

CA Foundation

Paper 2 - Business Law

Chapter 3 (SOGA)

The Sales of Goods Act, 1930

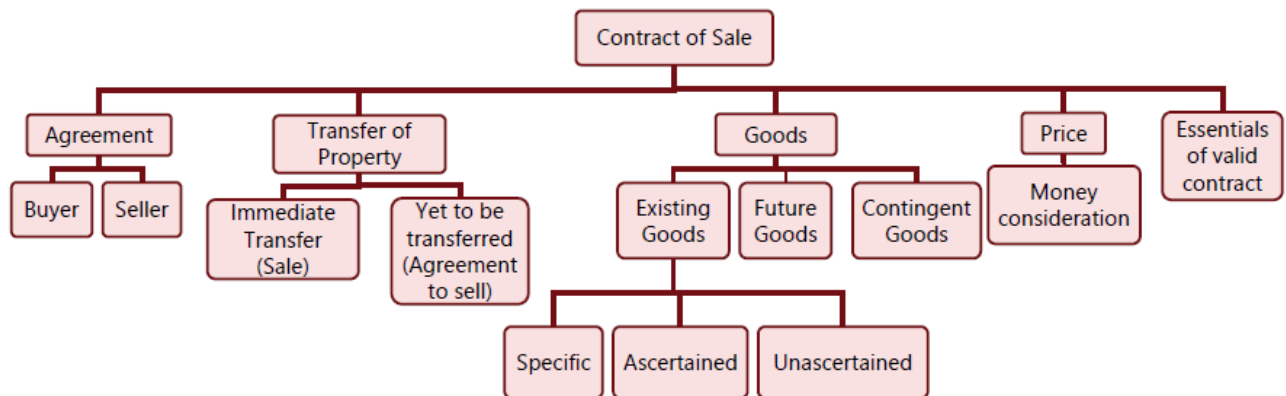
Notes by - CA Chaitanya Jain

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Unit 1 - Formation of the Contract of Sale



- Deals with the laws relating to sale of goods in India.
- This Act is mainly based on [English Sale of Goods Act, 1893](#).
- Before the Sale of Goods Act, 1930 - all the provisions relating to sale of goods was covered under the [Chapter VII of Indian Contract Act, 1872](#).
- A strong need was felt to have an independent Sale of Goods Act and consequently a new act called the Sale of Goods Act, 1930 was passed.
- The Act came into force from [1st July 1930 and extends to whole of India](#).

INTRODUCTION

- Sale is a typical bargain between the buyer and the seller.
- The Sale of Goods Act, 1930 allows the parties to modify the provisions of the law by express [stipulations](#) (Term to be explained in detail in Unit 2).
- However, in some cases, this freedom is severely restricted.
- Sale of Goods Act, 1930 is an [Act to define and amend the law](#) relating to the [sale of goods](#).

SCOPE OF THE ACT

- 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.

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- Sale of Goods Act, 1930 deals only with movable property.

The Indian Contract Act, 1872 and The Sale of Goods Act -

- The **general provisions** of the Indian Contract Act, 1872 apply to a Contract of Sale of Goods as far as **they are not inconsistent** with the express provisions of the Sale of Goods Act.
- The **expressions used but not defined** in the Sales of Goods Act, 1930 and defined in the Indian Contract Act, 1872 have the meanings **assigned to them in that Act**.
- The customs and usages will bind both the parties if these are reasonable and are known to the parties at the time of entering the contract of sale.

DEFINITIONS

A. 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)].

The two term 'buyer' and 'seller' are complementary and represent the two parties to a contract of sale of goods.

Both the terms are, however, used in a sense wider than their common meaning.

Not only the person who buys but also the one who agrees to buy is a buyer. Similarly, a 'seller' means not only a person who sells but also a person who agrees to sell.

B. Goods and other related terms:

- *"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/ separated from the land before sale or under the contract of sale.

[Section 2(7)]

Actionable claims -

- Claims, which can be enforced only by an action or suit,
- Claim or debt that can be enforced through legal action.
- It typically involves a right to a future benefit or payment that is not secured by physical possession but
- can be claimed through a court.

Example:

A lends ₹10,000 to Person B. The loan agreement states that Person B will repay the amount in six months. During this period, Person A has an actionable claim against Person B for the repayment of ₹10,000. If Person B fails to repay, Person A can take legal action to enforce this claim and recover the debt

Key characteristic of actionable claims -

Uncertainty or condition attached to the claim that would require enforcement through legal action.

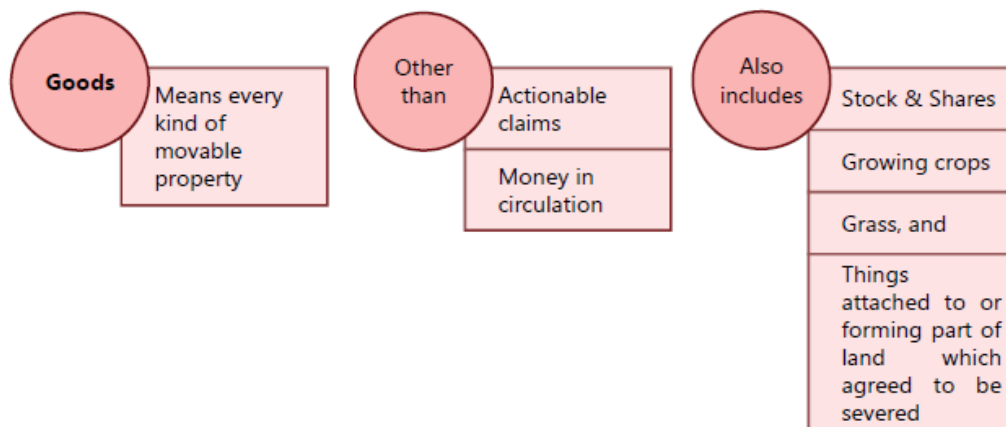
Item	Actionable Claim?
Unsecured debt	Yes
Future rent due from a tenant	Yes
Money deposited in a bank savings account	No
Fixed deposit with a bank (Secured and the person has right without any legal action)	No
Ownership of physical goods (e.g., a car)	No
Insurance policy proceeds (before maturity)	Yes
Beneficiary's right under a will	Yes
Dividend declared but not yet paid	Yes
Money owed for goods sold on credit	Yes

- “Goods” include both **tangible** goods and **intangible** goods like

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goodwill, copyrights, patents, trademarks etc.

- Stock and shares, gas, steam, water, electricity and decree of the court are also considered to be goods.
- Since the decree itself is enforceable directly & doesn't represent an uncertain or future right → NOT an actionable claim.



CLASSIFICATION OF GOODS

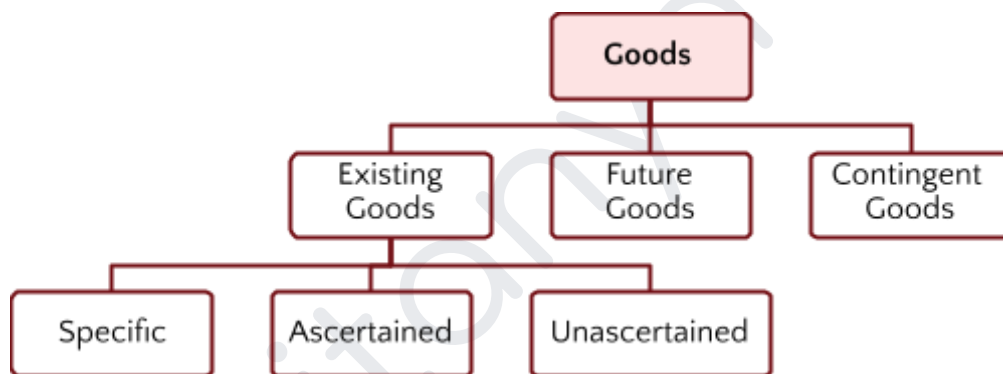
Type of Goods	Definition	Example
Existing Goods	Goods that are owned or possessed by the seller at the time of the contract of sale.	A laptop that a seller has in stock and is ready to sell immediately.
Future Goods	Goods that are yet to be manufactured, acquired, or produced by the seller at the time of the contract of sale.	A car that is yet to be manufactured or assembled, which will be delivered in a few months.
Contingent Goods	Goods that are subject to the occurrence or non-occurrence of a specific event before they can be sold.	A consignment of mangoes that will only be sold if they pass quality inspection upon arrival.

