

SALE OF GOODS ACT, 1930

Introduction

- The Sale of Goods Act, 1930 deals with the laws relating to sale of goods in India.
- The provisions of the Act are applicable to the contracts related to the sale of goods which means movable properties.
- The Act is not applicable for the sale of immovable properties like land, fields, shop or house etc.
- For immovable property, Transfer of Property Act, 1882 is applicable.
- Sale of Goods Act, 1930 deals only with movable property.
- Came into force from 1st July 1930
- This act deals with all the contracts of sale of goods, but does not deal with the contract of sale of service or pledge of goods, mortgage of property or barter of goods
- It covers both a sale as well as agreement to sell goods

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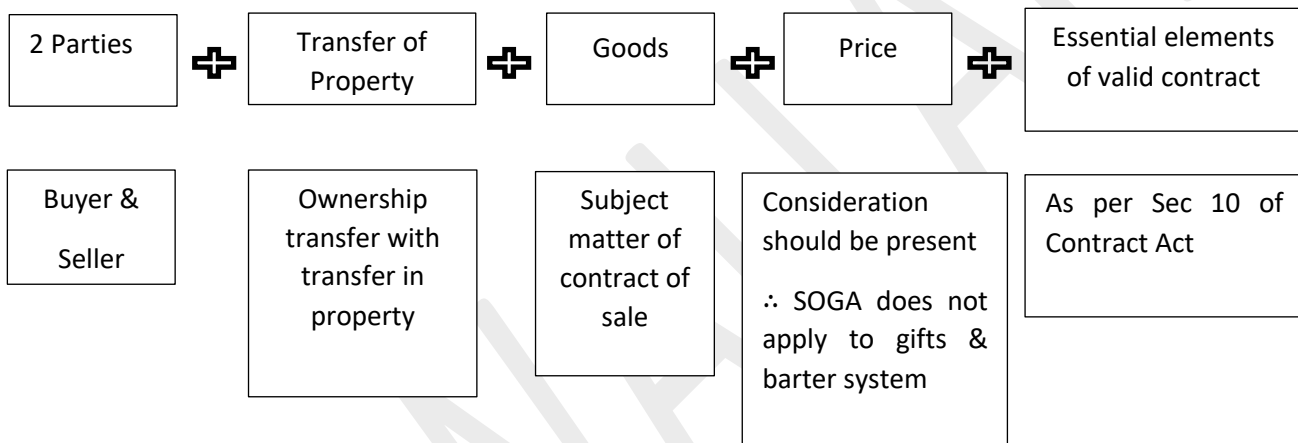
Unit 1

FORMATION OF CONTRACT OF SALE

CONTRACT OF SALE [Sec. 4 (1)]

A contract whereby seller transfers agrees to transfer Property in goods to Buyer for Price.

Essential elements /Features /Characteristics of contract of Sale (T/Q | A)



The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930 (sec 4)

- There must be at **least two parties**, the seller and the buyer and the two must be different persons. A person cannot be both the seller and the buyer and sell his goods to himself.
- The subject matter of the contract must necessarily be **goods** covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
- A **price** in money (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.
- A **transfer of property** in goods from seller to the buyer must take place. 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.
- A contract of sale may be absolute or conditional.
- All other **essential elements of a valid contract** must be present in the contract of sale, e.g. free consent of parties, competency of parties, legality of object and consideration etc

How Contract of Sale is made (Section 5)

A contract of sale may be made in any of the following modes:

- i. Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.
- ii. There may be immediate delivery of the goods; or
- iii. There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or
- iv. There may be immediate delivery of the goods and an immediate payment of price , or
- v. It may be agreed that the delivery or payment or both are to be made in instalments; or
- vi. It may be agreed that the delivery or payment or both are to be made at some future date.

DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

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, it is called an agreement to sell.

[Section 4(3)]

Basis	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.

Practical Question


Sonal went to a Jewellery shop and asked the sales girl to show her diamond bangles with Ruby stones. The Jeweller told her that we have a lot of designs of diamond bangles but with red stones if she chooses for herself any special design of diamond bangle with red stones, they will replace red stones with Ruby stones. But for the Ruby stones they will charge some extra cost. Sonal selected a beautiful set of designer bangles and paid for them. She also paid the extra cost of Ruby stones. The Jeweller requested her to come back a week later for delivery of those bangles. When she came after a week to take delivery of bangles, she noticed that due to Ruby stones, the design of bangles has been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

- (i) State with reasons whether Sonal can recover the amount from the Jeweller.
- (ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? **[May 2022 (6 Marks)] [RTP Dec 2023] (7 Marks) (MTP July 24)**

Law	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 and 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
Conclusion	<ol style="list-style-type: none"> i. On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Sonal and Jeweller and not a sale. Even though the payment was made by Sonal, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Ruby Stones, the original design is disturbed, bangles are not in original position. Hence, Sonal has right to avoid the agreement to sell and can recover the price paid. ii. If Jeweller offers to bring the bangles in original position by repairing, he cannot charge extra cost from Sonal. Even though he has to bear some expenses for repair; he cannot charge it from Sonal.

Sale vs Contract for work and labour

A contract of sale of goods is one in which some goods are sold or are to be sold for a price. But where no goods are sold, and there is only the doing or rendering of some work of labour, then the contract is only of work and labour and not of sale of goods.

	<p>(1) Where gold smith is given gold for making ornament.</p> <p>(2) Artist making a painting.</p> <p>(3) Contract of maintenance of computers which covers not only maintenance of computers but also supply of shares.</p> <p>(4) A lady gave a plain saree to Jariwala brothers for embroiding with Jari.</p>
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Sale vs Bailment

A "bailment" is a transaction under which goods are delivered by one person (the Bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished.

Shortcut: Gave P C to P O O R for USE as Bailment

BASIS OF DISTINCTION	SALE	BAILMENT
1. <u>Parties</u>	Parties involved in a sale contract are called seller and buyer.	Parties involved in a bailment agreement are called bailor and bailee.
2. <u>Consideration</u>	Consideration is price in terms of money.	Bailment may be gratuitous or non-gratuitous.
3. <u>Transfer of possession</u>	Possession of goods may or may not be transferred immediately at the time of contract.	Possession of the goods is immediately given to the bailee at the time of the contract.
4. <u>Transfer of ownership/Property</u>	The ownership of the goods is transferred from the seller to the buyer.	Only possession of the goods is transferred from the bailor to the bailee and not ownership.
5. <u>Return of goods</u>	Goods are not returned to the seller in sale.	When the purpose of bailment is over, the goods must be returned by the bailee to the bailor.
6. <u>Use of goods</u>	Buyer may use the goods according to his own choice.	Bailee must use the goods in accordance with the terms and conditions of bailment.

DISTINCTION BETWEEN SALE AND HIRE PURCHASE AGREEMENT

- i. A "hire purchase agreement" is basically a contract of hire, but in addition, it gives the hirer an option to purchase the goods at the end of the hiring period.
- ii. It is an agreement under which
 - (a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and
 - (b) The property in the goods is to pass to such person on the payment of the last of such instalments, and
 - (c) Such person has a right to terminate the agreement at any time before the property so passes;

Shortcut: Sent P A R R O T to W I for Hire Purchase

BASIS OF DIFFERENCE	SALE	HIRE-PURCHASE AGREEMENT
1. <u>S</u> ales tax/ <u>G</u> ST	Sales tax is levied at the time of making a contract.	Sales tax cannot be levied unless it becomes a sale.
2. <u>P</u> ossession of the goods	Possession of the goods need not be transferred immediately.	Possession of the goods is transferred immediately.
3. <u>G</u> overning <u>A</u> ct	Governed by 'The Sale of Goods Act, 1930'	Governed by 'Hire Purchase Act, 1972'
4. <u>R</u> ight to repossess the goods	The seller has no right to repossess the goods on breach. He can sue for the price only.	The hire-vendor has a right to repossess the goods if the hirer defaults in the payment.
5. <u>R</u> esale	The buyer can resale the goods as he is the owner of goods.	Hirer cannot resale goods before the payment of last installment.
6. <u>T</u> ransfer of <u>o</u> wnership	Ownership is transferred immediately.	Ownership is transferred on the payment of the last installment.
7. <u>R</u> ight to <u>t</u> erminate	The buyer has no right to terminate the contract of sale by returning the goods.	The hirer has right to terminate the agreement at any time by returning the goods.
8. <u>W</u> riting	A contract of sale need not necessarily be in writing.	The hire-purchase agreement must be in writing.
9. <u>P</u> ayment made by <u>i</u> nstallment	The payment made by the buyer in installment is treated as payment of price of the goods.	Installment paid by the hirer is treated as hire charges for use of goods.
10. <u>N</u> ature	Executed contract	Executory contract


