

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 4

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Essentials of a Contract of Sale

ARSHITA JAIN¹

ABSTRACT

The article is penned by Arshita Jain an affiliated student of Symbiosis Law School, Noida explaining the value of the contract of sale in carrying out any purchases amongst the buyer and the seller. These relationships can also be that of purchaser with the dealer, supplier, retailer, vendor or shop seller. When the buyer purchases any product with a bill receipt abiding by all the legal formalities and legal validities, one is said to enter a binding contract and can file a case against the seller in case of any defects in the item and their receipt of payment acts as a proof to the transaction. Similarly, the seller can sue the buyer in case the buyer is unable to complete the formalities of any sale.

Keywords: *Sale, Contract of Sale, Necessary conditions to comply a contract, Rights of seller and buyer.*

I. INTRODUCTION

When two parties agree on a price, different conditions and compromises to a property they agree to a sale and play the role of vendor and purchaser². These sides go through a long process of negotiation to enter into a legally binding agreement.

The agreement of sale has been defined under Section 4 of Sales of Goods Act, 1930. Such types of contracts can be either absolute or conditional. An agreement to sell becomes a sale when its time elapses and the given conditions are fulfilled the contract it becomes an agreement of sale³.

This sale or Exchange leads to transfer from one person to another in consideration of some price. This consideration can be anything including goods, money or barter. These all are treated validly as a sale. There shall also be other valid essentials like competence of parties, mutual assent of the parties and the price that can be compensated for⁴.

There is also a differentiation between 'sale' and 'agreement to sale' which is clearly defined by Supreme Court, when the transfer is going to be completed in future and is subject to some

¹ Author is a student at Symbiosis Law School, India.

² Singh, A. (2005). *Principles of the law of sale of goods and hire purchase: (sale of goods act, 1930 ; hire-purchase act, 1972)*. Eastern Book Co

³ 'Sale', in Taxation Laws With Special Reference to Work Contract: a Journey of Conceptual Aberration During Pre and Post 46th Constitutional Amendment, 2 SML L Rev 164 (2019)

⁴ Halsbury's Laws of England, 91 (5th edn., Vol. 5, 2012)

conditions it is an agreement to sell whereas if the time has lapsed or the conditions are fulfilled it becomes sale⁵.

II. ESSENTIALS TO A CONTRACT OF SALE

(A) Valid Contract:

- i. It must be a valid contract of sale under Section 10 of Indian Contract Act that states that ‘All agreements are contracts if they are made by free consent of parties, competent to contract for a lawful consideration with a lawful object and are declared to be void.’
- ii. There must be an agreement between two parties. This agreement taken place when one party offers to another to buy or sell a good. The other party accepts the offer. These can be understood from Section 2(a), (b) and (c) of Indian Contract Act,1872.
- iii. There must be a lawful consideration under Section 2(d) of Indian Contract Act,1872.
- iv. The parties must have a legal intention while entering into a contract.
- v. The object of the sale must be lawful.
- vi. There should be free consent of the parties who enter into an agreement under section 13 and section 14 of Indian Contract Act,1872.
- vii. Both the parties that are entering into the contract must have legal capacity which means they should be major and not mentally fit. These essentials have been mentioned in Section 11 and Section 12 of Indian Contract Act, 1872.
- viii. The agreement must not be expressly declared to be void.

Example: can be Ram agrees to sell his property to Shyam. Both of them are parties playing the roles of seller and buyer respectively. Shyam agrees to pay the amount and Ram would give him his property which will act as a consideration. Since the property is sold with free consent and an object that is lawful in the eyes of the law it'll become an agreement. When both of them are legally binding themselves to it, it finally becomes a contract between them.

1) The contract should be bilateral:

A sale has to be bilateral as a person cannot buy his own goods. The seller and buyer must be

⁵ Hyderabad Engg. Industries v. State of A.P., (2011) 4 SCC 705.

two different people and as stated by Pothier must be 'consensual, communicative and bilateral'.⁶ A sale must be also be consensual this means free and should not extend more than a sale. The patient if has a statutory obligation then he shall execute it.

Even if a person wants to buy his own goods he can do it in auction sales, executing a decree and in part ownership.

2) **Price-Money Consideration:**

The consideration must be money called price. However it is not necessary it is in the form of currency only. When the goods are sold for a definite sum are partly paid in cash and partly in goods it becomes sale as in the case of *Aldgrige V. Johnson*⁷.

In cases where someone sells his old belonging or good to get money in return that is also considered as a sale.

Under Section 2(10) of Sales Act, the price is the consideration for contract of sale in terms of money. If the goods are transferred, then the sale will not take place but an exchange would.

For example- Ram delivered Shyam 5 pens at Rs 10 per pen. Shyam delivered to Ram 1kg rice at Rs 100 and Ram paid the balance Rs 50 to Shyam then it becomes a valid contract of sale.

3) **Goods:**

Goods are related to every moveable property other than the actionable claims and money which includes different stocks, shares, crops, grass and other land attached things they become a part of contract of sale if they are agreed to severed before. They have meaning part, inclusion part and the exclusion part.

