



Define a contract of sale of goods. Distinguish between a 'contract of sale and an agreement to sell.'?

Section 4 of the Indian Sale of Goods Act, 1930 defines the contract of sale of

goods as, "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

The term 'contract of sale of goods is a generic term and it includes:

(i) sale and (ii) an agreement to sell.

Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale. Thus, in a sale, the ownership passes immediately to the buyer. Payment of the price is immaterial for the transfer of property in goods.

Agreement to sell. Where under a contract of sale, the transfer of property in conditions, it is termed as an agreement to sell.

Difference between 'Contract of Sale'

- Sale is 'executed contract'.
- In a 'sale' since the property has passed to the buyer, the seller can sue the buyer for the price of the goods
- Sale creates a 'jus-in-rem', ie, a right on the goods against the whole world.
- In case of loss to goods, in sale, the loss in this case shall be borne by the buyer, even though the goods are in the possession of the seller.
- Insolvency of buyer. In a sale, the seller must deliver the goods to official assignee or receiver and claim rateable dividend for the price of the goods.
- Insolvency of seller. In a sale, the buyer is entitled to receive the goods from the official assignee or receiver.

'Agreement to Sell'

- An agreement to sell is an 'executory contract'.
- In an 'agreement to sell', the seller has the right only to sue for damages for non-performance of the contract.
- An agreement to sell creates a 'jus-in-personam', i.e., a personal right only against the person for any default in fulfilling his part of the agreement.
- The loss in the case shall be borne by the seller, even though the goods are in the possession of the buyer.
- In an agreement to sell, the seller may refuse to deliver to buyer.
- In an agreement to sell, the buyer has to prove the amount he has paid to the seller and he can only claim a rateable dividend. He cannot compel the receiver to sell and deliver the goods.

