

SWIFTSCANS FOR CA FOUNDATION JUNE' 23



Swiftscans– CA foundation Sale of Goods Act, 1930

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The swiftscans contain all the questions of


- RTP - May' 18 to June' 23.
- Question papers - May' 18 - Dec' 22.
- Mock test papers

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9831011194**

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Explain the term “Delivery and its form” under the Sale of Goods Act, 1930.
(RTP May’ 18)/ (MT Mar’ 19)/ (MT)/ (MT)



As per section 2(2) “Delivery means voluntary transfer of possession from one person to another”.

As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Forms of delivery: There are three types of delivery. The following are the kinds of delivery:

- a) **Actual delivery:** When the goods are physically delivered to the buyer. A sold his car to B and gave the possession of the car to B. the handing over of the car by A to B is actual delivery.
- b) **Constructive delivery:** This is also known as delivery by attornment acknowledgement. When the delivery is affected without any change in the custody or actual possession of the thing or goods. A had kept the goods in the warehouse of O. later he sells the same goods to B and informs O that the goods are now in his possession on behalf of B and not on his behalf.
- c) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else. The seller gives the buyer the means to obtain the possession of the goods. Delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.



Explain the term goods and other related terms under the Sale of Goods Act, 1930. (MT Oct' 18)



As per section 2(7) of the Sale of Goods Act, 1930 "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.



State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. (RTP May' 20)/ (RTP May' 21)



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

- i. There must be at least two parties, the seller and buyer.
- ii. The subject matter of the contract must necessarily be goods and shall only be moveable goods.
- iii. The consideration in a contract of sale must always be price and not in kind. Price is money which is the legal tender of the country. However the consideration may partly be in kind and partly money.
- iv. A transfer of property in goods from seller to the buyer must take place.
- v. A contract of sale may be absolute or conditional.
- vi. All other essential elements of a valid contract must be present in the contract of sale.



State the difference between Sale and Agreement to sell. (RTP June' 23)



Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract i.e. contract for which consideration has been paid.	It is an executory contract i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem means right against the whole world.	Creates Jus in personam means rights against a particular party to the contract.
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller
In case of insolvency of seller	The official assignee will not be able to take over the goods but will recover the price from the buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
In case of insolvency of buyer	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.



Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.
(Dec' 21)



The main points of distinction between the 'Sale' and 'Hire-Purchase' are as follows:

Basis of difference	Sale	Hire-Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of the contract	Property in goods passes to the hirer upon payment of the last instalment.
Position of the property	The position of the buyer is that of the owner of the goods	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of Insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him	The hirer cannot pass any title even to a bona fide purchaser
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the instalments.



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

- i. A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
- ii. A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop.
- iii. T agrees to sell to S all the oranges which will be produced in his garden this year. **(RTP Nov' 19)/ (MT)**



- i. 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.
- ii. 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 as the goods are only described and not identified.
- iii. 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.'



Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930. (MT)/ (RTP June' 23)



As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,

- i. Actual delivery
- ii. Constructive delivery and
- iii. Symbolic delivery.

When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood. On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery.

Hence, Avyukt is not right in claiming the price back.



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. **(RTP May’ 18)/ (May’ 22)**



In accordance with the provisions of the Sale of Goods Act, 1930 as contained in 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.

However section 8 applies 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 are the rules related to Acceptance of Delivery of Goods? (RTP
May' 19)



- Acceptance is deemed to take place when the buyer-
- i. intimates to the seller that he had accepted the goods; or
 - ii. does any act to the goods, which is inconsistent with the ownership of the seller; or
 - iii. retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods but the seller is entitled to a notice of the rejection. 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.



What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery. (MT Nov' 19)



Delivery u/s 2(2) means voluntary transfer of possession from one person to another. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Following are the different types of delivery:

- i. **Actual delivery:** When the goods are physically delivered to the buyer.
- ii. **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.
- iii. **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.



State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. (RTP Nov' 18) / (RTP May' 19)/ (MT Aug' 18)



Essentials of Contract of Sale

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

- i. There must be at least two parties, buyer and seller. Buyer is the person who buys or agrees to buy and seller is the person who sells or agrees to sell. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
- ii. The subject matter of the contract must necessarily be goods. Goods means any moveable goods. It may be either existing goods, owned or possessed by the seller or future goods.
- iii. The transfer of goods must take place for a price. The consideration in case of sale of goods must always be in money. However it may also be partly in cash and partly in goods.
- iv. Transfer can be only of general property and not of special property.
- v. A contract of sale may either be absolute or conditional.
- vi. All other essential elements of a valid contract must be present in the contract of sale, e.g. competency of parties, legality of object and consideration etc.



"A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930. (Dec' 21)/ (MT)



Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only. In the following cases, a contract is not avoided even on account of a breach of a condition:

- i. Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- ii. Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- iii. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- iv. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.



Explain the “condition as to Merchantability” and “condition as to wholesomeness” under the Sale of Goods Act, 1930. (RTP May’ 18)



Condition as to Merchantability: The expression “merchantable quality”, though not defined, 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.