1. EXISTING GOODS -

- Goods which are in existence at the time of the contract of sale,
- those owned or possessed or acquired by the seller
- at the time of contract of sale (Section 6).

The existing goods may be of following kinds:

Type of Existing Goods	Description	Example
Specific Goods	Goods that are identified and agreed upon at the time of the contract.	A specific car with a unique number that a buyer agrees to purchase.
Ascertained Goods	Goods that are identified out of a larger set after the contract is made.	10 bags of rice selected from a stock of 100 bags.
Unascertained Goods	Goods that are not specifically identified or agreed upon at the time of the contract.	50 bags of wheat to be drawn from a large warehouse.



- a. Specific goods mean goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].

Example 1: Any specified and finally decided goods like a Samsung Galaxy S7 Edge, Whirlpool washing machine of 7 kg etc.

Example 2: 'A' had five cars of different models. He agreed to sell his 'Santro' car to 'B' and 'B' agreed to purchase the same 'Santro' 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.

- b. Ascertained Goods -

- i. Which are identified in accordance with the agreement
- ii. **after the contract of sale is made.**
- iii. This term is not defined in the Act but has been judicially interpreted.

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- iv. In actual practice, the term 'ascertained goods' is used in the same sense as 'specific goods.'
- v. **When out of 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.

Example 3: 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 become 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.

- c. Unascertained goods are the goods
 - i. **Which are not specifically identified or ascertained at the time of making of the contract.**
 - ii. They are indicated or defined only **by description or sample.**

Example 4: 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.

Example 5: 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.

2. FUTURE GOODS -

- Goods **to be** manufactured or produced or acquired
- by the seller **after making the contract of sale** [Section 2(6)].
- **A contract for the sale of future goods is always an agreement to sell.**
- It is **never actual sale** because a person cannot transfer what is not in

existence.

Example 6: 1,000 quintals of potatoes to be grown on A's field is an example of agreement to sell.

Example 7: 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.

Example 8: T agrees to sell to S all the oranges which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

3. CONTINGENT GOODS:

- The acquisition of goods
- which depends upon an **uncertain contingency (uncertain event)**
- Contingent goods also operate as **'an agreement to sell'** and not a 'sale' so far as the question of passing of property to the buyer is concerned.
- In other words, like the future goods, in the case of contingent goods also, **the property does not pass to the buyer at the time of making the contract.**

Example 9: A agrees to sell to B a Picasso painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

Example 10: P contracts to sell 50 pieces of particular article provided the ship which is bringing them reaches the port safely. This is an agreement for the sale of contingent goods.

DELIVERY - ITS FORMS AND DERIVATIVES:

- Delivery means **voluntary transfer of possession** from one person to another [Section 2(2)].
- As a general rule, delivery of goods may be made by doing anything,

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- which has the effect of **putting** the goods in the **possession of the buyer**, or
- **any person authorized** to hold them on his behalf.

Forms of delivery:

Voluntary transfer of possession by one person to another		
Actual delivery	Constructive delivery	Symbolic delivery

1. Actual delivery:

- When the goods are physically delivered to the buyer.
- Actual delivery takes place when the seller transfers the physical possession of the goods
 - to the buyer or
 - to a third person authorised to hold goods
 - on behalf of the buyer.
- This is the most common method of delivery.

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)

Example 11: 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:

- When there is a delivery of a thing in token of a transfer of something else,
- i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods,
- like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods
- is handed over to buyer.
- Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.

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)].

Example 12: When A contracts to sell timber and make bundles thereof, the goods will be in a deliverable state after A has put the goods in such a condition.

C. Document of title to goods

- Includes -
 - i. bill of lading,
 - ii. dock-warrant,
 - iii. warehouse keeper's certificate,
 - iv. wharfingers' certificate,
 - v. railway receipt,
 - vi. multimodal transport document,
 - vii. 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)]

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Example 13: Bill of lading, dock warrant, warehouse keeper 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.
- **Document of Title:** Must show an unconditional promise to deliver goods to the holder.

Document showing title VS 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.

D. Mercantile Agent [Section 2(9)]:

- It means an agent who in the customary course of business has,
- as such agent,
- authority either to sell goods or to consign goods
- for the purpose of sale or to buy goods or to raise money on the security of the goods.
- **Mercantile agent can borrow money by pledging the goods.**

Example 14: Such kind of agents are auctioneers or brokers, etc.

E. Property [Section 2(11)]:

- 'Property' here means 'ownership' or general property.
- In every contract of sale, the ownership of goods must be transferred by the seller to the buyer, or
- there should be an agreement by the seller to transfer the ownership to the buyer.
- It means the general property (right of ownership-in-goods) and not merely a special property.

Aspect	General Property	Special Property
Definition	Full ownership rights.	Limited rights, often conditional.
Scope	Complete rights, including transfer and sale.	Specific rights, not full ownership.
Example	Owning a car.	Pledged item (e.g., pawned goods).
Transferability	Can be fully transferred.	Transfer of special rights doesn't affect general ownership.
Legal Rights	Total control and responsibility.	Control limited to specific conditions.

Now let's understand the concept with an example of Pledge -

Example 15: If A who owns certain goods pledges them to B, A has general property in the goods, whereas B has special property or interest in the goods to the extent of the amount of advance he has made. In case A fails to repay the amount borrowed on pledging the goods, then B may sell his goods but not otherwise.

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Aspect	General Property (Pledgor)	Special Property (Pledgee)
Rights	Full ownership rights, can sell or transfer.	Limited rights, can retain the property until loan repayment.
Example	Owner of the gold necklace.	Lender holding the gold necklace as security.
Transferability	Can transfer ownership, including the pledged item.	Cannot transfer ownership, only retains possession for security.

F. Insolvent -



- 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.

G. Price -

- 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.

H. **Quality of goods** includes their state or condition. [Section 2(12)]

SALE AND AGREEMENT TO SELL (SECTION 4)

Sale	Agreement to Sell
	
<ul style="list-style-type: none">• Ownership passes to the buyer• Executed contract• Seller cannot resell the goods• Completed contract	<ul style="list-style-type: none">• Ownership remains with the seller• Executory contract• Seller can sell the goods to third party• Ongoing contract

- Contract of Sale (Section 4(1)):

A contract where the seller transfers or agrees to **transfer ownership** of goods to the **buyer** for a **price**. It can even occur between **part-owners**.

- Types of Contracts (Section 4(2)):

- **Sale**: When ownership of goods is **immediately** transferred from seller to buyer.
- **Agreement to Sell**: When ownership is set to transfer at a **future date** or upon fulfilling certain conditions.

- Conversion (Section 4(4)):

An agreement to sell turns into a sale when the **agreed time passes or conditions are met**.

- Sale:

- Property in goods is transferred immediately from seller to buyer.
- A sale occurs when the property in goods is transferred under a contract.

- Agreement to Sell:

- Ownership of goods is not transferred immediately.

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- Transfer is intended at a future date or upon completion of certain conditions.
- An agreement to sell is when the transfer is to take place later or after fulfilling conditions.

- **Key Distinction:**

- A contract is a sale if it involves immediate transfer.
- It is an agreement to sell if the transfer is set for a future time.

- **When Agreement to Sell Becomes a Sale:**

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled for the transfer of property.

- Whether a contract of sale of goods is an absolute sale or an agreement to sell, ----- ???

Depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date.

Example 16: X agrees with Y on 10th October, 2022 that he will sell his car to Y on 10th November, 2022 for a sum of ` 7 lakhs. It is an agreement to sell.

- **When agreement to sell becomes sale -**

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.

