

# Bill of sale

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A bill of sale is a document that transfers ownership of goods from one person to another. It is used in situations where the former owner retains possession of the goods. Bills of sale may be used in a wide variety of transactions: people can sell their goods, exchange them, give them as gifts or mortgage them to get a loan. They can only be used:

- to transfer ownership of goods that people already own;
- to transfer ownership of moveable tangible goods; and
- by individuals and unincorporated businesses.

Bills of sale exist at common law quite independently of any legislation. In England and Wales, they are regulated by two Victorian pieces of legislation: the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882. This area of the law was subject to review by the Law Commission, which published a consultation paper ([http://www.lawcom.gov.uk/wp-content/uploads/2015/09/cp225\\_bills\\_of\\_sale.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/09/cp225_bills_of_sale.pdf)) on 9 September 2015.<sup>[1]</sup>

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## Bills of sale in the US

## Historical origin

The term “bill of sale” originally referred to any writing by which an absolute disposition of personalty for value was effected or evidenced. A common feature of such dispositions is that the owner mortgagor remains in possession and exercises all the attendant rights of ownership, which may be so overwhelming as to induce a third party to accept the same chattel as a security for a grant, albeit without notice of the first mortgagee. This scenario made the bill of sale a veritable tool of fraud.

The evolution of various bills of sale laws, within the USA, was to curb the use of the bill of sale as a means of defrauding innocent persons. The first of such being the Bills of Sale Act 1854 which was repealed and re-enacted by the Bills of Sale Act 1878 which was almost on all fours with the 1854 act. Further developments led to the enactment of the Bills of Sale Act 1882.

A bill of sale has been defined as a legal document made by the seller to a purchaser, reporting that on a specific date at a specific locality and for a particular sum of money or other value received, the seller sold to the purchaser a specific item of personal property, or parcel of real property of which he had lawful possession. The Black's Law Dictionary on its part defines a bill of sale as “an instrument for the conveyance of title to personal property, absolutely or by way of security”. According to Omotola the bill of sale is “a form of legal mortgage of chattels”. Bullen and Leake and Jacobs define a bill of sale as “a document transferring a proprietary interest in personal chattels from one individual (the “grantor”) to another (the “grantee”), without possession being delivered to the grantee”.

In essence, a bill of sale is a written instrument showing the voluntary transfer of a right or interest or title to personal property, either by way of security or absolutely, from one person to another without the actual physical possession of the property leaving the owner and being delivered to the other party. It is clear from the definitions above that the bills of sale are essentially of two types: The absolute bill of sale and the conditional bill of sale.<sup>[2]</sup>

### The absolute bill of sale

Absolute bills of sale, which do not represent any form of security whatsoever, are simply documents evidencing assignments, transfers and other assurances of personal chattels, which are substantially no more than mere contracts of sale of goods covered by the common law of contract and the sale of goods law.

### The conditional bill of sale

The conditional bill of sale refers to any assignment or transfer of personal chattels to a person by way of security for the payment of money. The conditional bill of sale creates a security in favour of the grantee of the bill whereby the grantee is given personal right of seizure giving right to a security interest of a possessory nature.

There are other forms of security over goods such as a pledge and contractual lien which also only give right to a security interest of a possessory nature.

An example of a conditional bill of sale can be found where a creditor gives a loan and has transferred to himself, as collateral or security for the loan, the title of the goods or other personal property of the debtor. The physical goods or other property however remains with the debtor.

## Bills of sale in England and Wales

### Historical perspective

Bills of sale have existed at common law since at least the Middle Ages, when they were most commonly used commercially in the shipping industry. As the general population began to own more personal goods in the Victorian era, bills of sale came to be used as a form of consumer credit. Lenders would extend credit on the security of:

*all and every the household goods, furniture, plate, linen, china, books, stock in trade, brewing utensils and all the effects*.<sup>[3]</sup>

Most often, people would grant bills of sale over their goods as security for a loan. Borrowers would transfer ownership of their goods to the lender, while retaining possession of them when making repayments. When the loan was repaid, the borrower would regain ownership. Bills of sale used in this way are known as “security bills”.

Sometimes, bills of sale would transfer ownership outright, such as when a person sold their goods to another while retaining possession. Bills of sale used for purposes other than borrowing money are known as “absolute bills”.

