

# The Sale of Goods Act, 1930

**What are the consequences of “destruction of goods” under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected**

**Provision:** [The Sale of Goods Act, 1930]

1. In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.
2. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
3. In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
4. It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

**What do you understand by Caveat Emptor under the Sale of Goods Act 1930? What are the exceptions to this rule?**

**Provision:** [The Sale of Goods Act, 1930]

1. Caveat emptor’ means “let the buyer beware”, i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly.
2. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.
3. The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: “Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”
4. The rule of caveat emptor does not apply in the following cases:
  - a) **Fitness for buyer’s purpose:** Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller’s skill or judgment and the goods are of a description which it is in the course of the seller’s business to supply, the seller must supply the goods which shall be fit for the buyer’s purpose. (Section16(1).
  - b) **Sale under a patent or trade name:** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1).
  - c) **Merchantable quality:** Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied

condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

- d) **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).
- e) **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

**What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operatives under the said Act**

**Provision:** [The Sale of Goods Act, 1930]

1. The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930
  - a) that the bulk shall correspond with the sample in quality
  - b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
  - c) that the goods shall be free from any defect, rendering them merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].
2. Implied Warrants under The Sale of Goods Act, 1930 are as follows:
  - a) **Warranty of quiet possession [Section 14(b)]:** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
  - b) **Warranty of freedom from encumbrances [Section 14(c)]:** The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
  - c) **Warranty as to quality or fitness by usage of trade [Section 16(3)].** An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
  - d) **Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

**Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.**

**Provision:** [The Sale of Goods Act, 1930]

1. Difference between Condition and Warranty
  - a) A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
  - b) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
  - c) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

2. According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:
- a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
  - b) Where the buyer elects to treat the breach of condition as breach of a warranty.
  - c) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
  - d) Where the fulfilment of any condition or warranty is excused by law due to impossibility or otherwise.

**Nemo Dat Quod Non Habet”–“None can give or transfer goods what he does not himself own.” Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.**

**Provision:** [The Sale of Goods Act, 1930]

The term means, “None can give or transfer goods what he does not himself own”. Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

- 1. Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely
  - a) if he was in possession of the goods or documents with the consent of the owner
  - b) if the sale was made by him when acting in the ordinary course of business as a mercantile agent and
  - c) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (Proviso to Section 27).
- 2. Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)
- 3. Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
- 4. Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]
- 5. Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].

6. **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)].
7. **Sale under the provisions of other Acts:**
- Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
  - Purchase of goods from a finder of goods will get a valid title under circumstances.
  - Sale by a pawnee under default of pawnor will give valid title to the purchaser.

**Ram consults Shyam, a motorcar dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930?**

**Provision:** [The Sale of Goods Act, 1930]

- A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty.
- A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
- A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
- Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

**Facts of Case:**

In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car.

**Answer:**

Ram is therefore entitled to reject the car and have refund of the price.

**Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer "on approval" or "on sale or return" or other similar terms, the property therein passes to the buyer.**

**Ms. Preeti owned a motor car, which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930 decide and examine what recourse is available to Ms. Preeti.**

**Provision:** [The Sale of Goods Act, 1930]

As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction
- if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time or

c) He does something to the good, which is equivalent to accepting the goods, e.g. he pledges or sells the goods.

**Facts of Case:**

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi.

**Answer:**

Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

**Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit".**

**Provision:** [The Sale of Goods Act, 1930]

The legal provisions regarding the right of lien of an unpaid seller has been stated from Sections 47 to 49 of the Sale of Goods Act, 1930 which may be enumerated as follows:

1. According to Section 47, the unpaid seller of the goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases namely:
  - a) where the goods have been sold without any stipulation as to credit.
  - b) where the goods have been sold on credit, but the term of credit has expired; or
  - c) where the buyer becomes insolvent.
2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.
3. Section 48 states that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.
4. According to Section 49 the unpaid seller loses his lien on goods:
  - a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
  - b) when the buyer or his agent lawfully obtains possession of the goods
  - c) by waiver thereof.
5. The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.
6. **Right of lien and Right to stoppage the goods in transit- Distinction:**
  - a) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
  - b) Seller should be in possession of goods under lien while in stoppage in transit
    - i. Seller should have parted with the possession
    - ii. possession should be with a carrier and
    - iii. Buyer has not acquired the possession.
  - c) Right of lien can be exercised even when the buyer is not insolvent, but it is not the case with right of stoppage in transit.
  - d) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.

**There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale.” Discuss the significance and State exceptions, if any.**

**Provision:** [The Sale of Goods Act, 1930]

The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maxim ‘Caveat Emptor’ meaning thereby ‘Let the buyer be aware’.