As per 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. 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.

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.

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 i.e., in a consumable state.

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.



Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of windows. The technician comes at the site and takes size of area where window to be fitted. Afterwards, Iron merchant on discussion with his technician intimates Priyansh that cost of the window will be 5,000 and he will take 1,000 as advance. Priyansh gives 1,000 as advance and rest after fitting of window. After three days when technician try to fit the window made by him at the site of Priyansh, it was noticed that the size of window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use. So, he will not refund the advance money rather Priyansh should give him the balance of 4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back? **(RTP June' 23)**



By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods should be in merchantable position at the time of transfer of property. Sometimes, the purpose for which the goods are required may be ascertained from the facts and conduct of the parties to the sale, or from the nature of description of the article purchased. In such a case, the buyer need not tell the seller the purpose for which he buys the goods.

In the above case Priyansh orders an iron window and the merchant sends his technician to take the size of the window. When the window was fitted it was noticed that the size of the window was not proper. On the basis of above provisions and facts given in the question, it is clear that as window size was not proper, window was not in merchantable condition.

Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.



Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.

With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler? (MT)



As per section 16(2) of the Sale of Goods Act, 1930, when goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use. However, the condition as to merchantability shall consider the following points –

- i. Right to examine the goods by the buyer. The buyer should be given chance to examine the good.
- ii. The buyer should reject the goods, if there is any defect found in the good.

But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]

In the instant case, Mr. X, a retailer is running a shop dealing in toys for children. He purchased from a wholesaler number of toy cars in a sale by sample. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X had to pay compensation to the boy and in turn sued the wholesaler to claim indemnity from him.

The retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect.

Thus, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.



TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber. **(Dec' 21)**



As per the provisions of the Sale of Goods Act, 1930, if the buyer had

- i. made known to the seller the purpose of his purchase
- ii. relied upon the skill and judgment of the seller to select the best goods and
- iii. the seller has ordinarily been dealing in those goods.

there is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them.

Further when the sale is made by description the seller must supply the goods which match the description. If the goods are not as per the description the buyer can return the goods back.

In the instant case, TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch but the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered but it does not match the description.

Therefore, TK may reject the timber.



Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. The goods were not according to the sample. Therefore, D who found the deviation of the goods from the sample rejected the goods and gave a notice to C. C sued B and B sued A. Advise B and C under the Sale of Goods Act, 1930. (RTP May' 22)



As per the provisions of the Sale of Goods Act, 1930, when the sale is made by sample

- i. the bulk must correspond to the sample
- ii. the buyer must be given an opportunity to examine the goods and
- iii. the goods must not have any latent defect which makes them unmerchantable.

If the conditions are not fulfilled the buyer can return the goods back to the seller. However if the buyer accepts the goods the buyer loses the right to cancel the contract.

In the instant case, A sold goods to B on sample, B sold goods to C on sample and C sold goods to D on sample. D noticed that the goods were not as per the description. When B sold goods to C, B had accepted the goods and cannot return it back to A. Further when C sold the goods to D C had accepted the goods and cannot return it back to B.

Therefore B and C shall have no rights to return the goods back as they had accepted the goods.



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. (RTP Nov' 19)/ (MT)/ (May' 22)



When the sale is made by sample the following conditions must be fulfilled:

- i. the bulk shall correspond with the sample in quality;
- ii. the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- iii. the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample.

Under the Sale of Goods Act the following are the implied warranties:

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **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 or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.



Prashant reaches a sweet shop and ask for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller.

- a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930?
- b) Will your answer be different if Prashant does not taste the sweet? (RTP Dec' 21)



As per Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that

- i. the bulk shall correspond with the sample in quality and
- ii. the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

In the instant case, Prashant goes to a sweet shop to purchase 'Burfi' if the sweets are fresh. Seller replied that all his sweets were fresh and of good quality. Prashant tastes one piece of 'Burfi' to check the quality and found it of good quality. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Here the sale was made by sample and the quality of bulk does not correspond with quality of sample.

Hence,

- a) Prashant can return the sweet and avoid the contract.
- b) In case Prashant did not taste the sweets the sale was by description and the quality of goods does not correspond with description made by seller. So the answer would still be same. Prashant can return the sweet and avoid the contract.



Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika selects a set of designer bangles and pays for it. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

- a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.
- b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same? **(RTP Dec' 21)/ (MT)/ (May' 22)**



As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. As per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. Even if the buyer has paid the price of the goods the ownership will be transferred only on the fulfilment of the conditions specified.

In the above case Archika went to a jewellery shop to buy gold bangles with white polish. The shopkeeper informed that he did not have bangles with white polish but he will arrange white polish on gold bangles that Archika would select without any extra cost. Archika paid the price but when she comes to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. She wanted to avoid the contract. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position she is not bound to take them.

Thus

- a) Archika has right to avoid the agreement to sell and can recover the price paid.
- b) If shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika even if he has to bear some expenses for repair.



