



## FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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NAME OF FACULTY: Dr. Ravi Kant Gupta

# Lecture-19



# Introduction

Section 54 of the Transfer of Property Act, 1882 defines sale, Section 55 of the Transfer of Property Act, 1882 speaks about the rights and liabilities of buyers and sellers.

## What is Sale? Definition of Sale -

Section 54 of the Transfer of Property Act, 1882 defines sale, "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

## Essentials of a valid sale:

### 1. The parties to the sale (seller and buyer) should be competent to transfer:

The transferor of the immovable property executing the sale is known as the seller. The person who receives the property sold to him for a consideration that is the transferee is known as the buyer. The transferor or the seller must be competent to contract and entitled to the transferable property. That is he must not be a minor, he should be of sound mind and shall not be disqualified by law to transfer the property. The transfer should either be made by the owner of the property or a person authorized to dispose of the transferable property which is not his own. In the case of *Biswanath Sahu v. Tribeni Mohan AIR 2003 Ori 189*. was held that Karta was authorized to dispose of the property of a joint Hindu family under certain circumstances.

A transferee should be competent to receive the transfer and he shall not be disqualified by law to receive the property transferred. For example, an official liquidator cannot purchase the property he is dealing with. A minor can be a mortgagee provided there is no covenant for him to perform or a minor can be a purchaser when the sale does not impose any obligation upon him and lastly a minor can also be a donee of a gift provided the gift is onerous.

**2. The subject matter of the transfer must be a transferable immovable property:**

When a property is transferred with an intention to sell the property to the buyer for a consideration, the transfer of property includes the delivery of the property along with the ownership rights of that property. The immovable property can be tangible or intangible. Under section 6 a property of any kind may be transferred except the following-

1. A transfer of spes succession
2. The right of re-entry
3. Easement
4. Restricted interest which could be right to future maintenance
5. A right to sue
6. Public office
7. Pension or stipends allowed to the military, air force, naval and civil pensioners of the government
8. A transfer for an unlawful purpose or consideration
9. Statutory prohibitions on transfer of interest

The *Official Assignee Of Madras vs Sampath* AIR 1933 Mad. 795 the court held that when a mortgage is executed by a heir is void eventhough the heir subsequently acquires the property as spes succession. Hence a transfer of property subject to spes succession is void.

### **3. The consideration for the sale must be paid, promised, part paid or part promised:**

Price is a consideration paid for the transfer of property. Therefore price is money but not necessarily money immediately paid in notes and coins, it includes money which might be already due or payable at a future date. A transfer is not a sale if no price is paid or promised or partly paid or promised. The transaction under sale without consideration will not amount to gift unless evidence is adduced for it nor can it be an exchange if the transferor does not transfer ownership of the property. A sale can be executed orally, there is no mandatory requirement of being transferred through a written document. In the case of *Nalamathu Venkaiya v. B.S. Neelkanta*, AIR 2005 Andh.Pra. 535 the court held that payment of consideration is of the essence when a transfer of property is made through a sale. The time of payment of consideration is not material. Consideration may be promised or paid at a future date.

#### **Mode of execution of sale:**

A property must be transferred by sale when it is executed by the transferor in writing and is attested and registered. When a property is of a lower value the sale can be completed by delivery of the property. Due to minimal value, the formality of registration and attestation is not mandatory, however, in a sale a property of a value less than rupees hundred the formalities required are optional. Hence a sale under the Act only pertains to immovable property and not movable property. Once registration, attestation and a document in writing called as the *sale deed* is executed the transfer of immovable property in form of sale is completed and will be binding on both the parties to the sale.

#### **Contract for sale:**

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

#### **Difference between sale and contract of sale:**

1. The sale of immovable property is a transfer of property along with ownership rights. Whereas a contract of sale is a mere agreement that a sale of a property is to take place in future on the terms mutually agreed between the parties. The ownership rights remain with the seller.

2. In a sale, the seller transfers the legal title of the property to the buyer. Whereas in a contract of sale no interest or charge is created in favour of the buyer.

3. A sale must be executed by a registered document where the immovable property is of the value of rupees hundred or more or in case of reversion or in case of any intangible property. Whereas a contract of sale does not require registration.

### **MCO**

**1. Which one of the following is not an essential element of sale?**

- (a) Parties
- (b) Subject matter ..
- (c) Transfer or conveyance.
- (d) Payment of price in cash

**2. Sale is a transfer of ownership in exchange for a price:**

- (a) paid
- (b) promised
- (c) part paid and part promised
- (d) all of the above

**3. In case of transfer of property, the seller is:**

- (a) not entitled to rents and profits
- (b) entitled to rents and profits of the property till the ownership thereof passed to buyer
- (c) entitled to rents and profits forever
- (d) none of the above

**4. Agreement for sale is define in section..... of Transfer of Property Act 1882.**

- (a) 54
- (b) 55
- (c) 56
- (d) 57

**5. Subject matter of sale should be**

- (a) tangible
- (b) intangible
- (c) tangible or intangible
- (d) All of the above