In other words, it is no part of the seller’s duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract.

The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

- 1. Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller’s skill or judgment and the goods are of a description which is in the course of seller’s business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
- 2. Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
- 3. Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If it is not so then seller is responsible.
- 4. Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination.
- 5. Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.
- 6. Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition.
- 7. Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.
- 8. Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case, the buyer has a right to avoid the contract and claim damages.

**Describe the consequences of “destruction of goods” under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.**

**Provision:** [The Sale of Goods Act, 1930]

- 1.** In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio.

2. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.
3. In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
4. It may, however, be noted that section 7 and 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

**Describe the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?**

**Provision:** [The Sale of Goods Act, 1930]

1. According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-
  - a) The whole of the price has not been paid or tendered.
  - b) A bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.
2. Right of stoppage of goods in transit: When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.
3. However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
  - a) The seller must be unpaid.
  - b) The seller must have parted with the possession of goods.
  - c) The goods must be in the course of transit.
  - d) The buyer must have become insolvent.
  - e) The right is subject to provisions of the Act.

**Explain the "condition as to Merchantability" and "condition as to wholesomeness" under the Sale of Goods Act, 1930.**

**Provision:** [The Sale of Goods Act, 1930]

1. Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
2. Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed .
3. The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Example: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

4. Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

**J the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than Rs 50, 000. The agent sells the car for Rs 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed.**

**Provision:** [The Sale of Goods Act, 1930]

1. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].
2. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
  - a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
  - b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
  - c) The buyer should act in good faith.
  - d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

**Facts of Case:**

In the given case J was the owner of Fiat Car, which he wants to sell for this he appointed P and mercantile agent putting one condition that price should not be less then Rs.50, 000. However, p sells the car for Rs. 40, 000 to A who buys the car in good faith without having any knowledge of fraud. P misappropriated the money received from sell of that car.

**Answer:**

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

**Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?**

**Provision:** [The Sale of Goods Act, 1930]



1. Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.
2. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.
3. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

**Facts of Case:**

1. Mr. Samuel agreed to purchase 100 bales from Mr. Varun and sent his men to take delivery of the same. Mr. Varun were able to pack only 60 bales.
2. Later on, there was accidental fire in Varun's place, due to which all the stock including those 60 bales to be delivered to Mr. Samuel was destroyed.

**Answer:**

Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

- a) Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.
- b) Where the bales have not been selected with the consent of buyer's representatives. In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

**What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods****Provision:** [The Sale of Goods Act, 1930]

1. Appropriation of goods: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.
2. The essentials regarding appropriation of unascertained goods are:
  - a) There is a contract for the sale of unascertained or future goods.
  - b) The goods should conform to the description and quality stated in the contract.
  - c) The goods must be in a deliverable state.
  - d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
  - e) The appropriation must be made by
    - i. the seller with the assent of the buyer; or

- ii. the buyer with the assent of the seller.
- f) The assent may be express or implied.
- g) The assent may be given either before or after appropriation.

**Mr. D sold some goods to Mr. E for Rs 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930**

**Answer:** [The Sale of Goods Act, 1930]

Position of Mr. D: Mr. D sold some goods to Mr. E for Rs 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

- a) Suit for price (Section 55) In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
- b) Suit for damages for non-acceptance (Section 56): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
- c) Suit for interest [Section 61]: If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

**What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?**

**Provision:** [The Sale of Goods Act, 1930]

1. As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-
  - a) a lien on the goods for the price while he is in possession of them;
  - b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
  - c) a right of re-sale as limited by this Act. [Sub-section (1)]
2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]
3. These rights can be exercised by the unpaid seller in the following circumstances:
  - a) Right of lien (Section 47): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-
    - i. where the goods have been sold without any stipulation as to credit;
    - ii. where the goods have been sold on credit, but the term of credit has expired;
    - iii. where the buyer becomes insolvent.
  - b) Right of stoppage in transit (Section 50): When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them

in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

- c) Right to re-sell the goods (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:
- i. Where the goods are of a perishable nature
  - ii. Where he gives notice to the buyer of his intention to re-sell the goods
  - iii. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
  - iv. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
  - v. Where the property in goods has not passed to the buyer

#### State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.

**Provision:** [The Sale of Goods Act, 1930]

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

1. There must be at least two parties
2. The subject matter of the contract must necessarily be goods
3. A price in money (not in kind) should be paid or promised.
4. A transfer of property in goods from seller to the buyer must take place.
5. A contract of sale must be absolute or conditional [section 4(2)].
6. All other essential elements of a valid contract must be present in the contract of sale

**Answer:**

Above given are the essential elements that must be present in contract of sale.

