

# 11. VALID SALE

A valid sale has 4 major elements:

## 1. Contract or Transaction (Aqd)

1.1 Offer and acceptance (Ijab-o-Qobool): The term “Offer” means that one person proposes to either sell his commodity to another person or buy from him and “Acceptance” means that the person who has been offered gives his approval of the proposal. Offer and acceptance are always done in past tense (e.g. “I have sold” or “I have purchased” etc). There are two ways of doing it:

1.1.1 Oral (Quali): By saying.

1.1.2 Implied (Isharaa): By indicating. This is of two types:

1.1.2 (a) Credit Sale (Istijrar): For example, settlement of the bill at the end of the month.

1.1.2 (b) Hand-to-Hand Sale (Taati): Exchange of money with goods without uttering Ijab-o-Qobool for procedure adopted in contemporary stores.

1.2 Buyer and Seller (Muta’aquadeen): Both must be:

1.2.1 Sane: Should be mentally sound at the time of contract.

1.2.2 Mature: Should be adult, however, if minor, must understand the nature of the transaction.

1.3 Conditions of Contract (Sharaet-e-Aqd):

1.3.1 Sale must be non-contingent: The delivery of the sold commodity to the buyer must be certain and should not depend on a contingency or chance. For example, A sells his car stolen by some anonymous person to B who purchases it in the hope that he will manage to recover it. The sale is void.

1.3.1 (a) Unconditional contract: The sale must be unconditional. For example, A buys a car from B with a condition that B will employ his son in his firm. The sale is conditional and hence invalid.

1.3.1 (b) Under reasonable conditions: The conditions which do not go against the contract. For example, A tells B to deliver the goods within a month. The sale is valid.

1.3.1 (c) Under unreasonable condition but in market practice: The sale is valid. For example, A buys a refrigerator from B with a condition that B undertakes its free service for 2 years. The condition being recognized as a part of the transaction is valid and the sale is lawful.

1.3.2 Sale must be immediate: The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on a future event is void. If the parties wish to effect a valid sale, they will have to effect it afresh when the future date comes or the contingency actually occurs. For example, A says to B on the first of January: "I sell my car to you on the first of February." The sale is void, because it is attributed to a future date." Similarly, if A says to B: "If x party wins the elections, my car stands sold to you," the sale is void because it is contingent on a future event.

## **2. Sold Good or Subject Matter (Mube'e)**

2.1 Existent: The subject matter of the sale must exist at the time of sale. Thus, a thing which has not yet come into existence cannot be sold. If a non-existent thing has been sold, even with mutual consent, the sale is void according to the Shariah. E.g. A sells the unborn calf of his cow to B. The sale is void.

2.2 Valuable: The subject of sale must be a property of value. Thus a thing having no value according to the usage of trade (e.g. a leaf or a stone on a roadside) cannot be sold or purchased.

2.3 Usable: The subject of sale should not be a thing which is not used except for an impermissible purpose, (e.g. pork, alcohol etc).

2.4 Capable of ownership: The subject matter should not be anything which is not capable of ownership (e.g. sea, sky etc).

2.5 Capable of delivery/possession: For example, an unconstructed building cannot be possessed since it is non-existent.

2.6 Specific and quantified: The subject of sale must be specifically known and identified either by pointing or by detailed specification that can distinguish it from other things which are not sold. For example, there is a building comprising a number of apartments built in the same pattern. A – the owner of the building says to B, "I sell one of these apartments to you;" B accepts. The sale is void unless the apartment intended to be sold is specifically identified or pointed out to the buyer.

2.7 Seller must have title and risk: The subject matter of sale must be in the ownership of the seller at the time of sale. Thus what is not owned by the seller cannot be sold. If he sells something before acquiring its ownership and risk, the sale is void. For example, A sells to B a car which is presently owned by C but A is hopeful that he will buy it from C and shall deliver it to B subsequently. The sale is void, because the car was not owned by A at the time of sale. The speculation in shares is another example.

## **3. Price (Thaman)**

3.1 Quantified (Maloom): The measuring unit of the price should be known (e.g. currency etc).

3.2 Specified and certain (Muta'aiyan): For a sale to be valid, the price should be ascertained and specified (e.g. the total amount etc). If the price is uncertain, the sale is void. For example, A says to

B: "If you pay within a month, the price is Rs.50 but if you pay after two months, the price is Rs.55." B agrees. The price in this case is uncertain and therefore the sale is void unless anyone of the two alternatives is agreed upon by the parties at the time of sale.

#### **4. Delivery or possession (Qabza)**

The subject of sale must be in the physical or constructive possession of the seller when he sells it to another person. This is done only in respect of movable goods, not immovable.

4.1 Physical (Haqiqi): For example, A has purchased a car from B. B has not yet delivered it to A or to his agent. However, A cannot sell the car to C. If he sells it before taking its delivery from B, the sale is void.

4.2 Constructive (Hukmi): Constructive possession means a situation where the possessor has not taken physical delivery of the commodity, but the commodity has come into his control and all the rights and liabilities of the commodity are passed on to him, including the risk of its destruction. For example, A has purchased a car from B. B after identifying the car has placed it in a garage to which A has free access and B has allowed him to take delivery from that place whenever he wishes. Thus the risk of the car has passed on to A. The car is in the constructive possession of A. If A sells the car to C without acquiring physical possession, the sale is valid.