Practical Question

State the nature of the transaction in each of the following cases:

- A dentist makes a set of false teeth for his patient with materials wholly found by the dentist and the buyer agrees to pay ` 2,000 when they are properly fitted into his mouth.
- A Customer gives his tailor a length of suiting and requires him to make a suit for him, the lining materials and the buttons to be supplied by the tailor.
- A member of a recreation club takes home a supply of certain provisions from the club store, the payment to be made along with the subscription for the month.
- A dealer in bicycles gives a 'Hercules' bicycle to a customer on the terms that ` 100 should be paid by him then and there and balance ` 375 in five equal monthly instalments.

Solution

- As all the conditions are satisfied the contract amounts to sale.
- It is contract of work and labour and not sale as the material is supplied by the consumer and main intention is service
- All the conditions are satisfied thus the contract amounts to sale
- The contract amounts to sale as all the conditions are satisfied

	<p>A hirer, who obtains possession of a refrigerator from its owner under a hire purchase agreement, sells the refrigerator to a buyer who buys in good faith and without notice of the right of the owner. Does this buyer get a good title to the refrigerator? State reasons for your answer</p> <p>Hint</p> <p>No, as hirer cannot pass good title to any 3rd person unless he himself doesn't get it</p>
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Subject matter of Contract of sale - Goods Sec. 2(7)

- "Goods" means 'every kind of movable property.
- Sale and purchase of immovable property is not covered by this Act.

IT INCLUDES	IT EXCLUDES
1. Stock and shares 2. Growing crops 3. Grass and things attached to or forming part of land, which are agreed to be severed before sale. 4. Rare, old and antique coins 5. Goods like patents, copyright, trademark, goodwill, license, water, gas, electricity.	1. Actionable claims 2. Money 3. Immovable property

Note: Actionable Claim means which can be claimed by action or suit. E.g. Debt.


Types of Goods. [Sec.6] (C)

1. Existing Goods

- (a) These are goods which **are in existence at the time of contract** of sale.
- (b) Such goods are in the ownership and in possession of the seller at the time he makes sale.


(i) Specific Goods

Goods which are **identified and agreed** by the parties at the time of the contract of sale are specific goods.

	<p>1: If "A" goes to a Television show room and identifies a TV of his own choice it is "Specific Goods".</p> <p>2: 'A' had five cars of different models. He agreed to sell his 'Santro' car to 'B' and 'B' agreed to purchase the same car. In this case, the sale is for specific goods as the car has been identified and agreed at the time of the contract of sale</p>
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(ii) Unascertained Goods

Generic or unascertained goods are 'goods **defined only by description or sample and not specifically identified** and separated at the time of the formation of contract.

	<p>1: If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.</p> <p>2: X has ten horses. He promises to sell one of them but does not specify which horse he will sell. It is a contract of sale of unascertained goods</p>
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(iii) Ascertained Goods

Goods which are **ascertained and identified** in accordance with the agreement **after the formation of the contract** are called ascertained goods.



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. It may be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods.

2. Future Goods

- (a) "Future Goods" means 'goods which are not in existence at the time of contract. These **goods are to be manufactured or acquired by the seller after the contract of sale is made**'.
- (b) Since, these goods are not in ownership and possession of the seller, the seller cannot make sale of these goods.
- (c) Rather, agreement to sell is made for these goods.



P agrees to sell to Q all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods

3. Contingent Goods

- (a) These are goods which are also **not in existence at the time of contract** like future goods.
- (b) The **acquisition** of contingent goods by the seller **depends upon happening or non-happening of an uncertain event** which may or may not happen.



Module Question-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 sugar out of the lot of one hundred packets lying in his shop.
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. (MTP May 24)

Hint

- (i) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. 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 sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.
- (iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

EFFECT OF DESTRUCTION OF GOODS

The effect of destruction of subject-matter may be discussed as under:

1. Goods perishing before making of the contract [Section 7]:

Sometimes, the goods have already been perished before making of the contract of sale. In such cases, the contract of sale is **void-ab-intio** if the contract is for the sale of specific goods, and the seller had no knowledge of the perishing of the goods. This principle is based on the rule of impossibility of performance of contract.



A agreed to sell to B 100 bags of cement lying in his godown. In fact, that cement had already been destroyed by leakage of water and has been converted into stone. But this fact was not known to the seller (A). In this case, the contract of sale is void-ab-intio.

2. Goods perishing after an agreement to sell, but before the sale is completed [Section 8]:

Sometimes, the goods perish after an agreement to sell is made but before the completion of the sale. In such cases, the contract of sale **becomes void** if the contract is for the sale of specific goods and the goods are destroyed without any fault of the seller or buyer.



A delivered a horse to B for trial for 8 days. It was agreed that the sale would be completed if the horse was found suitable for B's purpose. The horse died on the third day without any fault of either party. It was held that the contract was void and A could not recover the price from B.

Perishing of future goods: If the future goods are specific, the destruction of such goods will amount to supervening impossibility and the contract shall become void.



A agrees to sell B 100 tons of tomatoes grown on his land next year. But the crop failed due to some disease in plants and A could only deliver 80 tons of tomatoes to B. It was held A was not liable as the performance of contract became impossible due to supervening impossibility.



- Both the Sections 7 and 8, discussed above, **apply only to specific and ascertain goods**. If the contract is for the sale of 'unascertained goods', then the contract shall not become void even if the entire stock of goods is destroyed. And the parties remain liable to fulfill their obligations.
- Perishing of future goods:** If the future goods are specific, the destruction of such goods will amount to supervening impossibility and the contract shall become void.



What are the consequences of destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. **[May 2022 (4 Marks)]**
[RTP Dec 2023]

Practical Question

A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sale of Goods Act, 1930? **(ICAI Module)**

Law	Section 8 of the Sales of Goods Act, 1930 provides that where there is an agreement to sell specific goods and the goods without any fault of either party perish, damaged or lost, the agreement is thereby avoided. This provision is based on the ground of supervening impossibility of performance which makes a contract void
Conclusion	In this case, B, the buyer has no right against A the seller because all the following

	<p>conditions required to treat it as a void contract are fulfilled in the above case:</p> <ul style="list-style-type: none"> (i) There is an agreement to sell between A and B (ii) It is related to specific goods (iii) The goods are lost because of the sinking of ship before the property or risk passes to the buyer. (iv) The loss of goods is not due to the fault of either party
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PRICE AND MODES OF FIXING THE PRICE


'Price' means the monetary consideration for sale of goods [Section 2 (10)]. By virtue of Section 9, the price in the contract of sale may be-


1. fixed by the contract, or
2. agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
3. determined by the course of dealings between the parties.