Explain the term “Caveat-Emptor” under the Sale of Goods Act, 1930? What are the exceptions to this rule? (RTP May’ 18)/ (Nov’ 20)/ (MT)

OR

Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. (MT)



U/S 16 of the Sale of Goods Act the term “Caveat emptor” has been defined to mean “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. 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 the seller for the wrong selection of goods.

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”

The rule of caveat emptor does not apply in the following cases:

1. **Fitness for buyer’s purpose:** Where the buyer, expressly or by implication, makes known 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.
2. **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.
3. **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.
4. **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)].
5. **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.



Ram consults Shyam, a motor-car 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? (RTP Nov' 18)



As per section 12 of the Sale of Goods Act, 1930 a stipulation in a contract of sale with reference to goods which are the subject of such contract may be a condition or a warranty. If such term is a condition it is essential for the purpose of the contract and if the seller fails to fulfill such condition the buyer has a right to cancel the contract. In addition to cancelling the contract the buyer also has a right to claim damages that he may suffer on account of breach of condition. If the buyer at the time of purchase of goods

- i. Specifies to the seller the reason of his purchase
- ii. Depends on the seller's skill and judgment; and
- iii. The seller deal in such goods

The seller must give those goods which suit the buyer's purpose. If they do not suit his purpose the buyer may return the goods back.

In the above case, the buyer Ram had specified to the seller Shyam, a car dealer, that he was looking for a 'car which would be suitable for touring purposes'. This stipulation in the contract was a condition. Ram relying on Shyam had purchased the car specified by Shyam and realized the car was not suitable for touring purpose. As there was a breach of condition Ram has a right to rescind the contract.

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



AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes, customized as per the requirement of the customers. They dealt with Silk, Organdie, cotton, khadi, chiffon and many other different varieties of cloth. Mrs. Reema, a customer came to the shop and asked for specific type of cloth suitable for making a saree for her daughter's wedding. She specifically mentioned that she required cotton silk cloth which is best suited for the purpose. The Shop owner agreed and arranged the cloth pieces cut into as per the buyers' requirements. When Reema went to the tailor for getting the saree stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It has heavily starched and not suitable for making the saree that Reema desired for. The Tailor asked Reema to return the cotton organdie cloth as it would not meet his requirements. The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold. With reference to the doctrine of "Caveat Emptor" explain the duty of the buyer as well as the seller. Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement? **(RTP May' 22)**



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. However if the buyer

- i. Specifies the reason of his purchase to the seller
- ii. Depends upon the seller's skill and judgment and
- iii. The seller is a dealer of those goods

The seller must supply the goods which suit the buyer's purpose. If they are not suitable to the buyer's purchase the buyer may return the goods back. In such a case the rule of Caveat Emptor does not apply.

The following are the exceptions to the doctrine of “Caveat Emptor”:

- i. Fitness as to quality or use
- ii. Goods purchased under patent or brand name
- iii. Goods sold by description
- iv. Goods of Merchantable Quality
- v. Sale by sample
- vi. Goods by sample as well as description
- vii. Trade usage
- viii. Seller actively conceals a defect or is guilty of fraud

In the above case, Mrs Reema goes to AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes and asked for specific type of cloth suitable for making a saree for her daughter’s wedding. She specifically mentioned that she required cotton silk cloth which is best suited for the purpose. The Shop owner agreed and arranged the cloth pieces cut into as per the buyers’ requirements. When she went to her tailor she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It has heavily starched and not suitable for making the saree that Reema desired for. The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold. As it is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer Mrs Reema can return the goods back.

Thus Mrs Reema can claim the price of the goods.



Mr. P was running a shop selling good quality washing machines. Mr. Q came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, when the machine was delivered at Mr. Q's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930, discuss whether Mr. P is right in refusing to exchange the washing machine? (MT)/ (MT)



According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to sample or description, the buyer has the right to repudiate the contract. Further, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Based on the above provision and facts of case, we understand that there is breach of implied condition therefore Mr. Q can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. P to replace the washing machine with desired one.

Thus Mr P is not right in refusing to exchange the washing machine.



Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?

Explain the basic law on sale by sample under Sale of Goods Act 1930?

Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? (RTP May' 20)/ (July' 21)



As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

- i. the bulk shall correspond with the sample in quality;
- ii. the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- iii. The goods must not have any latent defect which makes them unmerchantable.

If the above conditions are not fulfilled the buyer has a right to return the goods back to the seller.

Further while purchasing any goods of the buyer specifies to the seller

- i. The reason of his purchase
- ii. Depends upon the seller's skill and judgment and
- iii. The seller deals in those goods

Then if the goods do not suit the buyers purpose the buyer can return the goods back.

In the above case Mrs. Geeta saw a sample of rice and purchased it. When she received the goods she casually checked it and failed to notice that the rice was mixed with different quality of rice. As she was negligent while checking she will have no claim.

Thus Mrs. Geeta will have no remedy against the seller.

However in case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.