- The following **Elements** -

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

Element	Explanation
Two Parties	Must be a seller and a buyer (different persons).
Goods	Subject matter must be movable property (existing or future goods).
Price	Consideration must be in money (can be partly money and partly in kind).
Transfer of Property	Ownership must be transferred from seller to buyer.
Absolute or Conditional	Contract can be absolute or conditional.
Contract Essentials	Must include all elements of a valid contract (free consent, legality, etc.).

DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

The differences between the two are as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract i.e. contract for which consideration has been paid.	It is an executory contract i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.

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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.

SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

Aspect	Sale	Bailment	Hire Purchase
Ownership	Ownership transfers immediately to the buyer.	Ownership does not transfer; only possession does.	Ownership transfers after the final installment is paid.
Possession	Possession and ownership are transferred.	Only possession is transferred; ownership remains with the bailor.	Possession is transferred immediately, ownership later.
Consideration	One-time payment or full payment is made.	No payment for ownership; only for the use or care of goods.	Payment is made in installments until full ownership.
Termination	No option for termination by buyer after sale.	Bailee can terminate by returning goods to bailor.	Buyer can terminate anytime before ownership transfer.
Purpose	To own the goods.	To use, store, or care for the goods.	To eventually own the goods after paying in installments.
Risk	Buyer bears the risk after sale.	Risk generally remains with the owner (bailor).	Buyer bears the risk once they take possession.

1. Sale and Hire Purchase:

- Hire purchase agreements are governed by the Hire-purchase Act, 1972.
- 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—
 - a. **Delivery:** The owner gives possession of goods to someone on the condition that they pay in installments.
 - b. **Transfer of Ownership:** Ownership passes to the person only after they pay the final installment.
 - c. **Right to Cancel:** The person can end the agreement anytime before they gain ownership.

3.1 ► Formation of the Contract of Sale

Basis of difference	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 untill he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

2. Sale and Bailment:

Basis of difference	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.

3. Sale and contract for work and labour:

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

Example 17: Where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture. Here, the basic substance of the contract is the exercise of skill and labour, therefore it is contract for work and labour.

3.1 ► Formation of the Contract of Sale

CONTRACT OF SALE HOW MADE (SECTION 5)

Mode	Description
Offer and Acceptance	The sale begins with an offer to buy or sell goods for a price and the acceptance of that offer.
Immediate Delivery	Goods are delivered immediately, but payment may be deferred.
Immediate Payment, Future Delivery	Payment is made immediately, but delivery is scheduled for a future date.
Immediate Delivery and Payment	Both goods are delivered and payment is made immediately.
Delivery or Payment in Installments	Delivery, payment, or both are done in installments.
Future Delivery or Payment	Delivery, payment, or both are scheduled for a future date.

Example 18: R agrees to deliver his old motorcycle valued at ` 55,000 to S in exchange for a new motorcycle and agrees to pay the difference in cash, it is a Contract of Sale.

SUBJECT MATTER OF CONTRACT OF SALE

Existing or future goods (section 6):

1. The goods which form the subject matter of a contract of sale -
 - i. may be either existing goods that are acquired, owned or possessed by the seller, or
 - ii. 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.

Example 19: A contract for sale of certain cloth to be manufactured by a certain mill is a valid contract. Such contracts are called contingent contracts.

3. There may be a contract of sale - where the seller purports to effect
 - i. a present sale of future goods,
 - ii. such contract operates as an agreement to sell the goods.

Goods Perishing and Contract Void

- **Before Contract (Section 7):**
 - If specific goods perish or get damaged (unknown to the seller) before a sale contract is made, the contract is void.
- **Before Sale but After Agreement (Section 8):**
 - If specific goods perish or get damaged (without fault of buyer/seller) after an agreement but before the risk passes to the buyer, the agreement becomes void.
- **Future Goods Perishing:**
 - If future specific goods perish, the contract becomes void due to supervening impossibility.

Example 20: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The agreement is void.

Example 21: 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.

3.1 ► Formation of the Contract of Sale

ASCERTAINMENT OF PRICE (SECTION 9 & 10)

Ascertainment of price (Section 9):

- Price can be fixed in the contract.
- Price can be agreed to be fixed later (e.g., by a valuer).
- Price can be determined by previous dealings between the parties.

Agreement to sell at valuation (Section 10):

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

1. If a third party is to set the price but doesn't or can't, the agreement is void.
2. If a party prevents the third party from setting the price, that party is liable for damages.
3. If the buyer has already received and used the goods, they must pay a reasonable price regardless.

Example 22: 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 as the third party Q refuses to fix the price

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“ PROBLEM KYA HAI ? - Unit 1 ”

Question Bank for the Chapter SOGA

*This section is complied with questions and suggested answers
for the chapter - SOGA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

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Question 1

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

(Module)

Answer 1

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. In the given case, the new TV set is agreed to be sold for Rs. 30,000 and the price is payable partly in exchange of old TV set and partly in cash of Rs. 20,000. So, in this case, it is a valid contract of sale under the Sales of Goods Act, 1930.

Question 2

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?

(Module)

Answer 2

In this case, B, the buyer has no right against A the seller. 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.

So, all the following conditions required to treat it as a void contract are fulfilled in the above case:

1. There is an agreement to sell between A and B
2. It is related to specific goods
3. The goods are lost because of the sinking of ship before the property or risk passes to the buyer
4. The loss of goods is not due to the fault of either party.

Question 3

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?

(Module)

Answer 3

In this case, B, the buyer has no right against A the seller. 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.

So, all the following conditions required to treat it as a void contract are fulfilled in the above case:

1. There is an agreement to sell between A and B
2. It is related to specific goods
3. The goods are lost because of the sinking of ship before the property or risk passes to the buyer.
4. The loss of goods is not due to the fault of either party.

RTPs, MTPs and PYQPs

Question 1

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

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

(RTP May 22)(SM) (MTP Apr' 23 4 Marks)

Answer 1

1. 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 become 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.
2. 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.
3. 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'.

Question 2

Avyukt purchased 100 Kgs of wheat from Bhaskar at 730 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

(RTP May'23)

Answer 2

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf. On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

Question 3

State the difference between Sale and Agreement to sell.

(RTP May'23)

Question 4

What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930.

(RTP Nov'23) (PYP May 22 4 Marks)

Answer 4

Goods perishing before making of Contract (Section 7 of the Sale of Goods Act, 1930):

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

Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930):

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.

Question 5

Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace.

When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had 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.

1. State with reasons whether Shubhangi can recover the amount from the Jeweller.

2. What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same?

(RTP Nov'23) (MTP Nov'22 6 Marks) (PYP May 22 6 Marks)

Answer 5

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.

1. On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.
2. If Jeweller offers to bring the necklace in original position by repairing, he cannot charge extra cost from Shubhangi. Even though he has to bear some expenses for repair; he cannot charge it from Shubhangi.

Question 6

Mr. Arun contracted to sell his swift car to Mr. Nikhil. Both missed to discuss the price of the said swift car. Later, Mr. Arun refused to sell his swift car to Mr. Nikhil on the ground that the agreement was void, being uncertain about the price. Does Mr. Nikhil have any right against Mr. Arun under the Sale of Goods Act, 1930? (RTP Jun'24)

(PYP Jun'23 4 Marks)

Answer 6

As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in a manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed discussing the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. Arun and Mr. Nikhil have entered into a contract for the sale of a swift car, but they did not fix the price of the same. Mr. Arun refused to sell the car to Mr. Nikhil on this ground. Mr.

Nikhil can legally demand the car from Mr. Arun and Mr. Arun can recover a reasonable price for the car from Mr. Nikhil.

Question 7

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

(MTP Jun 22 6 Marks)

Answer 7

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement.

Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

Question 8

Explain the term "Delivery and its forms" under the Sale of Goods Act, 1930.

(MTP Nov'22 6 Marks)

Answer 8

Delivery - its forms: Delivery means voluntary transfer of possession from one person to another [Section 2(2) of the Sale of Goods Act, 1930]. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Forms of delivery: Following are the kinds of delivery for transfer of possession:

1. **Actual delivery:** When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer. This is the most common method of delivery.
2. **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.

3. **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.

Question 9

Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ Rs. 1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months.

Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which is already made by it. Ram Bilas Yadav denied returning the price by saying that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring to the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company recover amount from Ram Bilas Yadav?

(MTP Nov'23 6 Marks)

Answer 9

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.

Further Section 2(6) defines "future goods" means goods to be manufactured or produced or acquired by the seller after making of the contract of sale.

In the instant case, on the basis of above provisions and facts, it can be said that there was an agreement to sell between Ram Bilas Yadav and Anna Chips Company because the goods under agreement was future goods. Even the payment was made by Anna Chips Company, the property in goods can be transferred only after the goods is ascertained. As the goods was not ascertained, property is not passed to buyer. Hence, Ram Bilas Yadav must return the price to Anna Chips Company.

Question 10

Samar was in search of a second-hand car. For this purpose, he approached "Car Wala 007", a dealer in pre-owned cars. The sales manager of "Car Wala 007" showed him three cars which were standing in the parking lane just outside the office. Samar finalised red Wagon R car. After completing the documenting formalities and receiving the price of car, sales manager of "Car Wala 007" handed over the key of car to Samar. But when Samar was coming to parking area for picking the car,

the electric poll fell on the car which badly damaged the car. Samar claimed that repair expenses of the car should be borne by "Car Wala 007" as car was not delivered to him. Referring to the provisions of the Sales of Goods Act 1930, state who will be liable to get the car repaired?

(MTP Dec'23 6 Marks)

Answer 10

According to the provisions of the Sale of Goods Act, 1930, there are three modes of delivery, (i) Actual delivery, (ii) Constructive delivery and (iii) Symbolic delivery.

Symbolic delivery is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

In the instant case, Samar purchased a pre-owned car from "Car Wala 007" which was standing in the parking lane just outside of office. After completing the documenting formalities, he received the key of car from sales manager of "Car Wala 007". But when he was coming to parking area for picking the car, the car which badly damaged due to fall of the electric poll on the car.

On the basis of above provisions and facts, it is clear that handing over the key of car is the symbolic delivery of car. Hence, Samar being owner of the car must bear the repair expenses of car.

Question 11

Distinguish between Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930.

(PYP Dec' 21 6 Marks)

Question 12

Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930.

(PYP Nov'22 4 Marks)

Answer 12

Sale of unascertained goods and Appropriation:

Where there is a contract for the sale of unascertained goods by description and goods of that description are in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by

the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

Whereas, 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 elements 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.

Question 13

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

(RTP May 21)

Answer 13

Essentials of Contract of Sale

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

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

Question 14

Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that.

The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for

1. State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.
2. What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?

(RTP Nov'21)

Answer 14

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

1. On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid
2. On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika

Question 15

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?

(RTP Nov'21)

Answer 15

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. (Section 9 of the Sale of Goods Act, 1930). 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.

Question 16

Explain the term "Delivery and its forms" under the Sale of Goods Act, 1930.

(MTP 4 Marks, Apr'21)

Answer 16

Delivery - its forms and derivatives: Delivery means voluntary transfer of possession from one person to another [Section 2(2) of the Sale of Goods Act, 1930]. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Forms of delivery: Following are the kinds of delivery for transfer of possession:

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

Unit 2 - Conditions and Warranties

Stipulation with Reference to Goods	
Condition	Warranty
Essential to main purpose of the contract	Collateral to main purpose of the contract
Breach-repudiation	Breach-claim for damages

- Let's understand the word "Stipulation"

अनुबंध या शर्त

STIPULATION

A representation which forms a part of the contract of sale and affects the contract.

However, every stipulation is not of equal importance.

Some of these may be very vital while others may be of somewhat lesser significance.

CONDITIONS

The more significant stipulations contained in a contract of sale of goods

WARRANTIES

The less significant stipulation have been given the name "Warranties"

STIPULATION AS TO TIME (SECTION 11)

- Time for Payment: Unless the contract states otherwise, the timing of payment is generally not considered critical in a contract of sale.
- Delivery of Goods: Delivery must be made without delay. The importance of delivery timing depends on the terms agreed upon in the contract.
- Price Fixing: The price may be set in the contract or agreed to be determined later in a specific way.
- Time of Delivery: Usually, the timing of delivery is crucial in the contract.

INTRODUCTION - CONDITIONS AND WARRANTIES

- At the time of selling the goods,
- a seller usually makes certain statements or representations with a view
- to induce the intending buyer to purchase the goods.
- Such representations are generally about the nature and quality of goods, and about their fitness for buyer's purpose.
- When these statements or representations do not form a part of the contract of sale,
- they are not relevant and
- have no legal effects on the contract.
- But when these form part of the contract of sale and
- the buyer relies upon them,
- they are relevant and have legal effects on the contract of sale.

Condition and warranty (Section 12):

1. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty

3.2 ► Conditions and Warranties

2. Condition - (2)

- 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

Example 1: P wants to purchase a car from Q, which can have a mileage of 20 km/litre. Q pointing at a particular vehicle says "This car will suit you." Later P buys the car but finds out later on that this car only has a top mileage of 15 km/ litre. This amounts to a breach of condition because the seller made the stipulation which forms the essence of the contract. In this case, the mileage was a stipulation that was essential to the main purpose of the contract and hence its breach is a breach of condition.

3. Warranty - (3)

- 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

4. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract.

A stipulation may be a condition, though called a warranty in the contract.

Example 2: Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. Here, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non- fulfilment defeats the very purpose for which Ram purchases the

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

Example -

- Ram buys a new Maruti car with a one-year warranty against manufacturing defects.
- Six months later, the horn stops working.
- Ram cannot cancel the contract but
- can have the horn repaired or replaced under the warranty.
- He can also claim damages if he suffered any loss, but
- he doesn't have the right to cancel the purchase.

DIFFERENCE BETWEEN CONDITIONS AND WARRANTIES:

Point of differences	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 IS TO BE TREATED AS WARRANTY (SECTION 13)

थी तो condition पर अब warranty मानेंगे → contract को खत्म करने का right गया अब बस damages

- Section 13 specifies cases where a breach of condition be treated as a

3.2 ► Conditions and Warranties

breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

- A contract is not avoided even on account of a breach of a condition -
 - a. 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.
 - b. 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.

Example 3: A agrees to supply B 10 bags of first quality sugar @ Rs. 625 per bag but supplies only second quality sugar, the price of which is Rs. 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, hence he may accept the second quality sugar and claim damages @ Rs. 25 per bag.

- c. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.

For Eg. If basmati rice and lower quality rice mixed together, the contract becomes non severable.

- d. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Scenario	Outcome	Key Point	Example
Buyer Waives Condition	Buyer chooses to ignore the issue	Condition is not enforced.	Ram buys a phone with a tiny scratch and decides to keep it as it is.
Treating Condition as Warranty	Buyer asks for a fix or compensation	No contract cancellation.	Shyam buys a bike with a small paint flaw and asks for a discount instead of returning it.
Non-Severable Contract	Buyer keeps all or part of the goods	Contract stays valid.	Sita buys a mix of good and lower quality rice and keeps the whole batch.
Excused by Law	Issue is out of everyone's control	Condition is excused.	Ramesh orders goods from abroad, but they get delayed due to customs rules.

Waiver of conditions

Voluntary Waiver

- Waives performance of contract
- Elect to treat condition as warranty

Compulsory Waiver

- Non-severability of contract
- Fulfilment of conditions excused by law

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)

'Conditions' and 'Warranties' may be either express or implied.

