

Essential Elements of a Contract

1. There must be at least two parties: a sale has to be bilateral because the property in goods has to pass from one person to another. The seller and the buyer must be different persons.
2. Transfer or agreement to transfer the ownership of goods: In a contract of sale, it is the ownership that is transferred (in the case of sale), or agreed to be transferred (in the case of agreement to sell), as against transfer of mere possession.
3. The subject matter of the contract must necessarily be goods: the sale of immovable property is not covered under Sale of Goods Act.
4. Price is the consideration of the contract of sale: the consideration in a contract of sale has necessarily to be 'money', (i.e. the legal tender money). If for instance, goods are offered as the consideration for goods, it will not amount to sale. It will be called a barter. Where goods are sold for a definite sum and the price is paid partly in terms of valued up of goods and partly in cash, that is sale. These are known as part-exchange contracts. To sum-up: the Act applies only when the buyer pays by cash (or by cheque, credit card, etc). Payment by installments: in the case of sale of goods, the parties may agree that the price will be payable by installments
5. All other essentials of a valid contract as per the Indian Contract Act, 1872 must be present: the parties to the contract must be competent of contract, the consent of the parties must be free, the object of the contract must be lawful and so on.

Goods & their classification

- ‘Goods’ means every kind of movable property, other than actionable claims and money; and includes stocks 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.

Page | 2

- Trademarks, patents, copyright, goodwill, water, gas, electricity are all goods.
- In general, it is only the movables that form goods.
- The term goods excludes money
- Money itself cannot be subject of a sale
- The actionable claims are things which a person cannot make use of, but which can be claimed by him by means of a legal action
- Actionable Claim example: A borrows Rs. 5000/- from B at 12% per annum interest on 1st April, 2006 and promises to pay back the amount with interest on 1st July, 2006. Till 1st July, 2006, the debt is an accruing debt and is an actionable claim.

Classification of Goods may be classified as:

1. Existing
2. Future
3. Contingent

Existing goods are those which are owned or possessed by the seller at the time of the contract. Instances of goods possessed but not owned by the seller are sales by agents.

Existing goods may be either:

- a) Specific or ascertained
- b) Generic and unascertained Specific goods means goods identified and agreed upon at the time a contract of sale is made.

Ascertained goods, though normally used as synonym for specific goods may be intended to include goods which have become ascertained subsequently to the formation of the contract.

Generic or unascertained goods are goods indicated by description and not specifically identified. Page | 3

Example: Anthony, who owns a TV showroom, has 20 TV sets and agrees to sell any one of them to Bharti. The contract is for unascertained goods, since which particular TV set shall become the subject matter of sale is not individualised at the time of the contract of sale.

Future goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale.

Example: farmer agrees to sell future crop of a particular agricultural field in the next season. This is an agreement to sell future goods.

Contingent goods are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Contingent goods is a part of future goods.

Example: Alka agrees to sell to Vivek a certain painting only if Chetan, its present owner sells it to her. This painting is classified as contingent goods.

Effect of perishing of goods

- Section 7 and 8 deal with the effect of perishing of goods on the rights and obligations of the parties to a contract of sale.
- Under these sections the word perishing means not only physical destruction of the goods but it also covers:
 - Damage to goods so that the goods have ceased to exist in the commercial sense, ie, their merchantable character as such has been lost, eg, where cement is spoiled by water and becomes almost stone or where sugar becomes sharbat and thus are unsaleable as cement or sugar
 - Loss of goods by theft

- Where the goods have been lawfully requisitioned by the government
 - It may also be mentioned that it is only the perishing of specific and ascertained goods that affects a contract of sale
 - Where unascertained goods form the subject matter of a contract of sale, their perishing does not affect the contract and the seller is bound to supply the goods from wherever he likes, otherwise be liable for breach of contract.

Example: Where A agrees to sell 10 dozen of eggs to B out of 100 dozens lying in his shop and the eggs are completely destroyed due to any circumstance, the contract does not become void. A must supply 10 dozen of eggs after purchasing them from the market or pay damages for the breach.

1. Perishing of specific goods at or before making of the contract (Sec 7)

(i) In case of the perishing of the ‘whole’ of goods: Where specific goods form the subject-matter of a contract of sale (both actual sale and agreement to sell), and they , without the knowledge of the seller , perish at or before the time of the contract , the agreement is void .This provision is based either on the ground of mutual mistake as to a matter of fact essential to the agreement , or on the ground of impossibility of performance, both of which render an agreement void.

ILLUSTRATION. (a) A sold to B a specific cargo of goods supposed to be on its way from England to Bombay. It turned out, however , that before the day of the bargain, the ship conveying the cargo had been cast away and the goods were lost. Neither party was aware of the fact. The agreement was held to be void.

(ii) In case of perishing of only ‘a part’ of the goods: where in a contract for the sale of specific goods, only part of the goods are destroyed or damaged, the effect of perishing will depend upon whether the contract is entire or divisible.

- If it is entire (i.e. indivisible) and part only of the goods has perished, the contract is void. If the contract is divisible, it will not be void and the part available in good condition must be accepted by the buyer.

2. Perishing of specific goods before sale but after agreement to sell (sec.8).

Where there is an agreement to sell specific goods, and subsequently the goods , without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided, i.e., the contract of sale becomes void, and both parties are excused from performance of the contract.

Page | 5

Examples:

(a) A buyer took a horse on a trial for 8 days on condition that if found suitable for his purpose the bargain would become absolute. The horse died on the 3rd day without any fault of either party. Held, contract, which was in the form of an agreement to sell, becomes void and the seller should bear the loss.

(b) A, had contracted to erect machinery on M's premises, the price to be paid on completion. During the course of the work, there was a fire which completely destroyed premises and the machinery. It was held that both parties were excused from further performance and A was not entitled to any payment as the price was payable on the completion of entire work.