1. **CONCEPT OF SALE AS CONTRACT**

Contract of sale of goods is a contract, whereby, the seller transfers or agrees to transfer the property in goods to the buyer for a price. There can be a contract of sale between one part-owner and another. In other words, ***under a contract of sale, a seller (or vendor) in the capacity of the owner, or part-owner of the goods, transfers or agrees to transfer the ownership in goods to the buyer (or purchaser) for an agreed upon value in money (or money equivalent), called the price, paid or the promise to pay same.***

A contract of sale may be absolute or conditional depending upon the desire of contracting parties. Formal contract by which a seller agrees to sell and a buyer agrees to buy, under certain terms and conditions spelled out in writing in the document signed by both parties. for example, is a contract of sale. Also called agreement of sale, contract for sale, sale agreement, or sale contract.

1. **NATURE OF SALE OF CONTRACT**

A contract for the sale of goods is defined by the Indian Sale of Goods Act of 1930 ***“as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.***

A contract of sale is therefore agreement by which the seller either actually transfers or enters into an agreement to transfer the ownership in the goods to the purchaser for a price.

When the ownership in the goods is not so transferred at the time of the contract, but the transfer of ownership is to take place at a future date or subject to some condition thereafter to be fulfilled, the contract is called ***“an agreement to sell”.*** An agreement to sell will thus become a sale when the time elapses or the condition are fulfilled subject to which the ownership is to be transferred.

The two essentials of an “agreement” are ***“offer” and “acceptance”.*** Offer maybe either oral or in writing or may even be implied from the conduct of the parties. An acceptance may also be made in any of these three ways.

1. **ESSENTIALS ELEMENTS OF A CONTRACT OF SALE**

The following six features are essential elements of any contract of sale of goods.

* *Goods*
* *Price*
* *Two parties*
* *Transfer of ownership*
* *All Essentials of a Valid Contract of Sale*
* *Includes both a* ***‘sale’*** *and* ***‘an agreement to sell****”*

***1. Goods***

There must be some goods. ’Goods’ means every kind of movable property other than actionable claims and money includes 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 **[Section 2(7)].**The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as ‘goods. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, ‘Transfer of Property Act’.

***2. Price:***

The buyer must pay some price for goods. The term ‘price’ is ‘the money consideration for a sale of goods’. Accordingly, consideration in a contract of sale has necessarily to be in money. **Where goods are offered as consideration for goods, it will not amount to sale, but it will be called barter or exchange, which was prevalent in ancient times.**

**Similarly, if a person offers the goods to somebody else without consideration, it amounts to a gift or charity and not sale. In explicit terms, goods must be sold for a definite amount of money, called the price**. However, the consideration can be partly in money and partly in valued up goods. Furthermore, payment is not necessary at the time of making the contract of sale.

***3. Two Parties:*** A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one’s own goods.

For example,

1. A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between part owners.
2. Suppose A and B jointly own a television set, A may transfer his ownership in the television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from the firm in which he is a partner, and vice-versa.

However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her money, the pawnor may buy them in execution of a decree.

1. ***Transfer of ownership***:

Transfer of property in goods is also integral to a contract of sale. The term ‘property in goods’ means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.

Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or Pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership.

1. ***All essentials of a Valid contract:***

A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing.

For instance, if A agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

1. ***Includes both a ‘Sale’ and ‘An Agreement to Sell’:***

The ‘contract of sale’ is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas ‘an agreement to sell’ is an executory contract and implies a conditional sale.

A contract of sale can be made merely by an offer, to buy or sell goods for a price, followed by acceptance of such an offer. Interestingly, neither the payment of price nor the delivery of goods is essential at the time of making the contract of sale unless otherwise agreed.

Subject to the provisions of the law for time being in force, a contract of sale may be made either orally or in writing, or partly orally and partly in writing, or may even be implied from the conduct of the parties.