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. (Nov' 19)/ (MT May' 20)/ (MT)



As per the provisions of the Sale of Goods Act, 1930 in case of sale of goods the buyer must select the goods which will suit his purpose and if the goods do not suit his purpose he cannot hold the seller liable. This is the doctrine of 'Caveat Emptor' which 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.

However if the buyer

- i. Specifies the reason of his purchase to the seller
- ii. Depends upon the seller's skill and judgment and
- iii. The seller is a dealer of those goods

The seller must supply the goods which suit the buyer's purpose. If they are not suitable to the buyer's purchase the buyer may return the goods back. In such a case the rule of Caveat Emptor does not apply.

However there are certain exceptions to this rule. Such exceptions are the duties of the seller.

- i. Fitness as to quality or use
- ii. Goods purchased under patent or brand name
- iii. Goods sold by description
- iv. Goods of Merchantable Quality
- v. Sale by sample
- vi. Goods by sample as well as description
- vii. Trade usage
- viii. Seller actively conceals a defect or is guilty of fraud

In the above case Mr. Das had specified to M/s Woodworth & Associates, sellers of various kind of wooden legs, the kind of wooden legs he was looking for. The goods supplied to Mr. Das were not suitable for his specified purpose. As he had specified the seller his purpose for the purchase it was the sellers duty to supply him goods which would suit his purpose.

Thus

- i. All exceptions to Caveat Emptor are the duties of the seller.
- ii. Mr. Das can return the goods back and claim the price of the goods or get the right kind of goods as required by him.



Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

- i. Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
- ii. Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain. (Dec' 22)



According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had

- i. made known to the seller the purpose of his purchase;
- ii. relied on the seller's skill and judgement; and
- iii. Seller's business is to supply goods of that description

then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the instant case, Mr. K has made known to Mr. J the purpose of his purchase and relied on his skill and judgement. It was the duty of Mr. J to supply the marbles fit for that purpose including for second floor. Since the marbles supplied were not fit for second floor Mr. J is liable to replace the marbles to the extent not fit for that purpose.

As per the above doctrine it was the duty of the buyer Mr. K to make known to Mr. J the purpose of his purchase of marbles. He has fully performed his part arranging the visit of Mr. J to the site.

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.

If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K.

Considering the above provisions

- i. Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr. J when he has made him known about that and relied on his skill and judgement.
- ii. Here, Mr. J supplied the boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Even though the tiles were laid in the car parking space of Mr. K and got damaged later because of vehicle used for unloading of cement bags were beyond the reasonable weight. Hence, the seller i.e., M/s Makrana Marbles is not liable as the buyer Mr. K as before laying down the tiles, has to satisfy himself that the tiles will serve the specific purpose i.e., can be used for car parking space only. Therefore, the replacement of the damaged tiles cannot be imposed on M/s Makrana Marbles



- i. **C** bought a bun from a baker's shop. The piece of bun contained a stone in it which broke **C**'s tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?
- ii. A contract with **B** to buy 50 chairs of a certain quality. **B** delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of **A** against **B** under the Sale of Goods Act, 1930? **(RTP Nov' 22)**



- i. **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. Hence, **C** could recover damages in light of the violation of said condition as regards to the consumption of goods i.e. the bun from the baker which is not of merchantable quality.
- ii. **Delivery of different description:** As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole. Hence, **A** may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.



Ankit needs a black pen for his exams. He went to a nearby stationery shop and told the seller for a black pen. Seller gives him a pen saying that it is a black pen but it was clearly mentioned on the packet of pen that “Blue Ink Pen”. Ankit ignore that and takes the pen. After reaching his house, Ankit finds that the pen is actually a blue pen. Now Ankit wants to return the pen with the words that the seller has violated the implied conditions of sale by description. Whether Ankit can do what he wants as per the Sale of Goods Act, 1930. **(RTP Nov’ 22)**



According to Section 16(2) of the Sale of Goods Act, 1930, 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 correspond with that quality. However, where the buyer could find the defect of the goods by ordinary examination, this rule shall not apply.

In the instant case, Ankit goes to a stationery shop to buy a black pen. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is Blue Ink Pen. Ankit ignores the instruction mention on the pack and bought it. On reaching at his house, he finds that actually the pen is blue ink pen and now wants to return the pen. On the basis of above provisions and facts, it is clear that the sale is made by description but Ankit could have found the defect using his ordinary diligence.

Hence, the rule of Caveat Emptor will be applicable here and Ankit cannot return the pen.



“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. (RTP Nov’ 18)/ (MT Aug’ 18)



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 by express terms in the contract. The person who buys goods must check the suitability of the goods while buying them. If he makes a bad choice, he must suffer the consequences of lack of skill and judgment 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.



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? (RTP' May 19)



As per section 16 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

- i. the purpose for which the goods are supplied is known to the seller,
- ii. the buyer relied on the seller's skills or judgement and
- iii. seller deals in the goods in his usual course of business.

If the following conditions are not fulfilled the seller has no obligation to supply goods which are suitable for the buyer's purpose but it the buyer's duty to see the goods are as per his requirement. If he fails to check the suitability of the goods he cannot hold the seller liable and shall be bound by the contract.