- **Express conditions -**

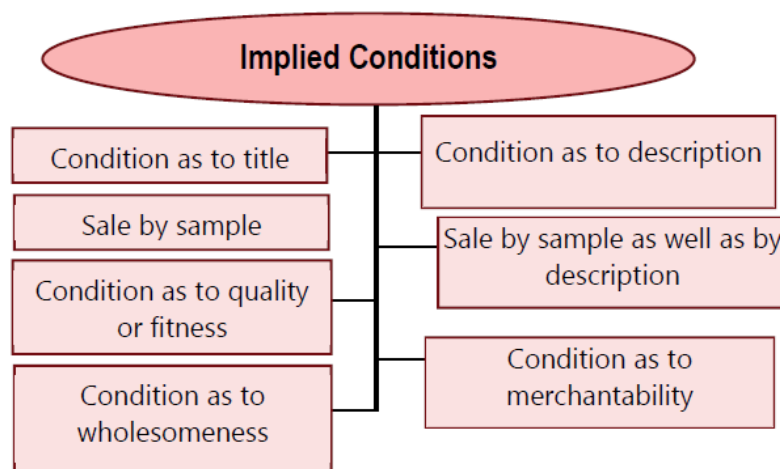
Which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

3.2 ► Conditions and Warranties

- Implied conditions -

Implied conditions are incorporated by law in the contract of sale. Those, which are presumed by law to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

- Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.



KEY TABLE for IMPLIED CONDITIONS			
Section	Condition	Simplified Explanation	Example
Section 14 Condition as to Title	Seller's Right to Sell	The seller must legally own the goods at the time of sale. If not, the buyer can return the goods and get a refund.	Example 4: A buys a tractor from B. If B doesn't own it and the real owner asks for it back, A can get a refund from B.
Section 15: Sale by Description	Goods Must Match Description	The goods sold must match the agreed description. If not, the buyer can reject them.	Example 6: A sells B "waste silk." If it's not waste silk, B can reject the goods.
Section 17: Sale by Sample	Goods Must Match Sample	The bulk of goods must match the sample provided.	Example 8: B is shown a sample of wheat but the larger parcel differs. B can reject it.
Section 15: Sale by Sample & Description	Must Match Both	Goods must match both the sample and description.	Example 10: Shoes sold for the French Army match the sample but not the description. The buyer can get a refund.
Section 16(1): Condition as to Quality/Fitness	Fit for Purpose	Goods should be fit for the buyer's stated purpose if the seller was informed and relied on.	Example 11: A buys false teeth from B, but they don't fit. A can return them and get a refund.
Section 16(2): Condition as to Merchantability	Goods Must Be Merchantable	Goods should be of a quality that a reasonable person would accept.	Example 13: Scratched motor horns due to poor packing can be rejected as unmerchantable.
Condition as to Wholesomeness	Fit for Consumption	In the case of food, it must be safe to consume.	Example 15: A supplies milk with germs. F's wife gets sick. A must pay damages.

1. Section 14 (a) - Condition as to title -

Unless there is an agreement to the contrary,

The first implied condition on the part of the seller-

Seller's Right to Sell:

- The seller must have the **right to sell the goods at the time of sale**.
- 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**.
- If the seller's ownership is **defective**, the buyer must **return** the goods to the true owner and **recover the purchase price**.

3.2 ► Conditions and Warranties

Example 4:

A buys a tractor from B, who doesn't own it. The true owner demands the tractor back, and A can sue B, the seller without title, for the refund and recovery of the purchase price.

Example 5:

If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this is proved to be an infringement of N Company's trade mark, it will be a breach of implied condition that A had the right to sell. B in such a case will be entitled to reject the goods or take off the labels, and claim damages for the reduced value.

If the seller has no title and the buyer has to make over the goods to the true owner, he will be entitled to refund of the price.

2. 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.

If you agree to buy peas, the seller can't make you take beans instead.

- The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
- Importance of Description:

The description is *key to identifying the goods*. If the goods don't match the description, it's a breach of condition.

- Determine this first -

Whether the description was essential for identifying the goods where the buyer had agreed to purchase.

If that is required and the goods tendered do not correspond with the

description,

it would be breach of condition **entitling the buyer to reject the goods**.

- The buyer can reject the goods if they don't match the description, **even if they didn't inspect them beforehand**.

-

Example 6:

Waste Silk:

A sells B twelve bags of "waste silk." If the goods aren't actually waste silk, B can reject them.

Example 7:

Copper-Fastened Ship:

A ship sold as "copper-fastened" is only partly copper-fastened. The buyer can reject it or claim damages because it doesn't match the description.

- The Act, however, does not define 'description'.
 - a. where the class or kind to which the goods belong has been specified, e.g., 'Egyptian cotton', "java sugar", etc., defining the category of good
 - b. where the goods have been described by certain characteristics essential to their identification, e.g., jute bales of specified shipment, steel of specific dimension, etc.
- Understanding 'Description':
 - **Class/Kind:**

The description might specify the class or kind of goods, like "Egyptian cotton" or "Java sugar."
 - **Characteristics:**

The description might include specific characteristics like the size, origin, or packaging of the goods.

3.2 ► Conditions and Warranties

■ Fact-Based:

Whether the description is essential to identifying the goods depends on the contract and the facts of the case.

3. Sale by sample [Section 17]:

- 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

Example 8: 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.

- 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 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.

Example 9: 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.

4. 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.

Example 10: 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.

5. Condition as to quality or fitness [Section 16(1)]:

Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose.

- However, 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 implied condition will not apply if the goods have been sold under a trademark or a patent name.*
- There is implied condition of the part of the seller that the goods supplied -
 - shall be reasonably fit for the purpose for which the buyer wants them,
 - provided the following conditions are fulfilled:
 - a. The buyer should have made known to the seller the particular purpose for which goods are required.
 - b. The buyer should rely on the skill and judgement of the seller.
 - c. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.
- In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold.

3.2 ► Conditions and Warranties

- Where the goods can be used for only one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

Example 11: 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

Example 12: 'A' went to 'B's shop and asked for a 'Merrit' sewing machine. 'B' gave 'A' the same and 'A' paid the price. 'A' relied on the trade name of the machine rather than on the skill and judgement of the seller 'B'. In this case, there is no implied condition as to fitness of the machine for buyer's particular purpose.

As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them.

This is known as rule of caveat emptor which means "Let the buyer beware".

6. Condition as to Merchantability [Section 16(2)]:

- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not),
- there is an implied condition that the goods shall be of merchantable quality.
- There are two requirements for this condition to apply:
 - a. Goods should be bought by description.
 - b. The seller should be a dealer in goods of that description.
- Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression “merchantable quality”, though not defined, nevertheless connotes -

Goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Example 13: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

Example 14: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

7. Condition as to wholesomeness:

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

Example 15: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Implied Warranties:

- It is a warranty which the law implies into the contract of sale.
- It is the **stipulation** -
- which **has not been included in the contract** of sale in express words. B
- ut the law **presumes** that the parties have **incorporated it into their contract**.
- It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

3.2 ► Conditions and Warranties

These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

(Option 1 - ऐसा लिखा है agreement में की implied को नहीं मानेंगे)

(Option 2 - dealing के तरीके से भी या अधिकतर trade में ऐसा होता है तब)

