

Course Name	LL.B 2nd sem
Subject	Special Contract Law
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Concept	Nature and Definition of Sale and agreement to Sale

THE MEANING AND NATURE OF THE CONTRACT OF SALE OF GOOD

S.1(1) of the Sales of Goods Act, a contract of sale is one whereby a seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. A contract of sale could be absolute or conditional; **S.1 (2) SOGA**.

A contract of sale can be an outright sale or an agreement to sell. It is an outright sale if by the time the contract is made; the goods are transferred from the seller to the buyer. It is an agreement to sell if by the time the contract is made, the goods are to be transferred at a future date or upon the fulfillment of some conditions; **S.1 (3) SOGA**.

An agreement to sell would become a sale when the time for delivery elapses or the conditions are fulfilled; **S.1 (4)**.

Formation of a Contract of Sale

By virtue of the provisions of **S.3 of the Sales of Goods Act**, no formality is required for the formation of a contract of sale. It could be written or oral or a mixture of both. It could also be concluded by the conduct of the parties to the contract. It is however provided that this provision shall not affect the law relating to a corporation.

Therefore, although a company has the powers of a natural person, if its memorandum stipulates that its contracts of sale should be in a particular format, they must be in that format; **S.38 (1) Companies and Allied Matters Act**.

Essentials of a Contract of Sale

The following are essential requirements for the formation of contract of sale of goods:

1. **Two Parties:** In a contract for sale of goods, there must be two parties present; the buyer and the seller. The parties do not necessarily have to be two single individuals; it could be two corporations with one as the buyer and the other as the seller.

2. **Offer and Acceptance:** Another important ingredient for a contract of sale is offer and acceptance. The offer most likely comes from the buyer and the acceptance comes from the seller. However, in some situations, this role may be reversed.
3. **Consent:** Another important ingredient is the consent of the parties. A contract of sale in which one of the parties is under duress would not be valid. The parties have to be aware of what they are doing and they should consent to it.
4. **Capacity:** By the provisions of **S.2 SOGA**, capacity to contract in sales of goods is governed by the general law relating to capacity to contract. However, where necessaries are sold to an infant, a drunkard or a person with mental incapacity, such persons must pay a reasonable price.
Necessaries are further defined as goods that are important and suitable for the life of such persons that lack capacity can also be his actual requirements at the time of the contract of sale.
5. **Price:** The price in a contract of sale of goods serves as the consideration. The price is usually in monetary terms. It could also be in monetary terms and in goods. There are different ways of fixing the price. The price could be fixed by the provision of the contract, at the time of dealing or in the manner agreed to by the parties; **S.8 (1) SOGA**.
In a situation in which a price was not fixed for the purchase of the goods, a reasonable price should be paid. The reasonableness of a price depends on the individual circumstances of each case; **S.8 (2) SOGA**.
6. **Time:** By the provisions of **S.10 SOGA** it is stated that time for payment isn't considered of the essence except it is stipulated by the terms of the contract. It is further provided that whether or not any other stipulations as to time would be of the essence is determined by the agreement between the parties. If there is no stipulation as to the time for delivery, by the provisions of **S.29 (2)** it is stated that the goods should be delivered within a reasonable time. This goes to show that although time of payment is not *prima facie* of the essence, the time of delivery is important.
Thus in the case of *Amadi Thomas vs Thomas Aplin & Co Ltd (1972) 1 All NLR @409* the goods were to be delivered at a particular time but the seller didn't comply with the time stipulated. The court ruled that the time of delivery is of the essence. Thus the failure to stick to the time provided by the contract was a breach of the contract of sale.
7. **Goods:** By the provisions of **S.62 (1) of the Sales of Goods Act**, goods have been defined as chattel personal other than money. However it should be noted that land is not included under the ambit of sales of goods. Under the Act, goods have been broadly classified into: specific goods, existing goods, future goods, unascertained goods and ascertained goods.

Specific goods are goods that have been clearly identified and agreed upon at the time of the contract of sale; **S.62 (1) SOGA**.

Existing goods are those that the seller already possesses at the time of the contract of sale; **S.5 (1) SOGA**. In the case of existing goods, property in the goods passes once the buyer takes delivery of such goods.

