**Essential Elements in a Contract of Sale Distinguish between Sale and Agreement to sell.**

It is important to understand the essentials of contract of sale in business law before you create any contract. Being familiar with the terms used in a contract and knowing what to look for will help you avoid problems in the future and ensure that your best interests are protected.

[1. Essential Elements in a Contract of Sale](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#essential-elements-in-a-contract-of-sale)  
[2. Two Different Parties](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#two-different-parties)  
[3. Goods](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#goods)  
[4. Transfer of Ownership](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#transfer-of-ownership)  
[5. Price](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#price)  
[6. Other Contract Essentials](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#other-contract-essentials)  
[7. Contract Sale](https://www.upcounsel.com/essentials-of-contract-of-sale-in-business-law#contract-sale)

**Essential Elements in a Contract of Sale**

* Two parties: A contract of sale is between two parties, where one party transfers goods to another party.
* Goods: The subject of the contract must be goods. This is usually the most important element in a contract of sale because if the goods are not described precisely, confusion could result.
* Transfer of ownership: Ownership of the goods must be moved from the seller to the buyer, or there should be an agreement in which the transfer of ownership is made.
* Price: The buyer in the contract must pay a price for the goods.
* A sales contract is a special type of contract. In order for it to be valid, it must contain clauses about free consent and the competency of the signing parties.
* A sale and an agreement to sell are part of a [sales contract](https://www.upcounsel.com/sales-agreement).
* No formalities. There is no particular form to define a valid contract of sale. A contract of sale can be made simply by offering and accepting.

**Two Different Parties**

The ownership of the goods is transferred from one of the [two parties](https://www.quora.com/What-is-a-two-party-contract) to the other. The buyer and the seller have to be different people. Otherwise, it's not possible to create a contract.

For example, Parties A and B both own a TV. Party A can transfer complete ownership to Party B because they are partners in business, and Party B becomes the sole owner of the TV.

**Goods**

[Goods](https://www.upcounsel.com/contracts-for-sale-of-goods) are defined as any type of movable property such as crops, stocks, and things attached to the land that can be separated from it. While writing a contract, make sure to describe the goods for purchase exactly, including details such as weight, color, size, type, and model number. You can avoid future problems by writing a detailed goods description so that buyer gets what he or she wants.

For example, Party A agrees to sell wheat crops to Party B. Both parties agree that Party B can cut the crops and take them, once he pays the agreed price. Since wheat crops are considered a good, this is a valid contract of sale. Every kind of movable property is a good except for cash and actionable claims. Contracts for services are not contracts of sale. Sale of immovable property and book debt are dealt with differently.

**Transfer of Ownership**

In every contract of sale, the [transfer of ownership](https://www.globalnegotiator.com/international-trade/dictionary/transfer-ownership/) has to be agreed upon. General property is transferred in a contract of sale. Special property is transferred in a pledge of goods. In a contract of sale, the transfer of ownership is final.

**Price**

Price is the money consideration for a sale of goods. Consideration in a contract of sale has to be in the form of money. Barter of exchange is used when the consideration is in the form of goods. This method was used before the prevalence of currency.

For a sale to exist, goods have to be sold for a given amount of money, or price. The consideration can consist partly of money and partly of goods that have been assigned a value. Payment is not needed at the time of creating the sales contract.

**Other Contract Essentials**

If any elements are not met, the sales contract is not valid. For example, Party A agreed to sell her car to Party B. Party B forced Party A to sell her car through excessive persuasion. Therefore, the contract is invalid because there is no free consent by the transferor.

**Contract Sale**

A sale is an absolute contract, while an agreement to sell is an executory contract that suggests a conditional sale. A sales contract consists of an offer to sell or buy goods for a price and acceptance of that offer. The payment or delivery of goods is not necessary at the time of creating the sales contract unless it's agreed to.

A contract can be made in the following ways:

* Orally
* In writing
* Partly in writing and partly orally
* Through actions, and implied by those actions

# Difference Between Sale and Agreement to sell

A ‘**Contract of Sale**‘ is a type of contract whereby one party (seller) either transfers the ownership of goods or agrees to transfer it for money to the other party (buyer). A contract of sale can be a sale or an agreement to sell. In a contract of sale, when there is an actual sale of goods, it is known as **Sale** whereas if there is an intention to sell the goods at a certain time in future or some conditions are satisfied, it is called an **Agreement to sell**. Both sale and agreement to sell are types of contract, wherein the former is an executed contract whereas the latter represents an executory contract. Many law students get confused amidst these two terms, but these are not one and the same. Here, in the article given below, we’ve explained the difference between sale and agreement to sell, check it out.

| **BASIS FOR COMPARISON** | **SALE** | **AGREEMENT TO SELL** |
| --- | --- | --- |
| Meaning | When in a contract of sale, the exchange of goods for money consideration takes place immediately, it is known as Sale. | When in a contract of sale the parties to contract agree to exchange the goods for a price at a future specified date is known as an Agreement to Sell. |
| Nature | Absolute | Conditional |
| Type of Contract | Executed Contract | Executory Contract |
| Transfer of risk | Yes | No |
| Title | In sale, the title of goods transfers to the buyer with the transfer of goods. | In an agreement to sell, the title of goods remains with the seller as there is no transfer of goods. |
| Right to sell | Buyer | Seller |
| Consequences of subsequent loss or damage to the goods | Responsibility of buyer | Responsibility of seller |
| Tax | VAT is charged at the time of sale. | No tax is levied. |
| Suit for breach of contract by the seller | The buyer can claim damages from the seller and proprietary remedy from the party to whom the goods are sold. | Here the buyer has the right to claim damages only. |
| Right of unpaid seller | Right to sue for the price. | Right to sue for damages. |

**Key Differences Between Sale and Agreement to Sell**

The following are the major differences between sale and agreement to sell:

1. When the vendor sells goods to the customer for a price, and the transfer of goods from the vendor to the customer takes place at the same time, then it is known as Sale. When the seller agrees to sell the goods to the buyer at a future specified date or after the necessary conditions are fulfilled then it is known as Agreement to sell.
2. The nature of sale is absolute while an agreement to sell is conditional.
3. A contract of sale is an example of Executed Contract whereas the Agreement to Sell is an example of Executory Contract.
4. Risk and rewards are transferred with the transfer of goods to the buyer in Sale. On the other hand, risk and rewards are not transferred as the goods are still in possession of the seller.
5. If the goods are lost or damaged subsequently, then in the case of sale it is the liability of the buyer, but if we talk about an agreement to sell, it is the liability of the seller.
6. Tax is imposed at the time of sale, not at the time of agreement to sell.
7. In the case of a sale, the right to sell the goods is in the hands of the buyer. Conversely, in agreement to sell, the seller has the right to sell the goods.

### Conclusion

Under Indian Sale of Goods Act 1930, section 4 (3) deals with the contract of sale and agreement to sell, where it has been clarified that the agreement to sell also come under sale. However, there is a distinction between these two terms which we discussed above.