

BALLB Vth SEM

CONTRACT II

BL 5002

SALE OF GOODS

What do you mean by contract of sale? Explain essential elements and difference between sale and agreement to sale.

Abstract: *Contract of sale is “consensual bilateral and commutative.” A “commutative” contract is one in which the thing given as act done by one party is regarded as the exact equivalent of money paid or act done by the other (Pothier).*

Contract of Sale:

According to section 4(1) of Sale of Goods Act, 1930 States.

A “contract of sale of goods is a contract whereby the seller transfers as agree to transfer the property in the goods to the buyer for a price.”

Essential elements of contract of sale:

Buyer: According to sec 2(1) which a person is buyer who buys or agrees to buy goods.

Seller: According to sec 2(13) which a person s seller who sells or agrees to sell goods (bilateral contract)

(State of Gujarat VS Raman Lal & Co. A.I.R 1965)

Goods: According to sec 2(7) every kind of movable property is goods other than actionable claim and money. But it includes stock and Shares, Growing crops grass and thins attached to earth agreed to be served. (Narayanappa v. Bhasker (1966), ASC 1300)

Price: consideration for contract of sale is money called price

Aldridge V Johnson (1857) Q.B . 296

Where goods are exchanged for goods that is not a sale, but where goods are sold for a definite sum and the price paid partly in terms of valued up goods and partly in cash that is sale.

Transfer of general property in goods: All the right should go to buyer such as right of ownership, right of enjoyment, right of possession etc.

Agreement to sale: An agreement to sale does not involve any transfer of the property in the goods. In an agreement to sale the arrangement is that the transfer of property in the goods is -

- (i) To take place at some future date , or
- (ii) Subject to some condition to be fulfilled thereafter –

An agreement to sale becomes a sale when-

- (i) The time on which the futurity depended elapses, or
- (ii) The conditions are fulfilled.

Difference between contract of sale and agreement to sale:

S.NO.	BASIS	CONTRACT OF SALE	AGREEMENT TO SALE
1	Transfer of property	Property passes from buyer to seller immediately	Property passes in future or subject to certain contingency
2	Type of goods	Existing or specific goods.	Generally relates to future or contingent goods.
3	Risk or loss	Risk full on the buyer own if the goods are in possession of the seller	Loss fully on seller even if goods are in possession of the buyer
4	Consequences of breach of contract	If the buyer fails to pay the price of goods, seller can sue the buyer for price of goods even though goods are in possession of seller	Seller can sue only for damages and not for price.
5	Right of re-sale of goods	Seller cannot re sale the goods with two exceptions: 1. <u>Under section 30</u> if the sale is by the seller who is in possession of goods. 2. <u>Under section 54</u> sale by unpaid seller	A subsequent purchaser who takes the goods for consideration and in good faith (without notice of prier sale gets the good title.)
6	General and particular property	Sale is contract plus conveyance of property so it creates right jus- in -rem (right against whole world)	Agreement to sell is merely a contract and not conveyance so it creates jus-in-persona-m (right only against seller).

Conclusion: Thus above the Statement Conclude that a contract of sale may be absolute or conditional. It is absolute when it is a sole pure and simple transferring the property absolutely to the buyer. It is conditional if there are conditions (precedent or subsequent) to contract by the parties.

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