In the above case Mr. Yadav bought blue colour cloth from Vivek for making uniforms however he failed to inform the seller the reason for the purchase. The uniforms were stitched and the cloth was found unfit for the purpose. As the buyer had failed to inform the seller about the reason of his purchase the condition as to quality and fitness does not arise in this case. The buyer is responsible for the wrong selection and the contract shall be valid.

Hence, the buyer will not succeed in getting any remedy from the seller.



Mr T was a retail trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for kitchen. Mr T showed him different brands and Mr M approved of a particular brand and paid for it. Fan was delivered at Mr M's house; at the time of opening the packet he found that it was a table fan. He informed Mr T about the delivery of the wrong fan. Mr T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

- i. Discuss whether Mr T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?
- ii. What is the remedy available to Mr M?(Jan' 21)/(RTP May' 21)



According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract. Further, as per Section 16(1) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose. If the goods do not suit the buyer's purpose he can return the goods back.

In the given case, Mr M had revealed Mr T that he wanted the exhaust fan for the kitchen. Mr T showed him different brands and Mr M approved of a particular brand and paid for it. The fan delivered was a table fan. Mr M wanted to return the fan but Mr T refused to take it back. Since the table fan delivered by Mr T was unfit for the purpose for which Mr M wanted the fan he can return the fan.

Therefore,

- i. T cannot refuse to exchange the fan.
- ii. When one party does not fulfill his obligation according to the agreed terms, the other party may treat the contract as repudiated or can insist for performance as per the original contract. Accordingly, the remedy available to Mr M is that he can either rescind the contract or claim refund of the price paid by him or he may require Mr T to replace it with the fan he wanted.



Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller i.e. P. Mrs G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?(RTP May' 21)



According to Section 16(1) of Sales of Goods Act, 1930, normally in a contract of sale there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied. The general rule is that of “Caveat Emptor” that is “let the buyer beware”. However where the buyer

- i. expressly or impliedly makes known to the seller the particular purpose for which the goods are required and
- ii. also relies on the seller’s skill and judgement and
- iii. this is the business of the seller to sell such goods in the ordinary course of his business,

the buyer can make the seller responsible.

In the given case, Mrs G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Mrs G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin.



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? (RTP May' 20)



As per the provisions of the Sale of Goods Act, 1930 when there is a sale of goods from the seller to the buyer 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 the goods are commercially saleable or goods are reasonably fit for the purpose for which they are being used. Further if the packing of the goods are defective that also makes the goods unmerchantable.

In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. As the packing of the goods was defective applying the provision of the Act Mr. Amit would have a right to claim damages.

Thus Mr. Amit would succeed in his claim for damages from the owner of the shop.



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. (RTP May' 19)/ (MT May' 20)/ (Jan' 21)/ (MT)/ (MT)



The following are the differences between condition and warranty:

- i. 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.
- ii. 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.
- iii. Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

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:

- i. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- ii. Where the buyer elects to treat the breach of condition as breach of a warranty.
- iii. Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- iv. Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.



Discuss the various types of implied warranties as per the Sales of Goods Act, 1930? (Nov' 19)

Or

What is an Implied Warranty and state the various types of Implied Warranties. (RTP May' 20)



The following are the implied warranties under the Sale of Goods Act, 1930:

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **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 or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.



"**R**isk Prima Facie passes with property." Elaborate in the context of the Sales of Goods Act, 1930. **(July' 21)**



Risk prima facie passes with property (Section 26 of the Sales of Goods Act, 1930): According to Section 26, 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 the buyer's risk whether delivery has been made or not. It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.



State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. (Nov' 19)



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. Where there is a contract for the sale of unascertained goods by description and goods of that description are 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.

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.

The essentials are:

- i. There is a contract for the sale of unascertained or future goods.
- ii. The goods should conform to the description and quality stated in the contract.
- iii. The goods must be in a deliverable state.
- iv. The goods must be unconditionally appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- v. The appropriation must be made by:
 - the seller with the assent of the buyer; or
 - the buyer with the assent of the seller.
- vi. The assent may be express or implied.
- vii. The assent may be given either before or after appropriation.



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? **(MT Oct' 18)/ (MT Mar' 19)/ (RTP May' 20)/ (MT)**



As per section 26 of the Sale of Goods Act, 1930 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. Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods property in the goods is transferred to the buyer only after the goods are ascertained and where there is contract for the sale of unascertained or future goods by description ownership is transferred only when the goods of that description are in a deliverable state are unconditionally appropriated to the contract. The appropriation of the goods shall be done either by the seller with the consent of the buyer or by the buyer with the consent of the seller and it may be either express or implied.

In the above case Varun sold 100 bales of cotton to Mr. Samuel by way of description. Mr. Samuel's men had gone to take the delivery of the goods. they had packed the 60 bales but before they could pack the rest the entire cotton was burnt down. Assuming that the 60 bales which were taken over were identified by Mr. Samuel's men the ownership of the same has passed on to Mr. Samuel.

