. | The position of the hire purchaser is that of the bailee. |
| 3. | The buyer cannot terminate the contract and as such is bound to pay the price of the goods. | The hire purchaser has an option to terminate the contract at any stage, and cannot be forced to pay the further instalments. |
| 4. | If the payment is made in instalments, the amount payable by the buyer is reduced towards the price of the goods. | The instalments paid by the hire purchaser are regarded as hire charges and not as payment towards the price. |

Subject matter of contract of sale: (Goods)

According to Sec. 2(7), ‘goods’ means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops and things attached to or forming part of the land. Trademarks, patent rights, copyrights, goodwill, electricity, water, gas are all goods.

Classification of goods:

1. Existing goods: These are the goods which are owned or possessed by the seller at the time of sale. Only existing goods can be the subject of a sale. The existing goods may be a) Specific goods: These are goods which are identified and agreed upon at the time a contract of sale is made. For eg. A specified watch, dog, etc. 500 quintals of wheat is not specific goods. B) Ascertained goods: These are the goods which become ascertained subsequent to the formation of the contract. C) Unascertained goods: These goods are not identified and agreed upon at the time of the contract of sale. Eg. Where X agrees to sell Y one bag of wheat out of the hundreds of bags placed in his/her godown which is the sale of unascertained goods because it is not known which bag is to be delivered.
2. Future goods: These are the goods which a seller does not possess at the time of contract but are to be manufactured or produced or acquired by the seller after the making of the contract of sale. Though it is expressed as an actual sale, it is an agreement to sell and not a sale. This is because the ownership of a thing cannot be transferred before that thing comes into existence. For **example**, a farmer may agree to sell a buyer all of the milk produced by his/her cows in the coming year.
3. Contingent goods: The **contingent goods** are a type of future **goods**. In this case, the acquisition of **goods** by the seller depends upon uncertain events which may or may not happen. ... Paul agreed to sell to John certain **goods**, which are to be arrived by a ship. If no such goods arrive on board, the seller is not liable for the contract.

The PRICE:

The price in a contract of sale means the money consideration for sale of goods. Sec.2(10). It forms an essential part of the contract. It must be expressed in money.

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