Agreement to sell at valuation (Section 10):

Section 10 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.
3. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

	<ul style="list-style-type: none"> • A agreed to sell his 100 bags of rice to B at a price to be fixed by C. But C failed to fix the price. In this case, the agreement becomes void on C's failure to fix the price. • A agreed to sell his 100 quintals of wheat to B at a price to be fixed by C. C is willing of the goods. In this case, B can claim damages from A.
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	<p>P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided</p>
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Practical Question

A agrees to buy a new TV from a shop keeper for r 30,000 payable partly in cash of 20,000 and partly in exchange of old TV set. Is it a valid Contract of Sale of Goods? Give reasons for your answer. **(ICAI Module)**

Law	<p>As per sec 9, It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods</p>
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Conclusion	In the given case, the new TV set is agreed to be sold for ` 30,000 and the price is payable partly in exchange of old TV set and partly in cash of ` 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.
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Practical Question	
X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? (ICAI Module)	
Law	Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price
Conclusion	In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X and X can recover a reasonable price of the car from Y

Practical Question	
Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930? [June 2023 (4 Marks)] (RTP June 2024)	
Law	As per the provisions of Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930. Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price
Conclusion	In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

Practical Question	
Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930. (MTP Apr. 24) (7 Marks)	
Law	
Conclusion	

DOCUMENT OF TITLE TO GOODS

“**Document of title to goods**” includes bill of lading, dock-warrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or is for authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. [Section 2(4)]



Bill of lading, dock warrant, warehouse keeper’s certificate, wharfinger’s certificate, railway receipt, warrant, an order of delivery of goods.

The list is only illustrative and not exhaustive. Any other document which has the above characteristics also will fall under the same category. Though a bill of lading is a document of title, a mate’s receipt is not; it is regarded at law as merely an acknowledgement for the receipt of goods. A document amounts to a document of title only where it shows an unconditional undertaking to deliver the goods to the holder of the document.

However, there is a **difference between a ‘document showing title’ and ‘document of title’**. A share certificate is a ‘document’ showing title but not a document of title. It merely shows that the person named in the share certificate is entitled to the share represented by it, but it does not allow that person to transfer the share mentioned therein by mere endorsement on the back of the certificate and the delivery of the certificate.

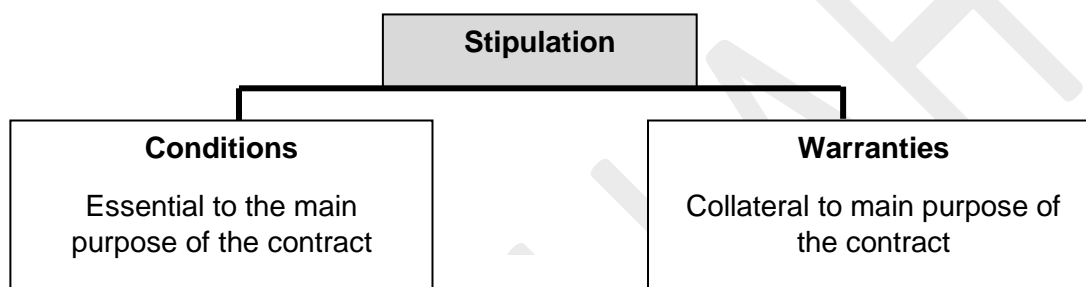
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Unit 2

CONDITIONS AND WARRANTIES


Sec.12 of the Sale of Goods Act states that a stipulation (or term) in a contract of sale with reference to goods may be a condition or a warranty.



Condition

- (i) The term 'condition' may be defined as a representation made by the seller which is so important that its non-fulfilment defeats the very purpose of the buyer.
- (ii) A condition is a **stipulation essential to the main purpose of the contract**, the **breach** of which gives rise to a right **to treat the contract as repudiated**. Sec. 12(2).
- (iii) Thus, a condition is an important representation by the seller which is essential to the main purpose of the contract. And if it proves to be false, the buyer has the right to terminate the contract and to have the refund of the price.

(iv) CONDITIONS CAN BE EXPRESSED OR IMPLIED

	<ol style="list-style-type: none"> 1. A consulted B, a car dealer, and told him that he wanted to purchase a car 'suitable for touring purpose'. B, suggested that a 'Bugatti' car would be fit for the purpose. Relying upon this statement, A bought a 'Bugatti' car. Later on, the car turned out to be unfit for the touring purpose. A wanted to reject the car and demanded the refund of the price. It was held that A was entitled to reject the car and to have the refund of the price. In this case, the suitability of the car, for touring purpose, was a condition of the contract. It was so important that its non-fulfillment defeated the very purpose for which A bought the car. [Baldrey v Marshall (1925) 1 KB 260] 2. A wants to buy a car which can give a mileage of 20 kms/liter. B, the car dealer, points out at a particular car and says "this car will suit you". A buys the car. But later on he finds that the car is giving a mileage of only 10 kms/litre. THERE IS A BREACH OF CONDITION, because the stipulation made by B forms the very basis of the contract.
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Practical Question



X consults V, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. V suggests 'Santro' and X accordingly buys it from V. The car turns out to be unfit for touring purposes. What remedy X is having now under the Sale of Goods Act, 1930? **(ICAI MODULE)**

Law	A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)] "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]
Conclusion	In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car. X is therefore entitled to reject the car and have refund of the price.

Implied Conditions:**(T/Q, A+)****1. Implied condition as to title (Sec. 14) :**


Condition implied is that the **seller has the right to sell the goods** (means he should be the real owner) at the time when the property is to pass.


If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller

	A sells to B tins of condensed milk labeled "Nissly Brand" and this is proved to be an infringement of Nestle Company's trade mark. Is it a breach of implied condition as to title? (Ans: When a person sell the goods by infringing a copyrights or trademark of the others, he is considered as not having right to sell such goods.)
	A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

2. Implied condition in a sale by description (Sec. 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. "Correspond with the description" means that the buyer must get the goods that he has asked for. The description may be given –
 - (a) By mentioning qualities or characteristic of the goods e.g. Basmati rice.
 - (b) By mentioning the trademark or brand name e.g. Videocon TV.
 - (c) By the type of packing e.g. 1 kg. packing of tea in plastic jar.
- If the buyer does not get the goods he has described he can reject the goods.
- The rule is "**If you contract to sell peas, you cannot oblige a party to take beans.**"


	A at Kolkata sells to B twelve bags of "waste silk" on its way from Murshidabad to Kolkata. There is an implied condition that the silk shall be such as is known in the market as "Waste Silk". If it not, B is entitled to reject the goods.
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	A ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.
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3. Implied condition as to sample


In a contract of sale by sample, there is an implied condition that

- (a) the bulk shall correspond with the sample in quality;
- (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

	In a case of sale by sample of two parcels of wheat, the seller allowed the buyer an inspection of the smaller parcel but not of the larger parcel. In this case, it was held that the buyer was entitled to refuse to take the parcels of wheat
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- (c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

	A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages
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	What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act? [May 2022 (6 Marks)] [RTP Dec 2023]
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4. Implied condition in a sale by sample as well as by description: (Sec. 15)

When goods are sold by sample as well as by description, the goods shall correspond both with the sample and with the description.

	A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample, but contained a mixture of hemp oil. B can reject the goods
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5. Implied condition as to fitness or quality: Sec. 16(1)

The general rule is, **there is no implied condition as to quality or fitness for the purpose of the buyer**. This is based on the doctrine of “caveat emptor” that is, the goods he is buying would suit his purpose or not.

(For details refer Doctrine of Caveat Emptor)

6. Implied condition as to merchantability:


- Sec. 16(2) where goods are brought by description from a seller who deals in goods of that description, there is an implied condition that goods shall be of merchantable quality.
- **Merchantable means that the goods are commercially saleable and that they are fit for the purpose for which they are generally used.**
- Where the buyer examines the goods prior to sale, there is no implied condition as to merchantability as regards defects which such examination ought to have revealed.
- However, **inspite of examination, if the goods have certain latent defects which no examination could reveal, the implied condition remains.**

	X bought a colour TV from M/s Concord Electronics. The TV was defective right from the beginning and it did not work inspire of repairs by expert technicians. There is a breach of
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	<p>implied condition as to merchantability and the dealer will have to take back the defective TV and refund the amount.</p> <ul style="list-style-type: none"> - X orders motor horns from a manufacturer. The horns supplied are defective. X is entitled to reject them as unmerchantable
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7. Implied condition as to wholesomeness.

- In case of food stuff and eatables, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome that is fit for human consumption.

	<p>X bought milk from Y, a dairy owner. The milk was contaminated with germs of typhoid fever. X's wife on taking the milk, became infected and died of it. Y was held liable in damages</p>
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Practical Question

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?

