

# FORMALITIES OF A CONTRACT OF SALE

A contract of sale is just like any other contract and therefore, it has to satisfy all essentials of a valid contract which are mentioned above. Offer from one party and the acceptance by the other party in writing and partly oral. [Section 5(2)]. In a contract of sale, however, the offer and acceptance must be relating to buy or sell movable goods for a price. The immediate delivery of goods or immediate payment of its price or even both is not necessary. The contract of sale may provide for immediate payment or delivery of goods or both shall be postponed [Section 5(1)].

## [A] GOODS

It is already stated that the subject matter of a contract of sale must always be for movable goods as defined in Section 2(7) of this Act. Good can

classified into three types, namely

- (a) Existing goods
- (b) future goods
- (c) contingent goods

## (1) Existing Goods

Existing goods are those goods which are owned and possessed by the seller at the time of sale.

The existing goods may be of three types which are as follows:

(1) **Specific goods:** Specific goods are those goods which are identified and agreed upon at the time of a contract of sale is made.

(2) **Unascertained or generic goods:** The goods which are not identified and agreed upon at the time of the contract of sale are the unascertained or generic

goods. Such goods are defined by description only and may form a part of a lot. With the help of an illustration, let us make the meaning of these three types of existings goods more clear. A has twenty chairs. (goods) has been identified at the time of sale and so, it is a contract of sale of specific goods

If A only agrees to sell one of the chairs to B, but does not specify which chair he will sell, it is a contract of sale of unascertained goods. The chair will become 'ascertained' only when A makes up his mind as to which chair he will sell to B and B gives his assent thereto.

## (b) future goods

Future goods are those goods which are to be manufactured, produced or acquired. A seller does not actually possess the future goods at the time of the contract of sale. A contract of present sale

of future goods purports to operate as an agreement to sell the goods and not a sale. It is obvious because the ownership of commodity or goods cannot be transferred unless that commodity or goods comes into existence.

### c) Contingent goods

Contingent goods are a type of future goods. Goods, the acquisition of which by the seller, depends upon an uncertain contingency are called contingent goods.

e.g. X agrees to sell 1000 yards of imported coupon to Y provided the ship which is bringing the same reaches the port safely. This is an agreement for the sale of contingent goods.

~~The Procurement of~~

The procurement of contingent goods depends upon a contingency and therefore the parties to the contract of sale are discharged on non-acquisition of contingent goods. But in the case of future goods, the parties are not discharged on non-production or non-acquisition of future goods,

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## CONTRACT OF SALE AND AGREEMENT TO SELL

Section 4(1) of this act defines a contract of sale which includes both sale and agreement to sell. But section 4(3) makes clear the difference between the two which is as follows.

When under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is a sale, it is only agreed to transfer the property from the seller to the buyer

in the future. It was also held in one sales Tax case that the liability to pay sales tax arises only when there is an actual sale of goods and not only an agreement to sell. The other points of distinction are as given on next page

CONTRACT OF SALE AND  
AGREEMENT TO SELL