The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

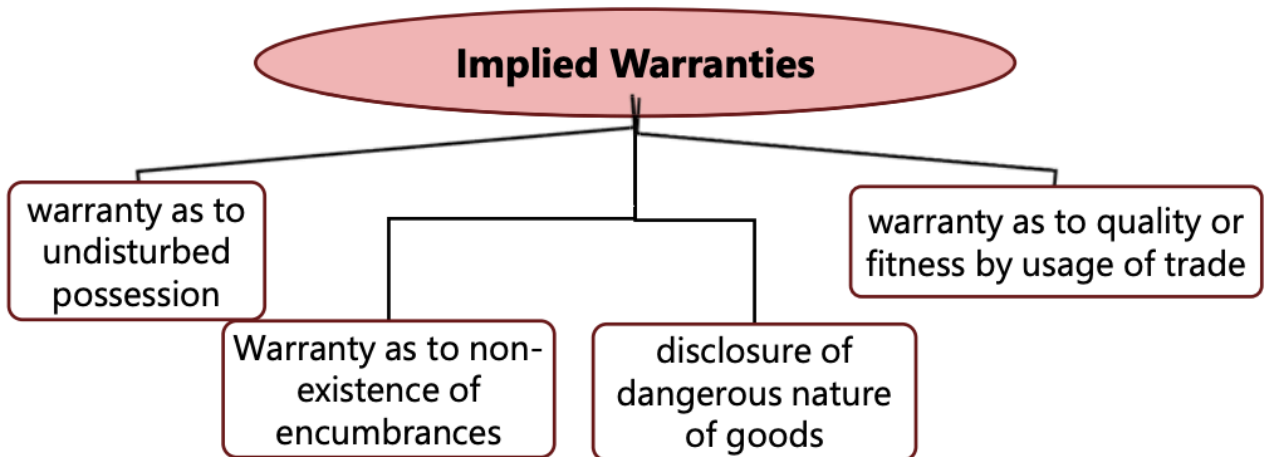
KEY TABLE for IMPLIED WARRANTIES			
Section	Implied Warranty	Explanation	Example
Section 14(b)	Warranty as to Undisturbed Possession	Buyer is assured of quiet possession of the goods. If possession is disturbed, buyer can claim damages.	Example 16: X buys a laptop, but it turns out to be stolen. X can claim damages from Y, the seller.
Section 14(c)	Warranty as to Non-Existence of Encumbrances	Goods should be free from any third-party claims or charges unknown to the buyer at the time of the contract.	Example 17: A sells a car to B without telling him it's pledged. B can ask A to clear the loan or pay it and sue A.
Section 16(3)	Warranty as to Quality/Fitness by Usage of Trade	Implied warranty based on trade usage that goods are fit for a particular purpose.	A buys curtain fabric from B, but the cloth fades quickly in sunlight. Since this cloth should be suitable for curtains by trade usage, A can claim a breach of warranty from B.
Disclosure of Dangerous Nature	Obligation to Warn About Danger	Seller must inform the buyer if the goods are dangerous, otherwise they may be liable for damages.	A sells B a corrosive cleaning solution without warning. B suffers burns from using it. A is liable for not disclosing the product's dangerous nature.

1. Warranty as to undisturbed possession [Section 14(b)]:

- An implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

Example 16: 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.



2. Warranty as to non-existence of encumbrances [Section 14(c)]:

- An implied warranty that the goods shall be **free from any charge or encumbrance in favour of any third party**
- **not declared or known to the buyer before or at the time** the contract is entered into.

Example 17: A pledges his car with C for a loan of '15,0000 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.

3. Warranty as to quality or fitness by usage of trade [Section 16(3)]:

- An implied warranty as to quality or fitness for a particular purpose
- may be annexed or attached by the usage of trade.
- Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied,
- the rule is 'let the buyer beware' i.e.,
- **the seller is under no duty to reveal unflattering truths** about the goods sold, but this rule has certain exceptions.

3.2 ► Conditions and Warranties

4. Disclosure of dangerous nature of goods:

- Where the goods are **dangerous** in **nature** and
- the buyer is **ignorant** of the danger,
- the **seller** must **warn** the buyer of the probable danger.
- If there is a **breach** of **warranty**, the **seller** may be **liable** in **damages**.

CAVEAT EMPTOR

- 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.
- It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.
- If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.
- There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"
- Following are the conditions to be satisfied:
 - ☐ 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** (Section 16).

Example 18: A sold pigs to B. These pigs being infected, caused typhoid to other healthy pigs of the buyer. It was held that the seller was not bound to disclose that the pigs were unhealthy. The rule of the law being "Caveat Emptor".

Example 19: 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.

Exceptions - The doctrine of Caveat Emptor is subject to the following exceptions:-

1. Fitness as to quality or use :- Section 16 (1)

- Where the buyer makes known to the seller the particular purpose for which the goods are required,
- so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply,
- it is the duty of the seller to supply such goods as are reasonably fit for that purpose

Example 20: 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.

In 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.

- Where the article can be used for only **one particular purpose**,

3.2 ► Conditions and Warranties

the buyer need not tell the seller the purpose for which he required the goods.

- But where the article can be used for a **number of purposes**, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.

In *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.

2. Goods purchased under patent or brand name: Section 16(1)

- 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**
- Here, the buyer is **relying** on the **particular brand** name.

3. Goods sold by description: Section 15

- Where the goods are sold by **description** there is an **implied** condition that the goods shall **correspond** with the **description**. If it is not so, then seller is responsible.

4. Goods of Merchantable Quality: Section 16(2)

- 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 for latent defects.
- **But where the buyer has examined the goods**, this rule shall apply if the **defects** were such which ought to have not been revealed by ordinary examination

5. Sale by sample - Section 17

Where the goods are bought by sample,

this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample

6. Goods by sample as well as description: Section 15

- Where the goods are bought by sample as well as description,
- the rule of Caveat Emptor is not applicable
- in case the goods do not correspond with both the sample and description or either of the condition

7. Trade Usage: Section 16(3)

- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable

8. Seller actively conceals a defect or is guilty of fraud:

- Where the seller sells the goods by making some misrepresentation or fraud and
- the buyer relies on it or
- when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.
- In such a case the buyer has a right to avoid the contract and claim damage

Example 21: In readymade garment business, there is an implied condition by usage of trade that the garments shall be reasonably fit on the buyer.

3.2 ► Conditions and Warranties

KEY TABLE for EXEMPTION ON CAVEAT EMPTOR		
Exception	Description	Example
Fitness as to Quality or Use	Goods must be fit for the specific purpose communicated by the buyer.	Trucks for hilly terrain broke down; not fit for purpose.
Goods Purchased Under Patent/Brand Name	No guarantee of fitness for a particular purpose when buying a patented or branded product.	A branded laptop not suited for gaming; seller is not liable.
Goods Sold by Description	Goods must match the description given by the seller.	A "leather" sofa turns out to be synthetic.
Goods of Merchantable Quality	Goods must be of acceptable quality; latent defects not covered.	A "high quality" appliance fails shortly after purchase.
Sale by Sample	Goods must match the provided sample.	Fabric ordered is faded compared to the sample shown.
Goods by Sample and Description	Goods must match both the sample and the description.	Shirts ordered as "blue cotton" turn out to be dull polyester.
Trade Usage	Goods must meet trade standards; deviation means Caveat Emptor does not apply.	Readymade garments must fit reasonably well; poorly fitting garments breach trade usage.
Seller Conceals Defect/Fraud	Seller liable for concealing defects or misrepresenting goods.	Priest vs. Last: Hot water bottle burst as it wasn't meant for boiling water.

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“ PROBLEM KYA HAI ? - Unit 2 ”

Question Bank for the Chapter SOGA

*This section is complied with questions and suggested answers
for the chapter - SOGA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product.

Y suggests 'Santro' and X accordingly buys it from Y. The car turns out to be unfit for touring purposes.

What remedy X is having now under the Sale of Goods Act, 1930?

(Module)

Answer 1

Condition and warranty (Section 12): 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)] 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.

Question 2

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?

(Module)

Answer 2

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. 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.

Question 3

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?

(Module)

Answer 3

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 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. 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.

MTPs, RTPs and PYQPs

Question 1

AB Cloth House, a firm dealing with the wholesale and retail buying and selling of various kinds of clothes, customized as per the requirement of the customers. They dealt with Silk, Organdie, cotton, khadi, chiffon and many other different varieties of cloth.

Mrs. Reema, a customer came to the shop and asked for specific type of cloth suitable for making a saree for her daughter's wedding. She specifically mentioned that she required cotton silk cloth which is best suited for the purpose.

The Shop owner agreed and arranged the cloth pieces cut into as per the buyers' requirements.

When Reema went to the tailor for getting the saree stitched, she found that seller has supplied her cotton organdie material, cloth was not suitable for the said purpose. It has heavily starched and not suitable for making the saree that Reema desired for. The Tailor asked Reema to return the cotton organdie cloth as it would not meet his requirements.

The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs.

Reema and hence could not be resold.

With reference to the doctrine of "Caveat Emptor" explain the duty of the buyer as well as the seller.

Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement?

(RTP May' 22) (SM)

Answer 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. **Duty of the seller according to the doctrine of "Caveat Emptor":**

The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

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 serving her 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].

Question 2

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

(RTP May'22)(SM)

Answer 2

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

Question 4

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

(RTP Nov'22)

Answer 4

According to Section 16(2) of the Sale of Goods Act, 1930, where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be correspond with that quality. But

where the buyer could find the defect of the goods by ordinary examination, this rule shall not apply. The rule of Caveat Emptor is not applicable.