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? **(ICAI MODULE) [RTP Dec 2023]**

Law	<p>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:</p> <ul style="list-style-type: none"> a) the bulk shall correspond with the sample in quality; b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample
Conclusion	<ul style="list-style-type: none"> (i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. (ii) In the instant case, the buyer does not have any option available to her for grievance redressal. (iii) 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, then the seller will be held liable.

Practical Question

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. **(ICAI MODULE) [June 2023 (4 Marks)] .[RTP May 2022]**

Law	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: (a) the bulk shall correspond with the sample in quality; (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample
Conclusion	In the instant case, D who noticed the deviation of goods from the sample can reject the goods and treat it as a breach of implied condition as to sample which provides that when the goods are sold by sample the goods must correspond to the sample in quality and the buyer should be given reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages

Practical Question

A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930? **(ICAI MODULE) [RTP Nov 2022]**

Law	This is a case related to implied condition as to wholesomeness which provides that the eatables and provisions must be wholesome that is they must be fit for human consumption
Conclusion	In this case, the piece of bread contained a stone which broke buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as breach of implied condition as to wholesomeness and can also claim damages from the seller.

Practical Question

Q asked P, the seller 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, machine delivered and was found 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? **(ICAI MODULE) (7 Marks) (MTP July 24)**

Law	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. Further under Sale of Goods
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	Act, 1930 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
Conclusion	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. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

Practical Question

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 2023]**

Law	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.
Conclusion	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

Practical Question

A purchased a hot-water bottle from a retail chemist. The chemist informed him that the bottle was specially meant for holding hot water. At the time of use, the bottle burst as soon as the hot water was poured into it and injured A's wife. Comment on remedies available to A under the Sale of Goods Act, 1930

Law	Breach of implied condition as to merchantability
Conclusion	A can claim damages

Practical Question

D bought a Colour TV from M/s. Kaka Enterprises for a sum of Rs 40,000. The TV set was defective right from the beginning and it did not work inspite of repairs by the expert mechanics. What is the remedy available to D?

Law	Breach of condition as to merchantability
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Conclusion	D shall be entitled to return the TV and claim damages
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Warranty


- (i) The term 'warranty' may be defined as a representation made by the seller which is not of that importance as a condition.
- (ii) "A warranty is a stipulation **collateral to the main purpose of the contract**, the breach of which gives rise to a **claim for damages** but not a right to reject the goods and treat the contract as repudiated".
- (iii) If it proves to be untrue, the buyer cannot put an end to the contract. He can only claim damages from the seller.

Implied warranties

In the absence of an agreement to the contrary, the following warranties are implied in every contract of sale:


(i) **The buyer must get quiet possession [Sec. 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.

	X buys a laptop from Y. After the purchase, X spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from X and delivered to its rightful owner. Y shall be held responsible for a breach and X is entitled to damages of not only the price but also the cost of repairs.
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(ii) **The goods must be free from encumbrance [Sec.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.


	A pledges his car with C for a loan of `15,000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, without knowing the fact. B, may either ask A to clear the loan or himself may pay the money and then, file a suit against A for recovery of the money with interest.
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(iii) **Warranty for quality or use by usage of trade [Sec.16(3)]:**

A warranty as to fitness for a particular purpose may be annexed to a contract of sale by a custom or usage of trade.

(iv) **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 this warranty, the seller may be liable in damages.

	Exclusion of implied terms. Sec. 62: These implied conditions and warranties may be excluded or modified by the parties to the contract by express contract, by course of dealing and by usage of trade.
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	Discuss the various types of implied warranties as per the Sale of Goods Act, 1930. [Dec 2023(4 Marks)]
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	Write the exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. (MTP May 24) (7 Marks)
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When a condition can be treated as a warranty Sec. 13

In the following three cases, a breach of a condition is treated as a breach of a warrant

- (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.



	A agrees to supply B 10 bags of first quality sugar @ ` 625 per bag but supplies only second quality sugar, the price of which is ` 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ ` 25 per bag
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- (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

THE DOCTRINE OF CAVEAT EMPTOR

- Means “**let the buyers beware**”. i.e. a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame the seller or recover damages from him...
- there is no implied condition as to quality or fitness for any particular purpose
- It is buyer’s duty to examine goods thoroughly.
- The buyer should ensure at the time of purchase that the goods conform to his requirements.
- If the goods turn out to be defective, buyer cannot hold the seller responsible.



	A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B
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EXCEPTIONS:

(A+)


The doctrine of caveat emptor **does not apply** in the following situations:


1. Basic Exception / Fitness as to quality or use

- (a) Where the buyer, **expressly or by implication, makes known to the seller the particular purpose for which the goods are required,**
- (b) So as to show that the buyer **relies on the seller’s skill,** or judgment, and
- (c) The goods are of a description which it is in the course of the seller’s business to supply (whether he is the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for such purpose

	An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.
Priest vs. Last	P, a draper, purchased a hot water bottle from a retail chemist, P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured his wife. It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle

2. **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.
3. **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 [Section 16(1)]. Here, the buyer is relying on the particular brand name.
4. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so then seller is responsible.
5. **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 [Section 16(2)].
6. **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 [Section 17].
7. **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 [Section 15].
8. **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 [Section 16(3)].

	In readymade garment business, there is an implied condition by usage of trade that the garments shall be reasonably fit on the buyer.
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	Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. [MTP Jun 2022(4 Marks)]
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Practical Question

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 a specific type of cloth suitable for making a suit for her daughter's birthday. 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 to get the suit stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It was heavily starched and not suitable for making the suit 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 Sep 24)**

<p>Law</p>	<p>1) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.</p> <p>2) Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:</p> <ol style="list-style-type: none"> 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
<p>Conclusion</p>	<p>Based on the above provision and facts given in the question, it can be concluded that Mrs. Reema is entitled to get the money back or the right kind of cloth as required to serve her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by the buyer. [Section 16(1) of the Sale of Goods Act, 1930]</p>

Practical Question

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

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

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

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

- (i) Explain the duty of the buyer as well as the seller according to the doctrine of "Caveat Emptor".
- (ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose? (6 Marks) (ICAI module)

Law	<p>Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.</p> <p>Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:</p> <ol style="list-style-type: none"> (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
Conclusion	<p>As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]</p>

Practical Question	
<p>For the purpose of making uniform for the employees, Bansi Bhaiya bought dark blue colored cloth from Vivek, but did not disclose to the Seller the purpose of said purchase. When uniform 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. Advice Bansi Bhaiya whether he is entitled to have any remedy?</p>	
Ref. Case	Jones V. Pandgett
Law	Hint: explain the Doctrine of Caveat Emptor
Conclusion	After applying above law to present situation, we conclude that, the seller is bound only to disclose any special matter related to goods, the cloth dealt by Vivek has multiple uses and he not bound to disclose them, if Bansi bhaiya required special quality cloth he must have enquired about it, but he did not do so. Hence, the Buyer will not succeed in getting any remedy from the Seller under the Sale of Goods Act.

Practical Question	
<p>A lady buys synthetic pearls for a high price thinking that they are natural pearls. The seller does not correct her mistake. Does she has any remedies against the seller? Would your decision be different if the lady had told the seller: "I think they are natural pearls and, therefore, agree to buy them at your price," and the seller was silent?</p>	
Law	<p>As per the Doctrine of Caveat Emptor a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame the seller or recover damages from him.</p> <p>But the above rule has certain exceptions, sec. 16(1) says that Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill, or judgment and Where the seller actively conceals defect in the goods so that the same could not be discovered on a reasonable examination.</p>
Conclusion	After applying above law to present situation, we conclude that, in the first case the lady won't have any remedy against the seller, but the latter case differs as the lady enquired about the same and silence of the seller amounted to his acceptance, thus the seller shall be liable for the same.