Thus for the 60 bales the loss shall be borne by Mr. Samuel as the ownership has transferred. For the rest 40 bales as the ownership is still with the seller, the seller shall bear the loss.



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? (Nov’ 19)/ (MT)

Or

“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. (RTP May’20)/ (MT May’ 20)/ (RTP Dec’ 21)/ (MT)/ (MT)/ (MT)

OR

Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930. (MT)



The general rule is that a non owner cannot transfer a good title to a bonafide purchaser. However there are certain cases where 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:
 - i. If he was in possession of the goods or documents with the consent of the owner;
 - ii. If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - iii. 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
- 2. Sale by one of the joint owners:** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, and such joint owner sells the goods to a bonafide purchaser the sale is valid.
- 3. Sale by a person in possession under voidable contract:** If a person has the possession of the goods under a voidable contract and before the contract is cancelled sells it to a bonafide purchaser, the sale is valid. However if the goods are possessed under a void contract even a bonafide purchaser will not get a good title to the goods.
- 4. Sale by a person in possession after sale:** If a person has sold goods but continues to be in possession of them or of the documents of title to them and sells them to a bonfide purchaser the sale is valid although the property in the goods had passed to the first buyer earlier.

5. **Sale by a person in possession before sale:** 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.
6. **Sale by Estoppel :** Where the owner of the goods lets the buyer believe that the person who is selling him the goods has a right to sell them, the sale is valid.
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.
8. **Sale under the provisions of other Acts:**
 - i. Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - ii. Purchase of goods from a finder of goods will get a valid title under circumstances.
 - iii. A sale by pawnee can convey a good title to the buyer.

Nitika Bachhawat



Ayushman is the owner of a residential property situated at Indraprastha Marg, New Delhi. He wants to sell this property and for this purpose he appoints Ravi, a mercantile agent with a condition that Ravi will not sell the house at a price not less than 5 crores. Ravi sells the house for 4 crores to Mudit, who buys in good faith. Ravi misappropriated the money received from Mudit. Ayushman files a suit against Mudit to recover his property. Decide with reasons, can Ayushman do so under the Sale of Goods Act, 1930? (RTP June' 23)



As per section 27 a person who is not the owner or does not have the authority to sell, sells the goods the buyer shall not get a good title. However there are certain cases where the non owner may sell the goods and the sale is valid. One of such exception is sale by a mercantile agent. As per section 2(9) 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)]. The buyer of the goods from a mercantile agent gets a good title to the goods if the following conditions are satisfied:

- i. The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- ii. The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- iii. The buyer should act in good faith.
- iv. The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the above case Ayushman is the owner of a residential property which he wants to sell. He appoints Ravi, a mercantile agent with a condition that Ravi will not sell the house at a price not less than 5 crores. Ravi sells the house for 4 crores to Mudit, who buys in good faith. On the basis of above the buyer Mudit obtained a good title of that residential property.

Hence, Ayushman cannot recover his property from Mudit. Rather, Ayushman can recover his loss from Ravi



Ms. R owns a Two Wheeler which she handed over to her friend Ms.K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?

- i. Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?
 - ii. Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?
- (Nov' 20)/ (RTP May' 21)**



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-

- a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b) 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.

When the goods are delivered on sale on approval on cash basis the ownership of th goods are transferred only after the price is paid.

In the above case, Ms R handed over her two Wheeler to her friend Ms K on sale or return basis. Even after a week, Ms K neither returned the vehicle nor made payment for it but pledged the vehicle to Mr A to obtain a loan. Ms R wants to claim the two Wheeler from Mr A. as the buyer has done an act with the goods which is in consistent with ownership the sale has taken place between Mrs R and Ms K.

Therefore,

- i. Ms R cannot claim back her two wheeler from Mr A, but she can claim the price of the two wheeler from Ms K only.
- ii. When the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for. Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms K. Thus, the pledge was not valid and Ms R could recover the two wheeler from Mr A.



Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demands the price of Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? If not, who will ultimately bear the loss? (RTP Dec' 21)/ (RTP Nov' 22)



According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

- i. when he signifies his approval or acceptance to the seller,
- ii. when he does any other act adopting the transaction, and
- iii. if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time.

Further, as per Section 8, where there is an agreement to sell specific goods, and 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 the agreement before the risk passes to the buyer, the agreement is thereby avoided. In such a case the loss caused to the goods shall be borne by the seller who is the owner of the goods.

In the above case Akansh purchased a Television set from Jethalal, on the condition that for three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demands the price of the TV. Since the sale has not been concluded between Jethalal and Akansh risk has not passed to the buyer.

Hence, Akansh is not liable to pay the price of the TV to Jethalal. The loss finally should be borne by Seller. Mr. Jethalal.



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 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. **(RTP May' 18/ RTP Nov' 19)**



As per section 27 a person who is not the owner or does not have the authority to sell, sells the goods the buyer shall not get a good title. However there are certain cases where the non owner may sell the goods and the sale is valid. One of such exception is sale by a mercantile agent. As per section 2(9) 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)]. The buyer of the goods from a mercantile agent gets a good title to the goods if the following conditions are satisfied:

- i. The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- ii. The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- iii. The buyer should act in good faith.
- iv. The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. J had authorized P to sell the car for 50,000 which P sold to A for 40,000 and ran away with the money. As P was a mercantile agent who had the possession of the car with the consent of the owner J, A being the bonafide purchaser shall get a good title.

