

UNIT -1: FORMATION OF THE CONTRACT OF SALE

- Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods.
- It extends to the whole of India. It came into force on 1st July, 1930.

❖ **Important Definitions:**

1. **Buyer and Seller:** 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. 'Seller' means a person who sells or agrees to sell goods [Section 2(13)].
2. "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7)]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods.

"Goods" include both tangible goods and intangible goods like goodwill, copyrights, patents, trademarks etc. Stock and shares, gas, steam, water, electricity and decree of the court are also considered to be goods.

Classification of Goods

- (i) **Existing Goods:** These are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed or acquired by the seller at the time of contract of sale (Section 6). They are may be of following kinds:
 - (a) **Specific goods:** Goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].
 - (b) **Ascertained Goods:** Goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.
 - (c) **Unascertained goods:** Goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description or sample.
 - (ii) **Future Goods:** These are goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)].
 - (iii) **Contingent Goods:** The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods' [Section 6(2)].
3. **Delivery** - its forms and derivatives: Delivery means voluntary transfer of possession from one person to another [Section 2(2)].
 - a) **Forms of delivery:** Following are the kinds of delivery for transfer of possession:
 - (i) **Actual delivery:** When the goods are physically delivered to the buyer. This is the most common method of delivery.
 - (ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement). 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.
 - (iii) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.
 - b) **Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].**
 4. **"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)]
 5. **Insolvent [Section 2(8)]:** A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.
 6. **Price [Section 2(10)]:** Price means the money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.

❖ **SALE AND AGREEMENT TO SELL (SECTION 4)**

- a) **"A contract of sale of goods** is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". There may be a contract of sale between one part-owner and another. A contract of sale may be absolute or conditional.
- b) **Sale:** 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.

- c) **Agreement to Sell:** 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.
- d) 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. [Section 4(4)]
- e) The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930:
- There must be at least two parties, the seller and the buyer and the two must be different persons.
 - The subject matter of the contract must necessarily be goods covering only movable property.
 - A price in money (not in kind) should be paid or promised. But the consideration can be 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

❖ DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

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	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

❖ SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

(i) **Sale and Hire Purchase:** Hire purchase agreements are governed by the Hire-purchase Act, 1972. Term “hire-purchase agreement” means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

- 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
 - The property in the goods is to pass to such person on the payment of the last of such instalments, and
 - Such person has a right to terminate the agreement at any time before the property so passes;
- Nonetheless, a sale has to be distinguished from a hire purchase as their legal incidents are quite different.

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

(ii) **Sale and Bailment:** A ‘bailment’ is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished to the bailor or are to be disposed of according to the directions of the bailor. Provisions related to bailment are regulated by the Indian Contract Act, 1872.

Basis	Sale	Bailment
Transfer of property	The property in goods is transferred from the seller to the buyer. So, it is transfer of general property.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc. So, it is transfer of special property.
Return of goods	The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
Consideration	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

(iii) **Sale and 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.

❖ **CONTRACT OF SALE HOW MADE (SECTION 5)**

- A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer.
- The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.
- Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

❖ **Existing or future goods (section 6):**

1. The goods which form the subject matter of a contract of sale may be either existing goods or future goods.
2. There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.
3. Whereby a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract (Section 7): The contract of sale of specific goods is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

Goods perishing before sale but after agreement to sell (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 or becomes void.

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.

❖ **ASCERTAINMENT OF PRICE (SECTION 9 & 10)**

Ascertainment of price (Section 9):

1. The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
2. Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation (Section 10):

1. Where there is an agreement to sell goods on the price fixed by the valuation of third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. However, if the goods have been delivered to the buyer he shall pay a reasonable price.
2. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in default.

