

CONTRACT OF SALE OF GOODS

Sale of Goods Act, 1930

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. This law came into force on 1st July, 1930. The Act contains 69 sections and extends to the whole of Pakistan.

Contract of Sale

It is a contract by which the ownership of movable goods is transferred from seller to the buyer. Section 4(1) of the Sale of Goods Act defines a contract of sale of goods as "A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price".

Essentials

The following are essentials of a contract of sale of goods:

1. Contract

A contract means an agreement enforceable by law. All essentials of a valid contract should be present in a contract of sale like capacity of parties, free consent, legality of object, etc. It may be verbal or in writing. It may be express or implied.

2. Seller & Buyer

There must be a seller and a buyer. Buyer means a person who buys or agrees to buy goods. Seller means a person who sells or agrees to sell goods. A person cannot be both a seller as well as a buyer because one cannot buy his own goods and similarly, one cannot sell his goods to himself.

However, the owner of one part can sell his share to the owner of other part. Similarly, a partner may buy the goods from the firm in which he is a partner and vice-versa.

EXAMPLES

- a. A sells his computer to B for Rs. 40,000. A is the seller and B is the buyer.
- b. A and B jointly own a computer. A sells his share to B. B becomes the sole owner of the computer.

3. Transfer of Property

The transfer of property is an essential of the contract of sale. Here, property means ownership of the goods. A mere transfer of possession of the goods cannot be termed as sale. In order to constitute a contract of sale, the seller must either transfer or agree to transfer the property (ownership) in the

EXAMPLE

A sells his car to B for Rs. 80,000. The ownership and possession of the car will transfer from A to B.

4. Goods

The subject matter of the contract of sale must be goods. According to Section 2(7), "Goods means every kind of movable property other than actionable claims and money; and includes electricity, water, gas, 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."

This law does not deal with immovable goods. The trees, fruits, etc. are regarded as goods because they can be separated from the land.

An actionable claim means a debt or claim for money which a person may have against another and which can be recovered by filing a suit. Money is not regarded as goods. However, old coins are treated as goods.

EXAMPLE

A sells his car to M for Rs. 3 Lac. It is a contract of sale because the subject matter of contract i.e. car is a moveable thing.

5. Price

The consideration in a contract of sale must be the price. When goods are sold or exchanged for other goods, the transaction is barter and not a contract of sale of goods. If goods are sold partly for goods and partly for price, it is a contract of sale. [Sec. 2(10)]

EXAMPLES

- a. A sells his chair to B for Rs. 2,000. It is a contract of sale.
- b. X sells his horse to B against B's promise to give 100 ton of wheat. It is not a contract of sale.

6. Sale and Agreement to Sell

The term contract of sale includes both sale and an agreement to sell. When ownership in the goods is transferred from the seller to the buyer at the time of formation of contract, the contract is called a sale.

When, under a contract of sale, the transfer of ownership in the goods is to be transferred from seller to buyer at some future date, the contract is called an agreement to sell.

EXAMPLES

- a. A buys a book from S and pays the whole price on a counter. It is a sale.
- b. A agree to buy B's car for Rs 2 Lac if his mechanic approves the car. It is an agreement to sell.

7. Other Formalities

There is no specific procedure to make a contract of sale. All essentials of a valid contract should be there in a contract of sale like capacity of the parties, free consent, legality of object etc. [Sec. 5]

EXAMPLE

C verbally promises to sell his radio to B. It is a contract of sale if parties are competent to contract, their consent is free and all essentials of contract have been fulfilled.