Thus the sale is valid and J cannot recover the car from A.



A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the seller is not the owner. Is the sale by a non-owner valid or not as per the provisions of Sale of Goods Act, 1930? (RTP May' 22)



Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods. One of the exceptions is sale by person in possession under a voidable contract. If a person has possession of goods under a voidable contract and before the contract is cancelled sells it to a bonafide purchaser then the sale is valid.

In the above case, A purchased goods from B by fraud. Mr A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract. Mr A is in possession of the ring and he sells it to a new buyer Mr C who acts in good faith and has no knowledge that A is not the real owner.

Therefore sale of ring by Mr A to Mr C is a valid sale.



Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021. The delivery of wheat and the payment was to be made in next three months i.e. by 10th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act,1930, discuss if such a sale made by Sohan to Vikram is a valid sale? (MT)



As per section 27 of the Sale of Goods Act ,1930 the general rule is "" NEMO DET QUOD NON HABET i.e. no man can sell the goods and give a good title unless he is the owner of the goods".

However, there are certain exceptions to this rule. One of the exceptions is when the seller after having sold the goods continues to be in possession of them and resells them to a new buyer, the new buyer will get a good title provided he buys the goods in good faith and without knowledge of the previous sale.

In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods. Now Sohan sell those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.

Therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.



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? (MT Nov' 19)



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. 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. Risk of loss of goods *prima facie* follows the passing of property in goods. Goods remain at the seller's risk unless the property there in 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.

If the seller does not receive the whole price of the goods he shall be treated as unpaid seller and shall have the following rights:

- i. 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.
- ii. 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 although the property in the goods has not passed and the goods have not been appropriated to the contract.

In the given case, Mr G sold his foods to Mr. H which was approved by Mr. H's agent. Mr G asked Mr. H to collect the goods as he had to stock other goods. Mr. H did not collect the goods so Mr. G had kept the goods outside and they were damaged. 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.

Thus the loss shall be borne by Mr. H

If Mr. G has not received the whole price of the goods he shall have the rights of an unpaid seller.



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 (RTP Nov’ 18)/ (MT Aug’ 18)



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-

- a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b) 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.

In the above case Ms. Preeti gave her car to Mr. Joshi on sale or return. Mr. Joshi pledged the same car to Mr. Ganesh. The act of Mr. Joshi pledging the car to Mr. Ganesh is an act in consistent with ownership and thus the sale is made between Mr. Joshi and Ms. Preeti.

Therefore 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.



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? (RTP May’ 18)/ (MT Mar’ 19)/ (MT Nov’ 19)



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.

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.

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.



AB sold 500 bags of wheat to **CD**. Each bag contains 50 Kilograms of wheat. **AB** sent 450 bags by road transport and **CD** himself took remaining 50 bags. Before **CD** receives delivery of 450 bags sent by road transport, he becomes bankrupt. **AB** being still unpaid, stops the bags in transit. The official receiver, on **CD**'s insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. **(Dec' 21)**



As per the provisions of the Sale of Goods Act, 1930, 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. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

In the instant case, **AB** sold 500 bags of wheat to **CD**. **AB** sent 450 bags by road transport and **CD** himself took remaining 50 bags. Before **CD** receives delivery of 450 bags sent by road transport, he becomes bankrupt. As the goods are in transit and the seller has become unpaid due to the buyer's insolvency the seller can stop the goods in transit.

Therefore, **AB** can stop the goods in transit and the official receiver, on **CD**'s insolvency cannot claim the bags.



Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the “Sale by Auction.” (RTP Nov’ 18)/ (Jan’ 21)



Section 64 of the Sale of Goods Act, 1930 provides the following rules to regulate the sale by auction:

- i. **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.
- ii. **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- iii. **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- iv. **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- v. **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- vi. **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer fall the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? **(RTP Dec' 21)**



As per the provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock. On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table.

Hence, in this case the sale is not completed and so Megha will not be liable for loss and can avoid the contract.



A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? (RTP June' 23)



Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold. Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

- 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 has become insolvent even though the period of credit has not yet expired.

In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime, B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

Thus A can exercise his right of lien.



What do you understand by 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? (MT Nov’ 19)/ (MT)



According to Section 45 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 in any of the following cases:

- i. There was no credit period and the buyer did not pay
- ii. There was a credit period which has expired but the buyer did not pay.
- iii. Payment was made by a negotiable instrument which has been dishonoured.
- iv. Buyer has become insolvent.

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. However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- i. The seller must be unpaid.
- ii. The seller must have parted with the possession of goods.
- iii. The goods must be in the course of transit.
- iv. The buyer must have become insolvent.
- v. The right is subject to provisions of the Act.