Practical Question	
<p>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? (ICAI MODULE)</p>	
Law	<p>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". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that 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</p>

Conclusion	In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for 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.
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CASE LAWS

Sr. No.	Explanation	Name of the Case Law
1.	W bought a reaping machine which he had never seen and which, V, the seller, described "to have been new the previous year and used to cut only 50 or 60 acres". W found the machine to be extremely old. Held, W could return the machine as it did not correspond with the description.	Varley vs Whipp
2.	G purchased a tweed coat which caused her dermatitis (inflammation of the skin) due to her unusually sensitive skin. Held, the seller was not liable, the cloth being fit for any one with a normal skin.	Griffiths vs Peter Conway Ltd.
3.	M sold to L 30 tins of Australian fruits packed in case each containing 30 fruits. M tendered a substantial portion in case containing 24 fruits. Held, L could reject all the tins as the goods were not packed according to the description given in the contract as the method in which the fruit was packed was an essential part of the description.	Moore & Co. v. Landauer
4.	N agreed to sell oil described as "Foreign refined Rape Oil, warranted only equal to sample". The Goods tendered were equal to sample, but contained an admixture of Hemp Oil. Held, the Buyer could reject the Goods.	Nichol v. Godts
5.	A purchased a hot water bottle from a chemist. The bottle burst and injured his wife. Held breach of condition as to fitness and thus chemist was liable for refund of price plus damages.	Priest vs Last
6.	P sold a plastic catapult to G, a boy of six. While G was using it in the proper manner, the catapult broke due to the fact that the material used in its manufacture was unsuitable. As a result, the boy was blinded in one eye. Held, P was liable as the catapult was not of merchantable quality.	Godley vs Perry

Basis (A+)	Condition	Warranty
1. Definition	A Condition is a stipulation which is essential to the main purpose of the contract. [Sec. 12(2)]	A Warranty is a stipulation which is only collateral or subsidiary to the main purpose of the contract. [Sec. 12(3)]
2. Effect of breach	Breach of Condition gives the aggrieved party	Breach of warranty gives only the right to sue for damages. The contract

	(i) a right to repudiate the contract and (ii) right to sue for damages.	cannot be repudiated and the Goods cannot be rejected.
3. Extent / Depth	Condition goes directly to the root of the contract.	Warranty does not go directly to the root / base of the contract.
4. Inter— changeability	Breach of Condition may be treated as a breach of Warranty in certain situations.	Breach of Warranty cannot be treated as a breach of Condition.

CAWALLAH

3

Unit 3

TRANSFER OF OWNERSHIP FROM SELLER TO BUYER

TRANSFER OF PROPERTY AND RISK IN GOODS (C)

Transfer of Property in Goods

Principle: The main object of contract of Sale is, Transfer of property in goods from the seller to the buyer. Transfer of Property means transfer of ownership of goods and not mere possession of goods. Once the ownership in goods is transferred, risk in the goods sold is also transferred.



What are the rules regarding Transfer of Property? (A+, T/Q | P/Q)

[A] Unascertained Goods: [Sec. 18 & 23]:

No property in goods is transferred from the Seller to the Buyer unless and until the Goods are **ascertained and appropriated**.

1. **Ascertainment (Sec 18):** It is the process of identifying the Goods and setting apart as per the intended quality or description.
2. **Appropriation:** For property to pass u/s 23, the following conditions must be satisfied —
 - a. There is a contract for the sale of unascertained or future goods.
 - b. The goods should **conform to the description and quality** stated in the contract.
 - c. The goods must be in a **deliverable state**.
 - d. The goods must be **unconditionally** (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
 - e. The appropriation must be made by: (i) the seller with the assent of the buyer; or (ii) the buyer with the assent of the seller.




A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, gives notice to B that the bags are ready and requires him to take them away, B says he will take them as soon as he can. By this appropriation by A, and assent by B, property, in the sugar passes to B.



Delivery of the goods to the carrier [Section 23(2)]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not

	reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract
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	State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. (MTP Apr. 24) (7 Marks)
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Practical Question	
<p>Mr. S agreed to purchase 100 bales of cotton from V, 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? (ICAI MODULE)</p>	
Law	<p>Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained. Also where there is contract for the sale of unascertained or future goods by description, the property in the goods thereupon passes to the buyer. when goods of that description are put in a deliverable state and 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, Such assent may be express or implied</p>
Conclusion	<p>Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the goods out of the bulk and he has sent his men for the same purpose.</p> <p>Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.</p> <ol style="list-style-type: none"> i. Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated. ii. Where the bales have not been selected with the consent of buyer's representatives: In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely

[B] Transfer of Property in Ascertained / Specific Goods [T/Q | PQ] (A):

1. Specific Goods in a deliverable State [Sec. 20]:

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer **when the contract is made**, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.



X goes into a shop and buys a television and asks the shopkeeper for its home delivery. The shopkeeper agrees to do it. The television immediately becomes the property of X.

2. Specific Goods in deliverable state, but price not ascertained [Sec. 22]:

- (a) The Goods are specified, but the Seller **has to weigh, measure, test or do some other act** or thing with reference to the Goods for the purpose of ascertaining the price.
- (b) Property passes only after the Seller has weighed, measured, tested or does some other action or thing to **ascertain the price** and the Buyer has notice thereof.



A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company

3. Specific Goods not in a deliverable state [Sec.21]:

- (a) The Goods are specified, but the Seller has to do some act or process so as to put the Goods in a deliverable state.
- (b) Property passes only when the Seller has done such action and puts the **goods into a deliverable state and the Buyer has notice thereof.**



Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery, and intimated the buyer about it



A, a boat-builder, contracts to sell to B, for a stated price, a boat which lies in A's yard. The boat needs to be painted and fitted for plying in the turbulent river, and the parties have agreed that price shall be paid on delivery. Property in the boat and risk do not pass to B until boat has been painted and fitted and notice thereof is given to B.

[C] Goods sent on Approval or on Sale or Return basis [Sec. 24]:

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 he **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.



P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument. The ownership is transferred when he has decided to purchase the instrument as his own
 'A' delivered some jewellery to 'B' on sale or return basis. 'B' pledged the jewellery with 'C'. It was held that the ownership of the jewellery had been transferred to 'B' as he had adopted the transaction by pledging the jewellery with 'C'. In this case, 'A' has no right against 'C'. He can only recover the price of the jewellery from 'B'.

	A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price
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Practical Question

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. **(ICAI MODULE)**

Law	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
Conclusion	Referring to the above provisions, we can analyse the situation given in the question. Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi. Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only

Practical Question

The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930? **(ICAI MODULE)**

Law	According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:- i. When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction. ii. When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time
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Conclusion	<p>In the given case, seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.</p> <p>When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These 5 tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor"</p>
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Practical Question	
<p>A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A file a suit against B for the recovery of price. Can he recover the price? (ICAI MODULE</p>	
HINT	<p>A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet. Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.</p> <p>The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].</p> <p>Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period</p>

Practical Question	
<p>Samuel purchased a Television set from Arun, the owner of Gada Electronics, on the condition that for the 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. Arun demands the price of Television set from Samuel. Whether Samuel is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss? (RTP Sep 24) (RTP June 2024) [RTP Nov 2022]</p>	
Law	<p>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:</p> <ol style="list-style-type: none"> 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". <p>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</p>
Conclusion	<p>Samuel purchases a Television set from Arun, the owner of Gada Electronics, on sale or approval for three days. Before Samuel could take any decision, the Television set spoiled due to earthquake. According to the above provisions and fact, the property has not been passed to Samuel i.e. buyer as no condition of</p>

	Section 24 is satisfied. Hence, risk is not passed to the buyer and the agreement is thereby avoided. Samuel is not liable to pay the price. The loss finally should be borne by Seller, Mr. Arun
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Seller's reservation of the right to dispose of Goods./ Conditional Appropriation (sec 25)

This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.


Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

- 1 If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the **goods are deliverable to the order of the seller or his agent**, then the **seller will be prima facie deemed to have reserved to the right of disposal**.
- 2 Where the seller **draws a bill on the buyer for the price and sends to him the bill of exchange together** with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill. And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

Law relating to passing of risk in Sale of Goods (Sec 26)

1. **Seller's risk:** Unless otherwise agreed upon, Goods remain only at the Seller's risk until the property therein is transferred to the Buyer. Hence, risk is borne by the Buyer, only when the property in the Goods passes over to him.
2. **Risk passes with property:** When the property in Goods is transferred to Buyer, Goods are at the Buyer's risk, irrespective of whether delivery has been made or not. [Sec. 26]
3. **Exceptions:** Following are the exceptions to the general rule that risk passes with property
 - (a) **Delayed delivery:** Where delivery of Goods has been delayed through the fault of either Buyer or Seller, Goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
 - (b) **Agreement between parties:** The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.




	A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.
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Rule:-

Nemo dat quad non-habet: (No one can give better title/ownership to the goods than what he himself has) (A, T/Q)

Rule :	Nemo dat Quad non-habet	
Meaning	No one can give better title than what he has i.e. only owner can transfer good title	
Exception	Shortcut : A-U-E-F-G-H-I-J	
	A	<p>Sale by Agent</p> <p>Agent can transfer good title to 3rd party as act of agent is act of principal. A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;</p> <p>(a) If he was in possession of the goods or documents with the consent of the owner;</p> <p>(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and</p> <p>(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).</p>
	U	<p>Unpaid seller</p> <p>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</p>
	E	<p>Estoppel</p> <p>Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods</p>
	FG	<p>Finder of goods</p> <p>Can resale and transfer good and title if condition fulfilled</p>
	H	<p>Person holding under Voidable contract</p> <p>1. A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).</p>
	I	<p>Insolvent</p> <p>Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title</p>
	I	<p>Seller or buyer in possession</p> <ul style="list-style-type: none"> • If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale • 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
	J	<p>Joint owner (sec 28)</p> <p>If one of several joint owners of goods has the sole possession of goods by permission of the co-owners, the</p>


		property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
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	<p>“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. (ICAI MODULE) [MTP Nov 2022(4 Marks)]</p> <p>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. [MTP Apr 2023(6 Marks)]</p>
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Practical Question

A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not? **(ICAI MODULE)**

Law	According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:- <ul style="list-style-type: none"> i. One of the several joint owners has the sole possession of them. ii. Possession of the goods is by the permission of the co-owners. iii. The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell
Conclusion	In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B. The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

	<p>A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not?</p> <p>Hint: According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied:-</p> <ul style="list-style-type: none"> (i) One of the several joint owners has the sole possession of them. (ii) Possession of the goods is by the permission of the co-owners. (iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell. <p>In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.</p> <p>The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by</p>
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	the permission of the co-owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.
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Practical Question

J, the owner of a fiat car wants to sell his car. For this purpose he hands 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 without notice of any fraud. P misappropriated the money also. J sues A for the recovery of the car. Decide with reasons whether J would succeed? (C. A. Foundation RTP May 2018) (Module)

Law	Sale by mercantile agent is valid and binding on the principal provided the (a) agent is in possession of the goods or documents of title with the consent of the owner, (b) the agent sells the goods while acting in the ordinary course of business of agency, (c) the buyer should have acted in good faith & the buyer should not have notice that at the time of sale, the agent had no authority to sell
Conclusion	In the given case P the agent was in possession of the goods with the consent of J. The car was sold by P in the ordinary course of business of agency and the car was bought by A in good faith without notice that agent was not authorised to sell it for ₹ 40,000. Thus sale is valid and A acquires a good title to the car & J will not succeed in recovering the car from A. J can only proceed against his agent lawfully

Practical Question

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. (C.A. Foundation Nov 2018, RTP & MTP) (Module)

Law	When goods are delivered on approval (Sec. 24): When goods are delivered to the buyer on approval or 'on sale or return,' or on other similar terms, the property therein passes to the buyer : (i) When he signifies his approval or acceptance to the seller, or ' (ii) When the buyer does any other act adopting the transaction, e.g., pledges the goods or resells them. (iii) When the buyer retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods, or if no time has been fixed, beyond a reasonable time. In short, the property passes either by acceptance or by failure to return the goods within specified or reasonable time.
Conclusion	In the given case Ms. Preeti has handed over the car to Mr. Joshi on sale or return basis and afterwards Mr. Joshi pledges the car with Mr. Ganesh. Applying the above stated provisions it can be concluded that pledging of the car by Mr. Joshi amounts to adoption of the transaction. Thus property in car passes on to Mr. Joshi on pledge and Ms. Preeti cannot claim back the car. She is only entitled to claim the price of the motor car since the property therein has passed to Mr. Joshi.

PERFORMANCE OF THE CONTRACT OF SALE

The performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment of price for them by the buyer in accordance of the terms of the contract.

Delivery of Goods

- 1. Meaning [Sec. 2]:** Delivery means **voluntary transfer of possession** from one person to another.
- 2. Duty of Seller [Sec. 31]:** It is the duty of the Seller to deliver the goods and of the buyer to accept and pay for them in accordance with the contract of Sale.
- 3. Payment and delivery are concurrent conditions (Section 32):** Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods

TYPES OF DELIVERY

(1) Actual Delivery:

Goods are **physically handed over to the Buyer** or his authorised agent i.e. actual transfer of physical custody.

(2) Constructive Delivery:

When transfer of goods is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)



Where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request. Constructive delivery takes place when a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on buyer's behalf.

(3) Symbolic Delivery:

Where Goods are bulky / heavy and it is not possible to physically hand over them to the Buyer, some symbol which carries with it the real possession or control over the goods is handed over to the Buyer.



Delivery of godown keys where Goods are lying, or endorsing bill of lading or railway receipt to the Buyer.



Explain the term "Delivery and its forms" under the Sale of Goods Act, 1930. **[MTP Nov 2022(6 Marks)]**

Practical Question


Akash purchased 100 Kgs of wheat from Bhaskar at `80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930. **(RTP Sep 24) .[RTP June 2023]**


Law	<p>As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery,</p> <ul style="list-style-type: none"> i. Actual delivery, ii. Constructive delivery and iii. Symbolic delivery. <p>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 the seller acknowledges to the buyer that he is holding the goods on buyer's behalf</p>
Conclusion	<p>On the basis of the above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Akash is not right. He cannot claim the price back.</p>

Rules regarding Delivery:

1. Delivery (Section 33): Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

2. Effect of part delivery [Sec.34]: A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

	<p>Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer, thereafter, accepted them and took away part. Held, there was delivery of the whole</p>
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	<p>'A' purchased 975 bales of rice being the whole contents of a Gola, paid earnest money and took part delivery of rice. The rest was afterwards destroyed by fire. 'A' is liable to pay the balance of the price in respect of the goods destroyed because the Property in goods being passed on part delivery.</p>
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3. Buyer to apply for delivery [Sec.35]: Apart from any express contract, the Seller is not bound to deliver them until the Buyer applies for delivery.

4. Place of delivery [Sec. 36(1)]:

Nature of Goods	Place of delivery
Delivery of goods sold	At the place at which they are at the time of sale
Delivery of goods agreed to be sold	At the place at which they are at the time of the agreement to sell.
Delivery of goods not in existence at the time of agreement (future goods)	At the place at which they are manufactured or produced.