Future goods are goods that would be manufactured or acquired by the seller after the conclusion of the contract of sale. They are not in the possession of the seller at the time of the contract. They are delivered to the buyer at a future date; **S.5 (1) SOGA**.

Unascertained goods are those that are not yet specified. They are usually sold by general descriptive terms for that class of goods. For example, a contract for 50 crates of eggs that haven't been seen by the buyer is one that involves unascertained goods. The 50 crates of eggs in this scenario are unascertained.

Ascertained goods, like specific goods, are those that have been identified at the time of the contract. For example, if there is a contract for 20 crates of eggs seen by the buyer, they become ascertained.

Sale and Agreement of Sale (Section 4)

A contract is a formal or verbal agreement that is enforceable by law. Every contract must have an agreement but every agreement is not a contract. The section 4(1) of the Sale of Goods Act, 1930 states that – ‘A contract of sale of goods is a contract whereby the seller either transfers or agrees to transfer the property in goods to the buyer for a decided price.’

In Section 4(4) of the Act, it is maintained that for an agreement of sale to become a sale, the time has to elapse or the conditions have to be fulfilled subject to which the property in the goods is to be transferred.

The point that is to be understood from the above discussion is that a contract for the sale of goods can either be a sale or an agreement of sale. Let us see both the cases in the light of the Act.

Sale

Here the property in goods is transferred at once to the buyer from the seller. The Section 4(3) of the Act says that “where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is then known as a sale.” A sale is carried out on deliverable goods. Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

The transfer of goods may be affected directly, after the fulfillment of a contingency or to a party authorized by the seller.

Agreement To Sell

We saw that in a sale the property in the goods is transferred from the seller to the buyer. However, in an agreement to sell, the ownership of the property in goods is not transferred immediately. The objective of the agreement is to transfer the goods at a future date, once some contingent clauses in the agreement or certain conditions are satisfied.

The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.”

Thus we see that a contract for the sale of goods may be either sale or agreement to sell. This depends on the condition whether it postulates an immediate transfer of property from the seller to the buyer or whether it postulates the transfer to take place at some future date.

Difference between sale from Hire-purchase

Contracts of sale resemble contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.-Nonetheless, a sale has to be distinguished from a hire purchase as their legal incidents are quite different.

Under hire purchase agreement, the goods are delivered to the hire purchaser for his use at the time of the agreement but the owner of the goods agrees to transfer the property in the goods to the hire purchaser only when a certain fixed number of installments of price are paid by the hirer

The main points of distinction between the ‘sale’ and ‘hire-purchase’ are as follows:

1. In a sale, property in the goods is transferred to the buyer immediately at the time of contract, whereas in hire-purchase, the property in the goods passes to the hirer upon payment of the last installment.
2. In a sale, the position of the buyer is that of the owner of the goods but in hire purchase, the position of the hirer is that of a bailee till he pays the last installment.
3. In the case of a sale, the buyer cannot terminate the contract and is bound to pay the price of the goods. On the other hand, in the case of hire-purchase, the hirer may, if he so likes,

terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.

4. In the case of a sale, the seller takes the risk of any loss resulting from the insolvency of the buyer. In the case of hire purchase, the owner takes no such risk, for if the hirer fails to pay an installment, the owner has the right to take back the goods.
5. In the case of a sale, the buyer can pass a good title to a bonafide purchaser from him but in a hire-purchase, the hirer cannot pass any title even to a bonafide purchaser.
6. In a sale, sales tax is levied at the time of the contract whereas in a hire-purchase, sales tax is not leviable until it eventually ripens into a sale (K.L. Johar & Co. vs. Dy.Commercial Tax Officer).

Perishing of Goods

After a contract of sale is made the subject matter of the contract may be destroyed or it may be found that the subject matter had already been destroyed before the date of making the contract, the effect of the two cases would be different.

A. Goods perishing before the contract of sale (Sec.7) provides, “where there is a contract for the sale of specific goods, the contract is void, if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.”

B. Goods perishing after the contract of sale is made

1. Perishing before sale but after an agreement to sell: “unless otherwise agreed, the goods remain at the seller’s risk, until the property therein is transferred to the buyer...”

2. Goods perishing after sale: In sale, goods are destroyed after sale. The loss arising from the destruction or damage of the goods would be borne by the buyer.(Sec.26)