Past Year Questions

- 1) Differentiate between Ascertained and Unascertained Goods with example. (Nov-2018-4 Marks)
- 2) Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. (Dec-2021-6 Marks)
- 3) What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery. (May-2018-4 Marks)
- 4) 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? (June -2022-6 Marks)

THE SALE OF GOODS ACT, 1930
UNIT -2: CONDITIONS & WARRANTIES

❖ **CONDITIONS AND WARRANTIES**

- **Stipulation as to time (section 11)** Unless a different intention appears from the terms of the contract, stipulation as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

- **Conditions and Warranties:** A seller usually makes certain statements or representations to induce the intending buyer to purchase the goods. A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. The more significant stipulations have been called as “Conditions”, while the less significant stipulation have been given the name “Warranties”.

“A **condition** is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated”.

“A **warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

- Whether a stipulation is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)]

- **Difference between conditions and warranties:**

Basis	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

When Condition to be treated as warranty (Section 13)

In the following cases, a contract is not avoided even on account of a breach of a condition:

- Where the buyer waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- 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.
- 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.
- Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Waiver of conditions:

Voluntary Waiver: <ul style="list-style-type: none">• Waives performance of contract• Elect to treat condition as warranty	Compulsory Waiver: <ul style="list-style-type: none">• Non-severability of contract• Fulfilment of conditions excused by law
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❖ **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)**

- Express conditions** are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.
- Implied conditions** are those, which are presumed by law to be present in the contract. An implied condition may be negated or waived by an express agreement.

➤ **Implied Conditions:**

- Condition as to title [Section 14(a)].** Unless there is an agreement to the contrary, the first implied condition on the part of the seller is that, in case of a sale, he has a right to sell the goods, and in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.
- Sale by description [Section 15]:** Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that “if you contract to sell peas, you cannot compel the buyer to take beans.” The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
- Sale by sample [Section 17]:** In a contract of sale by sample, there is an implied condition that,
 - the bulk shall correspond with the sample in quality;
 - the buyer shall have a reasonable opportunity of comparing the bulk with the sample,
 - 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.

- (iv) **Sale by sample as well as by description [Section 15]:** Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.
- (v) **Condition as to quality or fitness [Section 16(1)]:** The condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods. This will not apply if the goods have been sold under a trademark or a patent name.
- (vi) **Condition as to Merchantability [Section 16(2)]:** Where 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. There are two requirements for this condition to apply:
- Goods should be bought by description.
 - The seller should be a dealer in goods of that description.
- However, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. The expression "merchantable quality" connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description.
- (vii) **Condition as to wholesomeness:** In the case of eatables and provisions, there is another implied condition that the goods shall be wholesome.
- **Implied Warranties:** It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. Implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement. Following are the implied warranties:
- Warranty as to undisturbed possession [Section 14(b)]:** The buyer shall have and enjoy quiet possession of the goods.
 - Warranty as to non-existence of encumbrances [Section 14(c)]:** 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.
 - Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
 - 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.

❖ CAVEAT EMPTOR

<ul style="list-style-type: none"> The doctrine 'Caveat Emptor' means 'let the buyer beware'. 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>Following are the conditions to be satisfied: -</p> <ul style="list-style-type: none"> if the buyer had made known to the seller the purpose of his purchase, and the buyer relied on the seller's skill and judgement, and seller's business to supply goods of that description. 	<p>Exceptions: The doctrine of Caveat Emptor is subject to the following exceptions:</p> <ol style="list-style-type: none"> Fitness as to quality or use: Where the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)]. 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)]. 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. 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. Sale by sample: Where the goods are bought by sample [Section 17]. Goods by sample as well as description: The rule is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15]. 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. [Section 16(3)]. 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. In such a case the buyer has a right to avoid the contract and claim damages.
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Case Laws

Exceptions to doctrine of Caveat Emptor: Fitness as to quality or use

- **Priest vs. Last:** P purchased a hot water bottle from a retail chemist. 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 being used as a hot water bottle.
- **Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad:** Timber was purchased for the express purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.