5. Time of delivery [Sec. 36(2)]: Where under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time

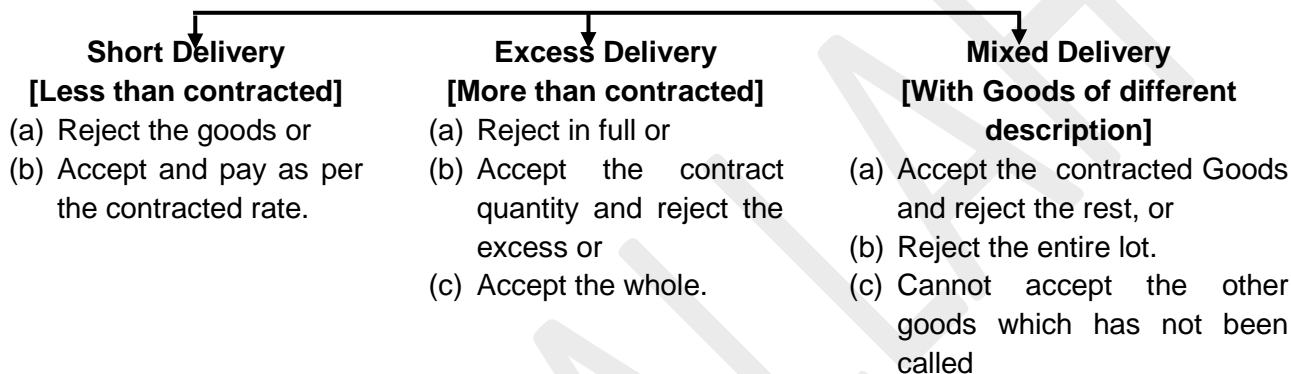
6. Goods in possession of a third party [Sec. 36(3)]: When at the time of sale, Goods lie in the possession of a third party, for an effective delivery by Seller to Buyer, the third party should acknowledge to Buyer that he holds them on the Buyer's behalf. If goods have been sold by

transfer of document of title to Goods, no such consent / acknowledgement by the third party is required.

- 7. **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is reasonable hour is a question of fact. **[Section 36(4)].**
- 8. **Expenses of delivery [Sec. 36(5)]:** Unless otherwise agreed upon by the parties, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the Seller.
- 9. **Delivery of wrong quantity [Sec.37]:**

Subject to any usage of trade or agreement between parties, the Buyer has the following rights when wrong quantity is delivered—

Option to Buyer in case of delivery of Wrong Quantity



Practical Question

Mr. G sold some goods to Mr. H for a 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? **(MTP May 24) (7 Marks)**

Law	<p>According to section 44 of the Sale of Goods Act, 1930, 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.</p> <p>Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property therein is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not</p>
Conclusion	<p>In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H</p>

Practical Question

Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ ₹100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale. Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930? **[Dec 2023 (2 Marks)]**

Law	According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate
Conclusion	<p>According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate.</p> <p>In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.</p> <p>Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.</p> <p>Important Note: The answer can also be given as per Section 34 of the Sale of Goods Act, 1930, which provides that a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.</p> <p>In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.</p> <p>Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.</p>

Practical Question

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 2022]**

Law	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
Conclusion	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

10. Instalment deliveries [Sec. 38]:

Unless otherwise agreed between the parties, the Buyer is not bound to accept delivery by instalments.



There was sale of 100 tons of paper to be shipped in November. The seller shipped 80 tons in November and 20 tons in December. The buyer was entitled to reject the whole 100 tons

11. Delivery to carrier or Wharfinger [Sec.39]:

Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer.

12. Deterioration during transit: Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk. **(Section 40)**



P sold to Q a certain quantity of iron rods which were to be sent by proper vessel. It was rusted before it reached the buyer. The rust of the rod was so minimal and was not effecting the merchantable quality and the deterioration was not necessarily incidental to its transmission. It was held that Q was bound to accept the goods.

13. Buyer's right of examining Goods [Sec. 41(1)]:

Where Goods are delivered to the Buyer which had not been inspected previously by him, it is the duty of the Seller to give a reasonable opportunity of examining them to ascertain that the Goods delivered are in conformity with the contract.

14. Acceptance by Buyer [Sec. 42]:

The Buyer is deemed to have accepted the Goods—

- (a) When he intimates to the Seller that he has accepted them, or
- (b) When goods are delivered to him, he does some action which is inconsistent with the ownership of the Seller, or
- (c) When, after the lapse of a reasonable time, he retains the goods without intimating the Seller that he has rejected the goods.

15. Buyer not bound to return rejected goods [Sec. 43]:

- (a) Unless otherwise agreed, where goods are delivered to buyer and he refuses to accept them (having the right to do so), he is not bound to return them to the seller.
- (b) It is sufficient if the buyer intimates the seller that he refuses to accept them.
- (c) When the seller refuses to take back the Goods, the buyer becomes the bailee of such goods and he may charge the Seller for the custody of his Goods.

4

Unit 4

UNPAID SELLER & AUCTION SALE

MEANING OF UNPAID SELLER

- (i) The whole price has not been paid or tendered,
- (ii) If a bill of exchange or other negotiable instrument is received, which has been dishonored.
- (iii) If buyer becomes insolvent then the seller is unpaid seller.
- (iv) Goods sold without any stipulation to credit
- (v) Goods sold on credit but credit period expired

RIGHTS OF AN UNPAID SELLER (sec 46)

(1) Rights against the goods

(a) Where the ownership of the goods has transferred to the buyer:

- (i) Rights of lien
- (ii) Right of stoppage the goods
- (iii) Right of resale

(b) Where the ownership of the goods has not been transferred to the buyer In this case, the unpaid seller has the right of withholding the delivery of goods sold.

Thus, the seller is under no obligation to deliver the goods to the buyer and he will not be liable for non-delivery until the price of the goods is tendered to him by the buyer.

(2) Right against the buyer

- (a) Suit for price
- (b) Suit for damages
- (c) Suit for interest
- (d) Suit for repudiation of contract



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

RIGHT OF LIEN - Sec. 47, 48, 49

1. MEANING

The right of lien is the right to **retain possession** of the goods. An unpaid seller of the goods who is in possession of them, has a right to retain goods in his possession until the full payment of the price is made or tendered to him in the following cases:

2. AN UNPAID SELLER CAN EXERCISE HIS RIGHT OF LIEN IF

- where goods have been sold without any stipulation of credit; (i.e., on cash sale)
- where goods have been sold on credit but the term of credit has expired; or
- Where the buyer becomes insolvent.

3. NATURE OF RIGHT IF LIEN

- The right of lien is indivisible in nature.
- An unpaid seller can exercise the right of lien on the whole goods in possession of him, even if part payment for the same has been made by the buyer.
- Thus, a buyer cannot demand proportionate delivery of goods for the part payment made by him.
- (Section 48):** Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien

4. TERMINATION OF THE RIGHT OF LIEN (Section 49):

When possession is lost, lien is lost

Unpaid seller loses his right of lien in the following cases:

- Where the goods are delivered to the carrier or other bailee by the seller for the purpose of transmission to the buyer, without reserving the right of disposal of the goods.
- Where the buyer or his agent lawfully obtains possession of the goods.
- Where the seller waives off his right of lien. Waiver may be express or implied.
- By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.



The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods



1: A sold certain goods to B for a price ` 50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

2: A, sold a car to B for ` 1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien



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? **(ICAI MODULE)**

	Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930? [Dec 2023(6 Marks)]
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Practical Question	
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? (ICAI MODULE) (MTP Apr. 24) (4 Marks)	
Law	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 Sales 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
Conclusion	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

Practical Question	
J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930? (ICAI MODULE)	
Law	The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under two exceptional cases these rights of the seller are affected:- i. When the buyer has made the transaction with the consent of the seller ii. When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.
Conclusion	In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So, he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So, R who has purchased the machine from K can demand the delivery of the machine

Practical Question

Mr. Shankar sold 1000 Kgs wheat to Mr. Ganesh on credit of 3 months. Wheat was to be delivered after 10 days of contract. After 5 days of contract, a friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the information of friend, Mr. Shankar applied the right to lien and withheld the delivery. With referring to the provisions of the Sale of Goods Act, 1930: **(RTP June 2024)**

- (i) State, whether Mr. Shankar was right in his decision?
- (ii) What would be your answer if Mr. Ganesh became insolvent within five days of contract?

Law	<p>According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-</p> <ol style="list-style-type: none"> (a) The whole of the price has not been paid or tendered. (b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment. <p>Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:</p> <ol style="list-style-type: none"> (a) where goods have been sold without any stipulation of credit; (i.e., on cash sale) (b) where goods have been sold on credit, but the term of credit has expired; or (c) where the buyer becomes insolvent.
Conclusion	<p>In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.</p> <ol style="list-style-type: none"> (i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat. (ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery

RIGHT OF STOPPAGE IN TRANSIT – Sec. 50 to 52

1. Meaning

- The right of stoppage in transit means the right of stopping the goods while they are in transit, **to regain the possession** and to retain them till the full price is paid.
- 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.
- This right is the extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.