DIFFERENCE BETWEEN SALE & AGREEMENT TO SELL

The following are points of difference between the two:

SALE	AGREEMENT TO SELL
<p>1. Transfer of Property The ownership of goods is transferred to the buyer immediately at the time of contract. The seller ceases to be the owner and buyer becomes the owner.</p>	<p>The ownership of goods is transferred to the buyer at some future date.</p>
<p>2. Existence of Goods There can be sale only if goods are in existence and are specified.</p>	<p>There can be an agreement to sell if goods are either inexistent or unspecified.</p>
<p>3. Recovery of Goods If seller refuses to deliver the goods, the buyer may sue for recovery of goods.</p>	<p>If seller refuses to deliver the goods, the buyer cannot recover the goods but may sue for damages.</p>
<p>4. Risk of Loss The ownership in goods passes from seller to buyer. If goods are destroyed, the buyer suffers loss even though goods are in possession of seller.</p>	<p>The ownership in goods does not pass from seller to buyer. If goods are destroyed, the seller suffers loss even though goods are in possession of the buyer.</p>
<p>5. Consequences of Breach If buyer fails to pay the price of goods, the seller can sue for the price, even though goods are in possession of seller.</p>	<p>If buyer fails to pay the price, the seller can sue for damages and not for price, even though goods are in possession of buyer.</p>
<p>6. Right of Resale The ownership transfers to the buyer so seller cannot resell the goods, even though goods are in possession of seller. If seller sells the goods, the new</p>	<p>The ownership remains with the seller so he can resell the goods to new buyer. The new buyer gets a good title to the goods, despite the knowledge of</p>

buyer having knowledge of previous sale does not get a title to the goods.

7. Insolvency of Buyer

If buyer becomes insolvent before payment, his legal representatives can demand delivery of goods from the seller. If price of goods is still unpaid, the seller can claim the price of goods proportionately.

8. Insolvency of Seller

If seller becomes insolvent, the buyer can recover the goods from Official Receiver because ownership of goods is with the buyer.

9. Nature of Contract

It is an executed contract as all formalities are completed and buyer becomes the owner immediately.

previous sale. The original buyer can sue for breach of contract only.

If buyer becomes insolvent before payment, the seller can refuse to sell the goods until price is paid by legal representative of the buyer.

If buyer has paid the price and seller becomes insolvent, he can recover the price proportionately. He cannot get the goods as ownership of goods is with the seller.

It is an executory contract as all formalities are not completed and buyer becomes the owner in future.

Kinds of Goods

The following are the kinds of goods:

1. Existing Goods

According to Sec. 6(1), the goods which are owned or possessed by the seller at the time of contract of sale are called existing goods. In other words, the goods which are physically in existence and in seller's possession or ownership at the time of contract are called existing goods. These goods can be divided into following kinds:

a. Specific Goods

The goods which are identified and agreed upon at the time of contract of sale are called specific goods. In other words, these goods can be clearly identified and recognized as separate things at the time of contract. [Sec. 2(14)]

EXAMPLE

X owns many cows and promises to sell one of them. If one cow is singled out, the contract is for specific goods.

b. Unascertained Goods

The goods which are not identified and agreed upon at the time of the contract of sale are called unascertained goods e.g. good in stock or lying in lots. These goods are described by description or sample only.

EXAMPLE

A has 100 bags of sugar. A promises to sell 10 bags of sugar out of them. It is a contract of unascertained goods.

c. Ascertained Goods

The goods which are identified only after the formation of the contract of sale are called ascertained goods. When a part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

EXAMPLE

A makes a contract with B to sell 10 bags of sugar. After the contract, A separates 10 bags from his stock of sugar for B. These bags are ascertained goods.

2. Future Goods

The goods which a seller does not possess at the time of contract but will be manufactured, produced or acquired by the seller after making the contract of sale are called future goods. The seller can only make an agreement to sell the future goods. He cannot sell the future goods. [Sec. 2(6)]

EXAMPLE

X agrees to sell to Y all the mangoes which will be produced in his farm next year. It is a contract of sale of future goods.

3. Contingent Goods

The goods which are not in existence at the time of contract of sale are called contingent goods. In this case, the performance of contract by the seller depends upon uncertain events which may or may not happen. [Sec. 6(2)]

EXAMPLE

A agrees to sell to B a rare painting if he is able to purchase from its present owner. This is a contract of sale of contingent goods.