In the instant case, Ankit orders a black pen to a stationery shop. Seller gives him a pen saying that it is a black pen. But on the pack of pen, it was clearly mentioned that it is Blue Ink Pen. Ankit ignores the instruction mention on the pack and bought it. On reaching at his house, he finds that actually the pen is blue ink pen. Now he wants to return the pen. On the basis of above provisions and facts, it is clear that undoubtedly is case of sale by description but Ankit can find the defect using his ordinary diligence as instructions of blue ink pen was clearly mentioned on the pack of pen. Hence, the rule of Caveat Emptor will be applicable here and Ankit cannot return the pen.

Question 5

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 May 23)

Answer 5

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.

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.

Question 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.

(RTP Nov'23) (PYP May 22 6 Marks) (MTP 6 Marks, Mar'21)

Answer 6

1. **Sale by sample [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,
- 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.

2. **The following are the implied warranties operative under the Act:**

A. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

B. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of

any third party not declared or known to the buyer before or at the time the contract is entered into.

C. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade. Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

D. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Question 7

Mrs. Kanchan 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. Kanchan insisted that she would like to see the sample of what would 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.

Mrs. Kanchan 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. Kanchan wants to file a suit of fraud against the seller alleging him of selling a mix of good and cheap quality rice. Will she be successful?

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

What would be your answer in case Mrs. Kanchan specified her exact requirement as to length of rice?

(RTP Nov'23) (SM) (PYP 6 Marks, Jul'21)

Answer 7

1. 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. 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. Kanchan 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.
2. In the instant case, Mrs. Kanchan does not have any option available to her for grievance redressal.
3. In case Mrs. Kanchan specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

Question 8

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

- a. State with reason whether Prakash can avoid the contract under the Sale of Goods Act, 1930?
- b. Will your answer be different if Prakash does not taste the sweets?

(RTP Jun'24) (RTP Nov'21)

Answer 8

By virtue of provisions of Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample. According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

- a. In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prakash can return the sweets and avoid the contract.
- b. In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prakash can return the sweets and avoid the contract.

Question 9

"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.

(MTP Mar'22 4 Marks) (PYP Dec'21 4 Marks)

Answer 9

Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

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

1. 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.
2. 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.

3. 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.
4. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 10

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

(MTP Jun' 22 4 Marks) (MTP 4 Marks, Oct'21)

Answer 10

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.

The doctrine of Caveat Emptor is subject to the following exceptions:

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sale of Goods Act, 1930].
2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods, this rule shall apply if the

defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].

5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].

6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15]

7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Question 11

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

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

(MTP Nov'22 6 Marks)

Answer 11

Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):

When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points -

1. Right to examine the goods by the buyer. The buyer should be given chance to examine the good
2. The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]

In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.

Question 12

Mr. Dheeraj was running a shop selling good quality washing machines. Mr. Vishal came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. Dheeraj showed him a particular machine which Mr. Vishal liked and paid for it. Later on, when the machine was delivered at Mr. Vishal's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. Dheeraj about the delivery of wrong machine. Mr. Dheeraj 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. Dheeraj is right in refusing to exchange the washing machine?

(MTP Apr 23 6 Marks) (MTP 6 Marks, Oct'21)

Answer 12

According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods

must correspond to both sample as well as description. In case, the goods do not correspond to sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930, when the buyer makes known to the seller, the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Vishal has informed Mr. Dheeraj that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine

Based on the above provision and facts of case, there is breach of implied condition as to sample as well as description, therefore Mr. Vishal can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. Dheeraj to replace the washing machine with desired one.

Question 13

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

Explain.

(MTP May'23 4 Marks) (MTP 4 Marks, Mar'21)

Answer 13

Difference between Condition and Warranty

1. A condition is a stipulation essential to the main purpose of the contract whereas a warranty is a stipulation collateral to the main purpose of the contract.
2. Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
3. Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

- a. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,
- b. Where the buyer elects to treat the breach of condition as breach of a warranty.

- c. Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
- d. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Question 14

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.

(PYP Dec'21 3 Marks)

Answer 14

Condition as to quality or fitness [Section 16(1) of the Sale of Goods Act, 1930]:

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.

There is implied condition on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- a. The buyer should have made known to the seller the particular purpose for which goods are required.
- b. The buyer should rely on the skill and judgement of the seller.
- c. The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In the instant case, as the timber supplied by the seller is commercially fit for the purposes for which it was ordered, it means the implied condition on the part of the seller is fulfilled.

Hence, TK cannot reject the timber.

Alternatively, the above answer can also be provided as under:

According to Section 15 of the Sale of Goods Act, 1930 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. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase.

If that is required and the goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

In the instant case, as the timber supplied by seller varies in thickness from 1 inch to 1.4 inches, it does not correspond with the description ordered by TK i.e. of 1 inch, TK may reject the timber.

Question 15

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

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

1. Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
2. Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.

(PYP Nov'22 6 Marks)

Answer 15

Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.

Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.

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

According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K

Alternate Answer

1. According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods.

Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

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

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

Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K

Considering the above provisions Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr. J when he has made him known about that and relied on his skill and judgement.

2. According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.

Here, Mr. J supplied the boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Even though the tiles were laid in the car parking space of Mr. K and got damaged later because of vehicle used for unloading of cement bags were beyond the reasonable weight. Hence, the seller i.e., M/s Makrana Marbles is not liable as the buyer Mr. K as before laying down the tiles, has to satisfy himself that the tiles will serve the specific purpose i.e., can be used for car parking space only.

Therefore, the replacement of the damaged tiles cannot be imposed on M/s Makrana Marbles.

Question 16

Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930.

(PYP Jun'23 4 Marks)

Answer 16

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.

In this case, M received the goods by sample from L but since the goods were not according to the sample, **M can reject the goods and can sue L.**

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, 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 Sale of Goods Act, 1930.

Question 17

Discuss the various types of implied warranties as per the Sale of Goods Act, 1930.

(PYP Dec' 23 4 Marks)

Answer 17

Various types of implied warranties are covered under Sections 14 and 16 of the Sale of Goods Act, 1930 which are as follows:

1. **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Question 18

Mrs. G bought a tweed coat from P. When she used the coat, she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to

the seller i.e. P. Mrs. G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?

(RTP May 21) (SM)

Answer 18

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.

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.

Question 19

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 the provisions of the Sale of Goods Act, 1930?

(RTP May 21) (PYP 6 Marks, Jan'21)

Answer 19

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Point of differences	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only 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.

Section 13 of the Sales of Goods Act, 1930, specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

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

1. Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.
2. 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.
3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.
4. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise

Question 20

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

- A. Discuss whether Mr. T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930?
- B. What is the remedy available to Mr. M?

(RTP May'21)

Answer 20

According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(1) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

A. In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

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

Question 21

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

1. Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?
2. What is the remedy available to Mr. M?

(PYP 6 Marks, Jan'21)

Answer 21

1. According to Section 15 of the Sale of Goods Act, 1930, where the goods are sold by sample as well as by description, the implied condition is that the goods supplied shall correspond to both with the sample and the description. In case, the

goods do not correspond with the sample or with description or vice versa or both, the buyer can repudiate the contract.

Further, as per Section 16(l) of the Sales of Goods Act, 1930, when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on the judgment or skill of the seller, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.

In the given case, Mr. M had revealed Mr. T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr. T was unfit for the purpose for which Mr. M wanted the fan, therefore, T cannot refuse to exchange the fan.

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

Question 22

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.