The sale for these goods can be either existing, future or contingent. The existing goods are dependent on the existence of their contract. The future goods will be produced after formation of contract and the contingent ones are dependant upon extension of future goods.

It is covered under Section 2(7) of The Sale of Goods Act that define different types of goods. All types of movable goods are actionable except money. Moreover, things like trademark, patents, gas, electricity. Ships and motor vehicles are also goods and maybe subject to contract of sale. A gift is not considered to be a sale as it does not have any money consideration. Mutual Fund units are considered as goods so that they can be taxed.

Even when a contract is drafted one must take care that the goods are described correctly and

⁶ de Montmorency, J. E. (1913). Robert-Joseph Pothier and French Law. *Journal of the Society of Comparative Legislation*, 13(2), 265–287. <http://www.jstor.org/stable/752278>

⁷ Aldrige vs Johnson (1857) 7 E&B 885: 119 ER 1476: 26 LJ QB 296.

have exactly mentioned their shape, size, weight, colour, model number⁸.

4) Transfer of Ownership:

It is the very essence of contract as the ownership in this case is transferred from one person to another. There should be a general property that must be transferred when all the conditions are fulfilled.

This can be distinguished between 'sale' and 'agreement to sale' is broken by seller, the buyer has to look for a personal remedy against the seller. But if the sale has taken place and then the seller breaches the contract then a personal can claim property damages as well. A sale has immediate effect and agreement to sell is to pass it in future⁹.

But the contract of sale is not same as labour. We can understand this from example of a hotel where there are consolidated charges for staying and other services provided by them. Since there are other services as well they are not counted as a contract of sale¹⁰.

In *Draper & Sons Ltd. v. Edward Turner & Sons Ltd.*¹¹, it was held that sale is a transfer of general or absolute property in return of money,

III. ESSENTIALS WHILE DRAFTING A SALE OF CONTRACT

1. **Description of Goods:** The facts and details about the goods must be clearly described to conduct buying and selling.
2. **Delivery Details:** The date of delivery must be clearly specified to avoid any delays.
3. **Warranty:** The goods under warranty must state starting period and duration. In case it doesn't have any warranty then a clause for replacement can be added to eradicate the problem of damage.
4. **Payment Details:** The method of payment and the date on which transaction should take place must be mentioned. This clause can also include condition of part payment.
5. **Procedure for Registration:** The steps must be followed correctly with appropriate consideration for same.

⁸ Electronic Contract Formation and Regulation : an Appraisal, 22 ALJ (2014-15) 9

⁹ Sunrise Associates v Govt (NCT of Delhi), (2000) 10 SCC 420

¹⁰ www.ETLegalWorld.com. (2023, November 15). *Agreement to sell does not transfer ownership or confer any title, says SC - ET LegalWorld*. ETLegalWorld.com. <https://legal.economicstimes.indiatimes.com/news/litigation/agreement-to-sell-does-not-transfer-ownership-or-confer-any-title-says-sc/105241823>

¹¹ *Draper & Sons Ltd. v. Edward Turner & Sons Ltd.*, 1965 I QB 424

6. **Stamp Duty:** In case of property there are stamp duties signed as a confirmation of buying a property¹².

IV. IMPORTANT STAND OF COURT ON ESSENTIALS OF SALE

(A) Cases:

In the case of *State of Madras v. Gannon Dunkerley & Co.*¹³, the Supreme court pointed out that in sale an agreement between the parties shall transfer title of goods supported by money consideration. If they are not present than a valid contract cannot take place.

In *M.M. traders' case*¹⁴ it was held that the goods should move so that sale gets completed as they both are inseparable.

In *State Trading Corporation of India Ltd.*¹⁵, it was held that that there must be an agreement between parties where transaction takes place in relation to transportation. There must be direct evidence whether it is oral or written

Recently in 2023, the Apex Court held that entering into an agreement does not confer any rights to ownership to the person in whose favour the property is proposed to be transferred. This case came to Supreme Court when it was appealed from Kerela High Court where the transfer of ownership was done in the favour of proposed buyer.

V. CONCLUSION

A contract of sales of goods becomes a contract when sellers agree to transfer his property to the buyer. These transfers are to take place in near future and are subject to certain conditions that are to be accepted and fulfilled by both the parties respectively. A valid contract of sale must contain all the essentials mentioned above. There are different essentials of a sale that are to be fulfilled such as a valid contract, competency of parties, price money, goods, delivery of goods and finally the rights and duties attached with such sales.

¹² *Sales contract*. Legal Service India - Law, Lawyers and Legal Resources. (n.d.). <https://www.legalserviceindia.com/legal/article-13386-sales-contract.html>

¹³ *State of Madras v. Gannon Dunkerley & Co.* A.I.R. 1958 S.C. 560

¹⁴ *M.M. traders case* MANU/MP/0404/2010 : (2010) 4 M.P.L.J. 515

¹⁵ *State Trading Corporation of India Ltd.* MANU/SC/0346/1962 : AIR 1963 SC 548,