Destruction of Goods

The effects of destruction of goods are as follows

1. Perishing before Formation of Contract

A contract for sale of specific goods is void ab initio if the goods without the knowledge of seller have perished, at or before the contract is made. However, if the seller has knowledge of the destruction of goods and he enters into a contract of sale with a buyer, the seller is bound to compensate the buyer. If the buyer knows of the destruction of goods, he has no right to claim compensation. [Sec. 7]

When there is contract about specific goods and part of the goods are destroyed, the effect of perishing depends upon the nature of contract. If the contract is divisible, the buyer will have to accept the goods available in good

EXAMPLES

- a. A agrees to sell 100 bags of sugar which are in transit by ship. On arrival of the ship, A discovers that the sugar is spoiled. The contract becomes void.
- b. A sold 10 bags of basmati rice to B. It was found that basmati rice was mixed with inferior quality of rice. The contract is void.

2. Perishing before Sale but after Agreement to sell

When there is an agreement to sell specific goods and subsequently the goods perish without any fault on part of the seller or buyer, the contract becomes void and the parties are not liable for performance. [Sec. 8]

If only part of the goods agreed to be sold are perished, the contract becomes void if it is indivisible. If the contract is divisible, the contract remains valid as regards to the part available in good condition.

EXAMPLES

- a. A took a horse for 8 days on condition that if found suitable the bargain would complete. The horse died on the 3rd day without the fault of any party. Held, the contract became void and the seller would bear the loss. (Elphick vs. Barnes)
- b. A agrees to sell to B, 1 ton of rice and 1 ton of wheat which are to be produced in his field. The crop of rice gets destroyed. A can sell wheat to B as it is a divisible part of the contract. B is bound to accept the wheat.

3. Perishing of Future and Contingent Goods

A contract of sale of future and contingent goods is an agreement to sell. The destruction of future and contingent goods makes the contract void.

EXAMPLE

C agreed to sell to H, 200 tons of potatoes to be grown on C's land. C sowed potatoes but a disease attacked the crop and he could deliver only 10 tons. The contract was held to be void. (Howell vs. Couplan)

Fixation of Price

The money consideration for sale of goods is known as price. Price is an essential element in every contract of sale of goods. A valid sale cannot take place without a price. The price should be paid or promised to be paid in legal tender money of Pakistan i.e. Rupees, unless otherwise agreed.

Modes of Fixing Price

The price may be fixed by the following modes: [Sec. 9]

1. Parties

It is the most common mode of fixing the price. The parties are free to fix any price. The price may be stated in a contract by the parties to the contract.

EXAMPLE

A agrees to sell his car to B for Rs. 5 Lac. Here, the price is fixed in the contract itself.

2. Agreed Method

The price may be determined as per the method specified. The parties decide in advance the method of determining the price. It may be the price prevailing on any particular date or price to be fixed by a third person.

EXAMPLE

A agrees to sell 100 shares of W company to B at the market rate prevailing on the 20th day after deal. It is a valid contract of sale.

3. Course of Dealings

When price is neither expressed in the contract nor any manner of fixing the price is agreed, the price is determined during the course of dealings between the parties. The price may be determined in accordance with the custom and usage of trade. This mode is applicable if parties regularly trade.

EXAMPLE

A agrees to buy 100 shares of W company from B. In general course of dealings, the price of shares is the price prevailing on the date of contract. It is the price prevailing in the stock market on the date of sale.

4. Reasonable Price

If the price is not capable of being fixed by any of the above modes, the buyer is bound to pay to the seller a reasonable price. The amount of reasonable price depends upon the circumstances of each case.

EXAMPLE

A orders B to supply 100 kg of sugar without fixing the price. The price of sugar in the market on day of order will be considered as reasonable price. B must supply sugar to A at this market rate.

SHORT ANSWER QUESTIONS

1. What is a sale?
2. What is an agreement to sell?
3. Define the term goods?
4. How many types of goods are there?
5. What are specific goods?
6. What are future goods?
7. What are contingent goods?