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' (RTP Nov)



The 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.

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:
 - 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; or
 - iii. where the buyer becomes insolvent.

The seller may exercise his right of lien not withstanding that he is in possession of the goods as agent or bailee for the buyer.

2. 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.
3. The unpaid seller loses his right of lien in the cases given u/s 49. As per this section
 - i. 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.
 - ii. when the buyer or his agent lawfully obtains possession of the goods;
 - iii. by waiver thereof.

The unpaid seller loses his lien

The following are the differences between the rights of lien and the rights of stoppage in transit:

- i. The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- ii. Seller should be in possession of goods under lien while in stoppage in transit seller should have parted with the possession, possession should be with a carrier and buyer has not acquired the possession.
- iii. 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.
- iv. 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.



Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr. Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan. Mr. Shekharan who is being unpaid seller wants to exercise his right to stoppage in transit.

- i. State with reason, can Mr. Shekharan do so under the Sale of Goods Act, 1930?
- ii. Whether your answer would be same if Mr. Ravi have knowledge of Mr. Raghwan's insolvency at the time of buying the goods? (MT)



According to Section 50 to 52 of the Sale of Goods Act, 1930, 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 and he may resume possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price. However right of stoppage in transit is available only in the following conditions:

- a) The seller must be an unpaid seller.
- b) When the buyer becomes insolvent; and
- c) When the goods are in transit.

This right of stoppage in transit is lost if buyer makes sub – sale of such goods during in transit and that buyer purchased in good faith.

In the above case Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr. Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan.

Therefore

- i. Even though Mr. Shekharan is an unpaid seller, he cannot apply his right of stoppage in transit as goods has been taken by Mr. Ravi in good faith.
- ii. Further, if Mr. Ravi has knowledge of Mr. Raghwan's insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Shekharan can exercise his right of stoppage in transit



When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?
(MT)/ (MT)/ (RTP Nov' 22)



A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where:

- i. the goods have been sold without any stipulation as to credit;
- ii. the goods have been sold on credit, but the term of credit has expired;
- iii. payment was made by a negotiable instrument which has been dishonoured
- iv. the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller loses his right of lien thereon-

- i. 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;
- ii. When the buyer or his agent lawfully obtains possession of the goods;
- iii. By estoppel or waiver

Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.



What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? (Dec' 22)



As per Section 54 of the Sale of Goods Act, 193, 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: In such a case, the buyer need not be informed of the intention of resale.
- ii. Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. On such resale the seller is also entitled to:
 - a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
 - b) Retain the profit if the resale price is higher than the contract price.The seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. If there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].
- iii. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods the subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.
- iv. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. In such a case the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.
- v. Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien"



Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930. (July' 21)/ (MT)



The right against the buyer are as follows:

1. Suit for price (Section 55 of the Sale of Goods Act, 1930):
 - 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.
 - b) 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 although the property in the goods has not passed and the goods have not been appropriated to the contract.
2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.
4. Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer. In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.



What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (RTP May' 20)/ (MT)



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-

- i. a lien on the goods for the price while he is in possession of them;
- ii. 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;
- iii. a right of re-sale as limited by this Act.

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.

These rights can be exercised by the unpaid seller in the following circumstances:

1. Right of lien (Section 47): 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.
2. 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.
3. 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



Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (RTP May' 19)



As per section 50 of the Sale of Goods Act, 1930 an unpaid seller shall have a right to exercise the rights of stoppage in transit if the following conditions are fulfilled:

- i. The seller must be unpaid
- ii. He must have parted with the possession of goods
- iii. The goods must be in transit
- iv. The buyer must have become insolvent
- v. The right is subject to the provisions of the Act.

In the above Ram had sold 200 bales of cloth to Shyam and delivered 100 bales by lorry and 100 bales by railways. The goods delivered by lorry was received by Shyam but the goods sent by railway is still in transit. In the meantime Shyam becomes insolvent and Ram the unpaid seller. As the 100 bales are still in transit and Ram had become insolvent he can still exercise his rights on the 100 bales.

Thus Ram can stop the 100 bales which are still in transit.



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. (RTP Nov' 19)



As per the section 55 of the Sale of Goods Act, 1930 if a seller does not receive the whole price of the goods he is an unpaid seller. Such unpaid seller shall have rights against the buyer. Such rights are:

- i. 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.
- ii. 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.

In the above case Suraj sold his car to Sohan at a price of 75,000. Sohan had paid 25,000. Later sohan refuses to pay the remaining price. As Suraj has not received the whole price of the goods he becomes an unpaid seller.

Thus Suraj will succeed against Sohan for recovery of the remaining amount and also the interest for the remaining amount.



What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930? (RTP May' 20)



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 for goods which have no substitute 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 –
 - i. set up against the seller the breach of warranty in diminution or extinction of the price; or
 - ii. 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. **Sue for recovery of price:** where in a contract of sale the buyer has paid the price but the seller fails to perform his part the buyer may sue the seller for recovery of price. In case of breach of condition the buyer may repudiate the contract and on such repudiation also claim the price paid.