2. Conditions of exercising right of stoppage in transit

- (a) The seller must be unpaid.
- (b) The buyer must be insolvent.

- (c) The property in goods has already passed to the buyer.
- (d) The goods must be in transit.
- (e) It should be with independent middle men neither agent of seller or agent of buyer.

3. Duration of transit

- The duration of transit is the period between the commencement and end of transit.
- The transit commences from the time when the goods are delivered to the middlemen (carrier or other bailee) and it continues till the buyer or his agent takes the delivery of the goods.

4. Transit comes to an end in the following cases

- (a) Where the buyer or his agent obtains delivery of the goods before they arrive at the appointed destination.
- (b) Where after the arrival of the goods at the appointed destination, the carrier or the other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf.
- (c) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.
- (d) Where after the arrival of the goods at the appointed destination, the buyer further directs the carrier to take the goods somewhere on behalf of the buyer.
- (e) Where the goods are delivered to a ship chartered by the buyer and the ship's acting as an agent of the buyer.

5. The unpaid seller may exercise his right of stoppage in transit either

- (a) By taking actual possession of the goods.
- (b) By giving notice of his claim to the carrier or the other bailee in whose possession the goods are.



1: B at Delhi, orders goods of A, at Mumbai. A consigns and forwards the goods to B. On arrival at Delhi, they are taken to B's warehouse and left there. B refuses to take these goods and stop payment. The goods are in transit and the unpaid seller can take them back
2: A sold certain goods to B of Mumbai and the goods are handed over to railways for transmission to B. In the mean time, B sold these goods to C for consideration. B becomes insolvent. A can still exercise his right of stoppage in transit

Exceptions where unpaid seller's right of lien and stoppage in transit are defeated:

- (a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.



A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result A's right to lien is defeated (**Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd.**).

- (b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for price, then, the proviso of sub-section (1) stipulates as follows:

- (i) If the last-mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated,
or
- (ii) If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the pledgee.
- However, the pledgee may be required by the unpaid seller to use in the first instance, other goods or securities of the pledger available to him to satisfy his claims. [Sub-section (2)].

Practical Question	
<p>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. Can Ram exercise right of stopping the goods in transit? (ICAI MODULE) (MTP Apr. 24) (3 Marks) .(MTP May 24) (4 Marks)</p>	
Law	<p>Right of stoppage of goods in transit: The problem is based on Section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.</p> <ul style="list-style-type: none"> (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
Conclusion	<p>Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer</p>

Practical Question	
<p>A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller? (ICAI MODULE)</p>	
Law	<p>The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods.</p> <p>This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-</p> <ul style="list-style-type: none"> (i) The buyer has not paid the total price to the seller (ii) The seller has delivered the goods to a carrier thereby losing his right of lien (iii) The buyer has become insolvent (iv) The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)
Conclusion	<p>In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway</p>

	<p>authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.</p> <p>According to the Sale of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods</p>
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Practical Question

Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. [RTP Dec 2023]

Law	<p>Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):</p> <p>(a) Subject to the provisions of this Act, 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.</p> <p>(b) 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</p>
Conclusion	<p>In the instant case, Tushar, the buyer becomes insolvent, and 450 bags are in transit. Ravi, the seller, can stop the goods in transit by giving a notice of it to Tushar. The official receiver, on Tushar's insolvency cannot claim the bags.</p>

RIGHT OF RESALE

The right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

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.

It may be noted that in such cases, on the resale of the goods, 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.

It may also be noted that 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.

Moreover, 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.

It may be noted that in such cases, 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". This is the additional right used in case of agreement to sell.

RIGHT AGAINST THE BUYER

Rights of unpaid seller against the buyer personally: An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. Rights of unpaid seller against the buyer are otherwise known as seller's remedies for breach of contract of sale. The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods.

The right against the buyer are as follows:

1. Suit for price (Section 55)

a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1)] (This is the case of contract of sale)

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. [Section 55(2)]. (This is the case of agreement to sell)


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. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies in this case.

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.

Practical Question	
<p>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. (ICAI MODULE)</p>	
Law	<p>As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that</p> <ol style="list-style-type: none"> 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 [Section 55(1)]. 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 [Section 55(2)]
Conclusion	<p>This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-</p> <ol style="list-style-type: none"> (i) Interest on the remaining amount (ii) Interest during the pendency of the suit. (iii) Costs of the proceedings

	<p>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 Sep 24)</p> <p>Hint:</p> <p>As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that</p> <ol style="list-style-type: none"> (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 [Section 55(1)]. (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. <p>It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].</p> <p>This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:-</p> <ol style="list-style-type: none"> (1) Interest on the remaining amount (2) Interest during the pendency of the suit. (3) Costs of the proceedings.
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A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?

Hint:

The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods. This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-

1. The buyer has not paid the total price to the seller
2. The seller has delivered the goods to a carrier thereby losing his right of lien
3. The buyer has become insolvent
4. The goods have not reached the buyer, they are in the course of transit. (Section 50, 51 and 52)

In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent.

According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.



J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R on the basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?

Hint:

The right of lien and stoppage in transit are meant to protect the seller. These will not be affected even when the buyer has made a transaction of his own goods which were with the seller under lien. But under

two exceptional cases these rights of the seller are affected:-

1. When the buyer has made the transaction with the consent of the seller
2. When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

In the given case, J has sold the machine to K and K gave a cheque for the payment. But the cheque was dishonoured that means J, the seller is an unpaid seller. So he is entitled to exercise the right of lien, but according to section 53(1) his right of lien is defeated because he has given the document of title to the buyer and the buyer has made a transaction of sale on the basis of this document. So R who has purchased the machine from K can demand the delivery of the machine.

REMEDIES OF BUYER 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.



'A' a shoe manufacturer, agreed to sell 100 pairs of shoes to 'B' at the rate of ₹ 10,500 per pair. 'A' knew that 'B' wanted the shoes for the purpose of further reselling them to 'C' at the rate of ₹ 11,000/- per pair. On the due date of delivery, 'A' failed to deliver the shoes to 'B'. In consequence, 'B' could not perform his contract with 'C' for the supply of 100 pairs of shoes. In this case, 'B' can recover damages from 'A' at the rate of ₹ 500/- per pair (the difference between the contract price and resale price).

2. **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

This remedy is allowed by the court subject to these conditions:

- The contract must be for the sale of specific and ascertained goods.
- The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.
- It empowers the court to order specific performance where damages would not be an adequate remedy.
- It will be granted as remedy if goods are of special nature or are unique.



'A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

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 –
- set up against the seller the breach of warranty in diminution or extinction of the price; or
 - sue the seller for damages for breach of warranty.

4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

5. **Suit for interest:**

- Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
- In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit filed by him for the refund of the price (in a case of a breach of the contract on the part of the seller) from the date on which the payment was made.



In case of a sale of cigarettes which turned out to be mildewed and unfit for consumption, damages were awarded on the basis of the difference between the contract price and the price released.



In case of absence of transfer of title or registration, the purchaser cannot claim damages for breach of conditions and warranties relating to sale



Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale under the Sale of Goods Act, 1930. **(7 Marks) (MTP July 24)**

AUCTION SALE

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

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

- a) **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.
- b) **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. Until such announcement is made, any bidder may retract from his bid.
- c) **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.
- d) **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.
- e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)

Where after a contract has been made but before it has been performed, tax revision takes place. Where tax is being imposed, increased, decreased or remitted in respect of any goods without any stipulations to the payment of tax, the parties would become entitled to read just the price of the goods accordingly. Following taxes are applied on the sale or purchase of goods:

- Any duty of customs or excise on goods,
- Any tax on the sale or purchase of goods

The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed. Thus, seller may add the increased taxes in the price. The effect of provision can, however, is excluded by an agreement to the contrary. It is open to the parties to stipulate anything regard to taxation

Practical Question

An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. **[June 2023 (2 Marks)]**

Hint

According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.
In the given question, the auction sale is complete on 7th March, 2023