Past Year Questions

1. What is the Doctrine of "Caveat Emptor"? What are the exceptions to the Doctrine of "Caveat Emptor"? (Nov-2018-6 Marks)
2. Discuss the various types of implied warranties as per the Sales of Goods Act 1930? (June-2019-4 Marks)
3. Write any four exceptions to the doctrine of Caveat Emptor as per The Sale of Goods Act, 1930. (Nov-2020-4 Marks)
4. What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when shall a 'breach of condition' be treated as 'breach of warranty' under provisions of the Sale of Goods Act, 1930? (Jan-2021-6 Marks)
5. "A breach of condition can be treated as a breach of warranty". Explain this statement as per relevant provisions of the Sale of Goods Act, 1930. (Dec-2021-4 Marks)
6. 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? (June-2022-6 Marks)
7. 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? (June-2019-6 Marks)
8. Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as 125 per kg. to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful? Explain the basic law on sale by sample under Sale of Goods Act, 1930? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930? What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? (Nov-2019-6 Marks)
9. TK ordered timber of 1 inch thickness for being made into drums. The seller agreed to supply the required timber of 1 inch. However, the timber supplied by the seller varies in thickness from 1 inch to 1.4 inches. The timber is commercially fit for the purpose for which it was ordered. TK rejects the timber. Explain with relevant provisions of the Sale of Goods Act, 1930 whether TK can reject the timber. (Dec-2021-3 Marks)
10. Mr. Das, a general store owner went to purchase 200 kg. of Basmati Rice of specific length from a whole seller. He saw the samples of rice and agreed to buy the one for which the price was quoted as Rs.150 per kg. While examining the sample Mr. Das failed to notice that the rice contained a mix of long and short grain of rice. The whole seller supplied the required quantity exactly the same as shown in the sample. However, when Mr. Das sold the rice to one of his regular customers she complained that the rice contained two different qualities of rice and returned the rice. With reference to the provisions of The Sales of Goods Act, 1930, discuss the options open to Mr. Das for grievance redressal. What would be your answer in case Mr. Das specified his exact requirement as to length of rice? (July-2021-6 Marks)

- **PASSING OF PROPERTY:**

- Passing of property constitutes the most important element to decide legal rights and liabilities of sellers and buyers. It implies passing of ownership.
- If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may still be in the seller's possession.
- The rules regarding transfer of property in goods from the seller to the buyer depend on two basic factors:
 - a) **Identification of Goods:** where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained.
 - b) **Intentions of parties:** The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties regard shall be:
 - (i) To the terms of the contract
 - (ii) To the conduct of the parties and
 - (iii) To the circumstances of the case

The primary rules determining the passing of property from seller to buyer are as follows:

- A. Property (Specific or ascertained goods) passes when intended to pass (Section 19):** In case of Specific or ascertained goods, the property in the goods is transferred at such time as the parties to the contract intend it to be transferred.
 1. **Specific goods in a deliverable state:** here, the property in the goods passes 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.
 2. **Specific goods to be put into a deliverable state:** the property does not pass until such thing is done and the buyer has notice thereof.
 3. **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price:** In this case, the property does not pass until such act or thing is done and the buyer has notice thereof.
- B. unascertained goods:** In case of contract for the sale of unascertained goods, No property in the goods is transferred unless and until the goods are ascertained.

Sale of unascertained goods by description and Appropriation: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) There is a contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality stated in the contract.
- (c) The goods must be in a deliverable state.
- (d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied.
- (g) The assent may be given either before or after appropriation

Delivery to the carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee 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.

- C. Goods sent on approval or "on sale or return" (Section 24):** In this case, 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 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.

Sale for cash only or Return: where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.

- D. Reservation of right of disposal (Section 25):** in the contract for the sale the seller may reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Circumstances under which the right to disposal may be reserved:

- a) 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.

- b) 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.

❖ RISK PRIMA FACIE PASSES WITH PROPERTY (SECTION 26)

- unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.
- The aforesaid rule is, however, subject to two qualifications:
 - (i) If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.
 - (ii) The duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

❖ TRANSFER OF TITLE BY NON OWNERS (SECTIONS 27 – 30)

Sale by person not the owner (Section 27):

- Sometimes a person may sell goods of which he is not the owner. The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller.
- This rule is expressed in the Latin maxim "**Nemo dat quod non habet**" which means that no one can give what he has not got.