### Bills of Sale Acts

The increased use of bills of sale in the Victorian era created a “false wealth” problem. Potential purchasers and other lenders could be misled into thinking that the person in possession of goods still owned them. The person in possession could sell the goods or use them to secure another loan. In both cases, the transaction was fraudulent, but the purchaser or lender had no way of discovering that the goods were already subject to a bill of sale.

As a result, Parliament passed the Bills of Sale Act 1878. This largely replicated the provisions of an earlier Bills of Sale Act 1854. It requires all bills of sale to be registered at the High Court so that interested third parties could check whether the person in possession has already transferred away ownership of goods.

The Bills of Sale Act (1878) Amendment Act 1882 had a different purpose. The 1878 Act led to a rise in the use of security bills. Concerns were expressed that such transactions could lead “thousands of honest and respectable people to their ruin”.<sup>[4]</sup> Parliament noted that:

*Many money-lenders advertised under the names of fictitious banks; and sometimes they advertised in this form – “A widow, with capital to spare, will be happy to lend on easy terms. Strict secrecy. Five per cent.” ... Having entrapped a man into his office, the money-lender proceeded in this way – He produced a bill of sale containing a large number of clauses, which it was impossible for the borrower to read or understand in the time allowed...<sup>[5]</sup>*

In response, Parliament enacted the 1882 Act, which was an early attempt at consumer protection.

Both the 1878 Act and the 1882 Act remain in force today. Absolute bills are regulated only by the 1878 Act. Security bills are regulated by the 1882 Act and the 1878 Act, to the extent that its provisions are consistent with those of the 1882 Act.

## Bills of sale in the 21st century

In the twenty-first century, bills of sale are overwhelmingly used in the form of so-called “logbook loans”.<sup>[6]</sup> These are security bills secured on the borrower’s vehicle. Borrowers transfer ownership of their car, van or motorcycle to the logbook lender as security for the loan. While making repayments, borrowers keep possession of their vehicle and continue to use it. Borrowers hand the logbook lender the V5C registration document – or “logbook” – but this is purely symbolic and has no legal effect.

## Criticism and reform of the law

The law of bills of sale has been criticised on a number of occasions. The Crowther report in 1971<sup>[7]</sup> and the Diamond report in 1986<sup>[8]</sup> both considered the Acts, with the latter recommending repeal.

In its consultation paper, the Law Commission made a number of criticisms of the law as it stood in 2015. It proposed to replace the Bills of Sale Acts with a new Goods Mortgages Act.<sup>[9]</sup>

In its consultation paper, the Law Commission identified five key problems with the Bills of Sale Acts:

- undue complexity;
- highly technical documentation;
- the registration regime is in need of modernisation;
- they offer little protection to borrowers;
- they offer no protection to third party purchasers.<sup>[10]</sup>

The Law Commission proposed to replace the Bills of Sale Acts with a new Goods Mortgage Act that would address each of the criticisms identified in the consultation paper.<sup>[11]</sup>

## See also

- Contract of sale
- Manufacturer's Certificate of Origin

## References

- Law Commission Consultation Paper No 225: <http://www.lawcom.gov.uk/project/bills-of-sale/>
- "What is a USA Bill of Sale or Documented Sales Receipt?". Retrieved 4 August 2013.
- J Weir, "The Law of Bills of Sale" (1896) p.23
- Hansard (HC), 20 March 1882, vol 267, cc1398-416.
- Hansard (HC), 20 March 1882, vol 267, cc1398-416
- Bills of Sale, Law Commission Consultation Paper No. 225, p 12.
- Report of the committee on consumer credit (1971) Cmnd 4596.
- A Diamond, *A review of security interests in property* (1989)
- Law Commission Consultation Paper No 225, para 8.1.
- Bills of Sale (2015) Law Commission Consultation Paper No 225, p 7
- Law Commission Consultation Paper No 225, p 90.

## External links

- Bills of Sale Act 1878 (<http://www.legislation.gov.uk/ukpga/Vict/41-42/31/contents>)
- Bills of Sale Act (1878) Amendment Act 1882 (<http://www.legislation.gov.uk/ukpga/Vict/45-46/43/contents>)
- Bills of Sale Act 1890 (<http://www.legislation.gov.uk/ukpga/Vict/53-54/53/contents>)
- Bills of Sale Act 1891 (<http://www.legislation.gov.uk/ukpga/Vict/54-55/35/contents>)

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