

future time or subject to certain conditions thereafter to be fulfilled is nothing but an agreement to sell the goods or property. For example, suppose X agrees today with B that he will sell to B his 10 bags of rice on 21st June of Rs 2,000/- on the condition that B should pay 50% of the amount immediately and rest on the 21st June. This is the agreement to sell.

ESSENTIALS OF A CONTRACT OF SALE

The following essential elements are necessary to constitute a valid contract of sale.

(A) TWO PARTIES

There should be two parties to the contract of sale of goods and obviously these two parties are a seller and a buyer. Of course the seller and the buyer must be two different persons because a person cannot buy his own goods. A buyer is a

person who buys or agrees to buy [section 2(1)] and a seller is a person who sells or agrees to sell [section 2(13)]. These two terms are complimentary. There can be a contract of sale between one part owner and another [section 4(1)]. However there are certain exceptions to this rule. A person may buy his own goods in certain case like auction sale [section 64(3)], execution of a decree etc.

(B) Goods - The subject matter of a contract

The subject matter of the contract of sale must be movable property or goods, Transaction involving purchase and sell of immovable property are out of the purview of the Sale of Goods Act. All transaction which involve buying and selling of immovable property are regulated by the transfer of property Act.

Date _____
Page _____

According to section 2(7) of the Sales of Goods Act, 1930 goods mean every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Here actionable claims means claims which can be enforced by a legal action or a suit e.g. a debt.

(C) Transfer of property

There must be a transfer of general property i.e. ownership and not special property in the goods from the seller to the buyer. Suppose X owns certain types of goods, he has general property of goods. If he pledges the goods with Y, Y has special property in the goods which he cannot sell. Transfer of property or the agreement to transfer. The

property is yet another important essential of a contract of sale. But mere transfer of goods from one to another place cannot amount to sale.

(D) Monetary consideration - price

When goods are exchanged for goods, that amounts to barter exchange and not a sale of goods. Again where goods are transferred by one person to another without any consideration that is a gift and not a sale. Therefore, the consideration for a contract of sale, called a price, must be money. But where the goods are exchanged partly for goods and partly for money, that will be a contract of sale.

(E) Essential elements of a valid contract

In addition to the above mentioned essential for constituting a valid contract of sale of goods, it must satisfy all the essential elements necessary

For the formation of a valid contract, as laid down in section 10 of the Contract Act. e.g. there must be consideration and mutual assent between the parties of the contract, all parties to a contract must be competent to enter into a contract, an object of a contract must be lawful etc. Of course it is not necessary that a contract of sale should always be absolute. It may be absolute or conditional

(f) A contract of sale includes sales as well as an agreement to sell

A contract of sales may either be a sale or an agreement to sell