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

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

❖ PERFORMANCE OF THE CONTRACT OF SALE (SECTIONS 31 – 44)

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 means voluntary transfer of possession from one person to another. For delivery, physical possession is not important. The buyer should be placed in a position so that he can exercise his right over the goods. Thus, if the possession is taken through unfair means, there is no delivery of the goods.
- **Delivery of goods is of three types:** (a) Actual Delivery (b) Symbolic delivery (c) Constructive Delivery

- **Duties of seller and buyer:** 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 terms of the contract of sale.
- **Payment and delivery are concurrent conditions:** 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.

Rules Regarding Delivery of goods (Section 33-41)

- (i) **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.
 - (ii) **Effect of part delivery:** 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.
 - (iii) **Buyer to apply for delivery:** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery
 - (iv) **Place of delivery:** Goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or if not then in existence, at the place at which they are manufactured or produced.
 - (v) **Time of delivery:** 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.
 - (vi) **Goods in possession of a third party:** Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
 - (vii) **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.
 - (viii) **Expenses for delivery:** These expenses must be borne by the seller in the absence of a contract to the contrary.
 - (ix) **Delivery of wrong quantity [Section 37]:**
 - a) **In case, seller delivers a quantity of goods less than he contracted to sell:** The buyer may reject them, but if the buyer accepts the goods he shall pay for them at the contract rate.
 - b) **In case, the seller delivers a quantity of goods larger than he contracted to sell:** The buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If he accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
 - c) **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, or may reject the whole.
 - (x) **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.
 - (xi) **Delivery to carrier:** Subject to the terms of contract, the delivery to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer.
 - (xii) **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.
 - (xiii) **Buyer's right to examine the goods:** Where the buyer has not previously examined the goods, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract.
- **Rule related to Acceptance of Delivery of Goods:** The buyer is deemed to have accepted the goods when-
 - a) he intimates to the seller that he has accepted them, or
 - b) when the goods have been delivered to him and he does any act in relation to them 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 to the seller that he has rejected them.
 - **Buyer not bound to return rejected goods:** Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.
 - **Liability of buyer for neglecting or refusing delivery of goods:** 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 take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal.

Past Year Questions

1. What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. (May-2018-6 Marks)
2. "A non-owner can convey better title to the bonafide purchaser of goods for value". Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of Sales of Goods Act 1930? (June-2019-6 Marks)
3. Explain any six circumstances in detail in which non- - owner can convey better title to Bona fide purchaser of goods for value as per The Sale of Goods Act, 1930.(Nov-2020-6 Marks)
4. "Risk Prima Facie passes with property." Elaborate in the context of The Sales of Goods Act, 1930. (July-2021-4 Marks)
5. 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. (June-2022-4 Marks)
6. Mr. D sold some goods to Mr. E for Rs. 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per The Sale of Goods Act, 1930. (May-2018-6 Marks)
7. Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged. Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending? (Nov-2018-6 Marks)
8. State the various essential elements involved in the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. (Nov-2019-4 Marks)
9. Ms. R owns a Two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two Wheeler from Mr. A. Will she succeed?
(i) Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?
(ii) Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid? (Nov-2020-6 Marks)

❖ **UNPAID SELLER: (Section 45)**

- The seller of goods is deemed to be an 'Unpaid Seller' when-
 - The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
 - When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.
- The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

❖ **RIGHTS OF AN UNPAID SELLER**

- The unpaid seller of goods, as such, has by implication of law-
 - a lien on the goods for the price while he is in possession of them;
 - in case of the insolvency of the buyer a right of stopping the goods in transit;
 - a right of re-sale as limited by this Act.
- Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

❖ **RIGHT OF UNPAID SELLER AGAINST THE GOODS**

1. SELLER'S LIEN:

<ul style="list-style-type: none"> The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely: - <ol style="list-style-type: none"> where the goods have been sold without any stipulation as to credit; where the goods have been sold on credit, but the term of credit has expired; where the buyer becomes insolvent. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. 	<ul style="list-style-type: none"> Part delivery: Where part delivery has been made, the unpaid seller 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. Termination of lien (Section 49): the unpaid seller of goods loses his lien thereon- <ol style="list-style-type: none"> when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods; when the buyer or his agent lawfully obtains possession of the goods; by waiver thereof. By estoppel The unpaid seller of 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.
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2. RIGHT OF STOPPAGE IN TRANSIT:

- Right of stoppage in transit (Section 50):** When the buyer 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. However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
 - The seller must be unpaid.
 - He must have parted with the possession of goods.
 - The goods are in transit.
 - The buyer has become insolvent.
 - The right is subject to provisions of the Act.
- Duration of transit (Section 51):**
 - Goods are deemed to be in the course of transit from the time when they are delivered to a carrier or other bailee, until the buyer or his agent in that behalf takes delivery of them.
- When does the transit come to an end?**

The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end in the following cases:

 - When the buyer or other bailee obtains delivery.
 - Buyer obtains delivery before the arrival of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.
 - Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
 - If the carrier wrongfully refuses to deliver the goods to the buyer.
 - Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.

- f) Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.
- g) Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.
- **How stoppage in transit is effected (Section 52)**
 1. The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.
 2. When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller.
- **Distinction between Right of Lien and Right of Stoppage in Transit**
 - (i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
 - (ii) Seller should be in possession of goods under lien while in stoppage in transit- (i) seller should have parted with the possession (ii) possession should be with a carrier & (iii) buyer has not acquired the possession.
 - (iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
 - (iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage in transit.
 - (v) Right of lien comes to an end as soon as the goods go out of the possession of the seller but the right of stopping in transit comes to an end as soon as the goods are delivered to the buyer.
- 3. **EFFECTS OF SUB-SALE OR PLEDGE BY BUYER:**
 - a) The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it. (**Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd**)
 - b) This is based on the principle that a second buyer cannot stand in a better position than his seller. (The first buyer).
 - c) The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub-buyer in good faith and for consideration.
- **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.
 - 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:
 - (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.
- **Effect of stoppage:** The contract of sale is not rescinded when the seller exercises his right of stoppage in transit. The contract still remains in force and the buyer can ask for delivery of goods on payment of price.
- 4. **RIGHT OF RE-SALE:** 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. 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. However, the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer.
 - (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:** In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. Further, 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 a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

❖ **RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTIONS 55-61)**

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 the property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods the seller may sue him for the price of the goods.
- b) Where 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.

2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. Suit for interest [Section 61]: The seller may recover interest from the buyer where there is specific agreement. If there is no specific agreement, 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.

❖ REMEDIES OF BUYER AGAINST THE SELLER

- **Breach of contract by seller:** Breach of contract by seller where he:
 - a) Fails to deliver the goods at the time or in manner prescribed
 - b) Repudiates the contract
 - c) Deliver non-performing goods and buyer rejects and revokes acceptance
- **If the seller commits a breach of contract, the buyer gets the following rights against the seller:**
 1. **Damages for non-delivery:** The buyer may sue the seller for damages for non-delivery.
 2. **Suit for specific performance (Section 58):** The buyer can appeal to the court for specific performance. This remedy is allowed by the court subject to these conditions
 - a) The contract must be for the sale of specific and ascertained goods.
 - b) The power of the court to order specific performance is subject to provisions of Specific Relief Act of 1963.
 - c) It empowers the court to order specific performance where damages would not be an adequate remedy.
 - d) It will be granted as remedy if goods are of special nature or are unique.
 3. **Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.
 4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
 5. **Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages 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.

❖ AUCTION SALE (SECTION 64)

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:

- a) **Where goods are sold 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 and 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:** In this case, 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.

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

- 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:
 - a) Any duty of customs or excise on goods,
 - b) 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. The effect of provision can, however, be excluded by an agreement to the contrary.

Past Year Questions

1. What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (Nov-2019-6 Marks)
2. What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?(Jan-2021-4 Marks)
3. Discuss the rights of an unpaid seller against the buyer under The Sales of Goods Act, 1930. (July-2021-6 Marks)
4. AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (Dec-2021-3 Marks)