#### What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930?

**Provision:** [The Sale of Goods Act, 1930]

If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits a breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
3. **Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
  - a) set up against the seller the breach of warranty in diminution or extinction of the price; or
  - b) sue the seller for damages for breach of warranty.
4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
5. **Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

**Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim?**

**Provision:** [The Sale of Goods Act, 1930]

**Essentials of Sale:** The problem as given in the question is based on Section 16(2) of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used.

**Answer:**

In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2), Mr. Amit would succeed in claim for damages from the owner of the shop.

**For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?**

**Provision:** [The Sale of Goods Act, 1930]

As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business. In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so.

**Answer:**

Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act, 1930.

**What are the rules related to Acceptance of Delivery of Goods?**

**Provision:** [The Sale of Goods Act, 1930]

1. Acceptance is deemed to take place when the buyer-
  - a) intimates to the seller that he had accepted the goods; or
  - b) does any act to the goods, which is inconsistent with the ownership of the seller; or
  - c) Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).
2. Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection.

3. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods.

**Classify the following transactions according to the types of goods they are:**

- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
- A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop.
- T agrees to sell to S all the oranges which will be produced in his garden this year.

**Answer:** [The Sale of Goods Act, 1930]

- A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.
- If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.
- T agrees to sell to S all the oranges, which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell

**Suraj sold his car to Sohan for ` 75,000. After inspection and satisfaction, Sohan paid ` 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.**

**Provision:** [The Sale of Goods Act, 1930]

As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that

- Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].
- Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

**Facts of Case:**

In given case Suraj sold his car to Sohan for 75,000. Sohan paid 25,000 and took possession of the car and promised to pay the remaining amount within month but later on Sohan refuses to give remaining amount on thr ground that car is notin good condition.

**Answer:**

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:-

- Interest on the remaining amount
- Interest during the pendency of the suit.

**J the owner of a car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than ` 50,000. The agent sells the car for ` 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed.**

**Provision:** [The Sale of Goods Act, 1930]

1. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].
2. The buyer of goods form a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
  - a) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
  - b) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
  - c) The buyer should act in good faith.
  - d) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

**Facts of Case:**

In given case J handover his car to P a mercantile agent for sell at a price not less than 50,000. But agent sells the same for 40,000 to A who buys the same in good faith . P also misappropriated the money. J sues A to recover the car.

**Answer:**

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

**Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.**

**Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending?**

**Provision:** [The Sale of Goods Act, 1930]

1. According to section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.
2. The property in the goods or beneficial right in the goods passes to the buyer at appoint of time depending upon ascertainment, appropriation and delivery of goods.

3. Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property therein is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

**Facts of case:**

In given question Mr. G sold some goods to Mr. H but payment of the same was not received that day. Goods were packed & lying in godown of Mr. G. agent of Mr. H inspected the goods and later on payment was made in cash. Just after receiving cash. Mr. G asked Mr. H to take away goods so he can store his other goods at such place but Mr. H did not take delivery. Mr. G kept the goods out of the godown in an open place and due to rain some of the goods were damaged.

**Answer:**

1. In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.
2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:
  - a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]
  - b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

**Mr. D sold some goods to Mr. E for ` 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.**

**Provision:** [The Sale of Goods Act, 1930]

1. **Position of Mr. D:** Mr. D sold some goods to Mr. E for ` 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
2. **Rights of Mr. D:** As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:
  - a) **Suit for price (Section 55):** In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
  - b) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

- c) **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

**“A non-owner can convey better title to the bonafide purchaser of goods for value.” Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sales of Goods Act, 1930**

**Provision:** [The Sale of Goods Act, 1930]

In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value:

1. **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
  - a) If he was in possession of the goods or documents with the consent of the owner;
  - b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
  - c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27 of the Sale of Goods Act, 1930).
2. **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
3. **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
4. **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. [Section 30(1)]
5. **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)].
6. **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
7. **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].
8. **Sale under the provisions of other Acts:**
  - a) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.



- b) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]
- c) A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

(i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".

(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

**Provision:** [The Sale of Goods Act, 1930]

1. **Duty of the buyer according to the doctrine of "Caveat Emptor":** In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.
2. **Duty of the seller according to the doctrine of "Caveat Emptor":** The following exceptions to the Caveat Emptor are the duties of the seller:
  - a) Fitness as to quality or use
  - b) Goods purchased under patent or brand name
  - c) Goods sold by description
  - d) Goods of Merchantable Quality
  - e) Sale by sample
  - f) Goods by sample as well as description
  - g) Trade usage
  - h) Seller actively conceals a defect or is guilty of fraud

**Answer:**

As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]