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## What is Contract of Sale of goods

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. There can be a contract of sale between one part-owner and another.

In other words, under a contract of sale, a seller (or vendor) in the capacity of the owner, or part-owner of the goods, transfers or agrees to transfer the ownership in goods to the buyer (or purchaser) for an agreed upon value in money (or money equivalent), called the price, paid or the promise to pay same.

A contract of sale may be absolute or conditional depending upon the desire of contracting parties.

## Essentials elements of a Contract of Sale

The following six features are essential elements of any contract of sale of goods.

* Goods
* Price
* Two parties
* Transfer of ownership
* All Essentials of a Valid Contract of Sale
* Includes both a ‘sale‘ and ‘an agreement to sell‘

1. **Two Parties:** A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one’s own goods.

For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between part owners.

Suppose A and B jointly own a television set, A may transfer his ownership in the television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from the firm in which he is a partner, and vice-versa.

However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her money, the pawnor may buy them in execution of a decree.

**Buyer And Seller**

As per the sec 2(1) of the Act, a buyer is someone who buys or has agreed to buy goods. Since a sale constitutes a contract between two parties, a buyer is one of the parties to the contract.

The Act defines seller in sec 2(13). A seller is someone who sells or has agreed to sell goods. For a sales contract to come into existence, both the buyers and seller must be defined by the Act. These two terms represent the two parties of a sales contract.

A faint difference between the definition of buyer and seller established by the Act and the colloquial meaning of buyer and seller is that as per the act, even the person who agrees to buy or sell is qualified as a buyer or a seller. The actual transfer of goods doesn’t have to take place for the identification of the two parties of a sales contract.

2. **Goods:** The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as ‘goods’. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, ‘Transfer of Property Act’.

3. **Transfer of ownership:** Transfer of property in goods is also integral to a contract of sale. The term ‘property in goods’ means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership.

4. **Price:** The buyer must pay some price for goods. The term ‘price’ is ‘the money consideration for a sale of goods’. Accordingly, consideration in a contract of sale has necessarily to be in money. Where goods are offered as consideration for goods, it will not amount to sale, but it will be called barter or exchange, which was prevalent in ancient times.

Similarly, if a person offers the goods to somebody else without consideration, it amounts to a gift or charity and not sale. In explicit terms, goods must be sold for a definite amount of money, called the price. However, the consideration can be partly in money and partly in valued up goods. Furthermore, payment is not necessary at the time of making the contract of sale.

5. **All essentials of a Valid contract:** A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing. For instance, if A agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

6. **Includes both a ‘Sale’ and ‘An Agreement to Sell’:** The ‘contract of sale’ is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas ‘an agreement to sell’ is an executory contract and implies a conditional sale.

A contract of sale can be made merely by an offer, to buy or sell goods for a price, followed by acceptance of such an offer. Interestingly, neither the payment of price nor the delivery of goods is essential at the time of making the contract of sale unless otherwise agreed.

Subject to the provisions of the law for time being in force, a contract of sale may be made either orally or in writing, or partly orally and partly in writing, or may even be implied from the conduct of the parties.

Sale and agreement to sell, Section 4. (1) 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. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

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

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