A. Explain the duty of the buyer as well as the seller according to the doctrine of 'Caveat Emptor'.

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

(MTP 6 Marks, Mar 21)

Answer 22

A. 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.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

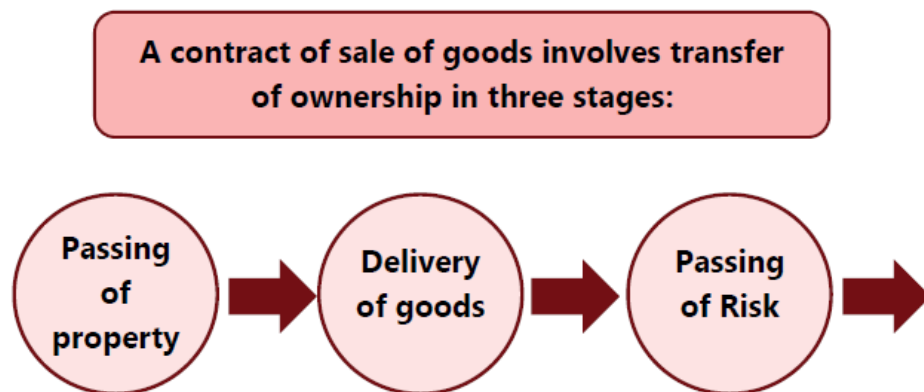
1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

B. 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]

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Unit 3 - Transfer Of Ownership And Delivery Of Goods



INTRODUCTION

Sale of goods involves transfer of ownership of property from seller to buyer.

It is essential to determine —>> कब ?? Time

At which the ownership passes from the seller to the buyer.

Importance of the time of transfer

The general rule is that risk prima facie passes with the property

In case where goods are lost or damaged,

- The burden of loss will be borne by the person
- who is the owner at the time when the goods are lost or damaged.
- Where the goods are damaged by the act of the third party, it is the owner who can take action.
- Suit for price by the seller can be filed only when the property has passed to the buyer.

PASSING OF PROPERTY (SECTIONS 18 – 26)

3.3 ► Transfer Of Ownership And Delivery Of Goods

PASSING OF PROPERTY (SECTION 18-26)		
Section	Topic	Key Points
Sections 18-19	Passing of Property	- Transfer of ownership (property) determines legal rights and liabilities.
		- Property passes to the buyer when the goods are specific/ascertained and the parties intend it to be transferred.
Section 20	Specific Goods in Deliverable State	Property passes when the contract is made if the goods are in a deliverable state.
Section 21	Specific Goods to be Made Deliverable	Property passes only when the goods are put in a deliverable state, and the buyer is notified.
Section 22	Goods in Deliverable State; Seller to Ascertain Price	Property passes after the seller takes actions like weighing or measuring to ascertain the price, and the buyer is notified.
Section 23	Sale of Unascertained Goods by Description and Appropriation	- Property passes when goods are appropriated to the contract with mutual consent.
		- Delivery to the carrier without reserving the right of disposal counts as appropriation.
Section 24	Goods on Approval or Sale or Return	- Property passes when the buyer approves or keeps the goods beyond a reasonable time.
Section 25	Reservation of Right of Disposal	- Seller can reserve the right of disposal until certain conditions are met.
		- Property doesn't pass even after delivery if the seller retains this right.
Section 26	Risk Prima Facie Passes with Property	- Risk generally passes with ownership.
		- Exceptions: Risk lies with the party at fault if delivery is delayed.

WHY ??

WE HAVE TO DECIDE - LEGAL RIGHT AND LIABILITIES -

Of sellers and buyers.

Passing of property = 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: -

1. Identification of Goods:

- Section 18 provides that
- 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.
- The buyer can get the ownership right on the goods **only when the goods are specific and ascertained.**

2. Intentions of parties: Section 19(1)

The property in goods is transferred to the buyer

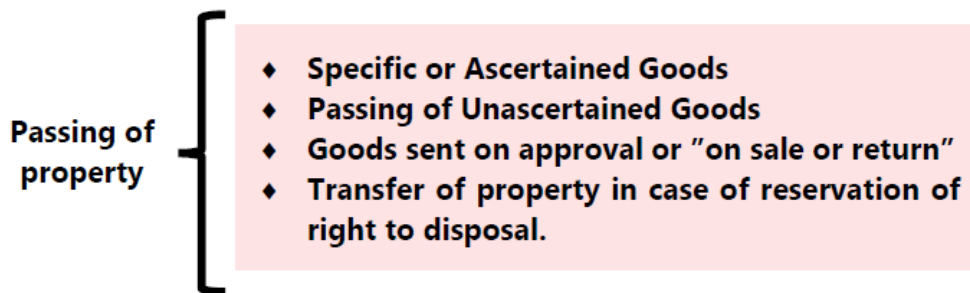
at such time as the parties to the contract intend it to be transferred.

Section 19(2) - HOW TO ASCERTAIN INTENTION OF THE PARTIES ?:

1. To the terms of the contract
2. To the conduct of the parties and
3. To the circumstances of the case

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

3.3 ► Transfer Of Ownership And Delivery Of Goods



A. SECTION 19 - SPECIFIC OR ASCERTAINED GOODS - Property passes when intended to pass -

Where there is a contract for the sale of specific or ascertained goods -

1. The property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
2. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case
3. Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Stages of goods while passing of property

Specific goods in a deliverable state

Specific goods to be put into a deliverable state

Specific goods in a deliverable state when seller has to ascertain price.

1. Specific goods in a deliverable state (Section 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.

Here, the condition is goods must be ready for delivery.

Example 1: 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 to be put into a deliverable state (Section 21):

- Where there is a contract for the sale of specific goods and
- the seller is bound to do something to the goods
- for the purpose of putting them into a deliverable state,
- the property does not pass until such thing is done and
- the buyer has notice thereof.

Example 2: 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.

3. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22):

- Where there is a contract for the sale of specific goods in a deliverable state,
- but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods
- for the purpose of ascertaining the price,
- the property does not pass until such act or thing is done and the

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buyer has notice thereof.

Example 3: 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.

B. Unascertained goods

- Where there is 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. [Section 18]
- The rules in respect of passing of property of unascertained goods are as follows:

1. Sale of unascertained goods by description and Appropriation

i. Section 23(1)

- 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:
 - a) the seller with the assent of the buyer; or

- b) 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.

ii. Section 23(2) - Delivery of the goods to the carrier

- 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.

Example 4: A bill of lading of railway parcel is made out in the name of the buyer and is sent to him, the ownership in the goods passes from the seller to the buyer. In case the goods are subjected to accidental loss or by theft, the seller will not be liable.

Example 5: M places an order for book with a book seller in Mumbai. He asks him to send the book by courier. Payment of the book was to be made by cheque. The seller sends the book by courier. The book is lost in the way. The seller wants the buyer to bear the loss. According to Section 23(2), it is an unconditional appropriation of goods because of which buyer M has become the owner of the goods. Therefore, he will bear the risk of loss of the book in the way.

C. Goods sent on approval or “on sale or return” (Section 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

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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.

Example 6: 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 buyer under a contract on the basis of 'sale or return' is deemed to have exercised his option -
 - when he does any act exercising domination over the goods \
 - showing an unequivocal intention to buy,
 - Example - If he pledges the goods with a third party.

Failure or inability to return the goods to the seller does not necessarily imply selection to buy.

Example 7: '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'.

Example 8: 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.

Sale for cash only or Return

- It may be noted that 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.

Example 9: 'A' delivered his jewellery to 'B' on sale for cash only or return basis. It was expressly provided in the contract that the jewellery shall remain 'A's' property until the price is paid. Before the payment of the price, 'B' pledged the jewellery with 'C'. It was held that at the time of pledge, the ownership was not transferred to 'B'. Thus, the pledge was not valid and 'A' could recover the jewellery from 'C'.

D. Reservation of right of disposal (Section 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.

Sub-section 1

- 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

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- till the condition imposed, if any, by the seller has been fulfilled.

Example 10: X sends furniture to a company by a truck and instructs the driver not to deliver the furniture to the company until the payment is made by company to him. The property passes only when the payment is made.

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. Sub section 2

- 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. Sub section 3

- 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.

It should be noted that Section 25 deals with “conditional appropriation” as distinguished from ‘unconditional appropriation’ dealt with under Section 23 (2).

SECTION 26 - RISK PRIMA FACIE PASSES WITH PROPERTY

- 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".

An exception to the rule - 'risk follows ownership'

- It provides that where delivery of the goods has been delayed through the fault of either buyer or seller,
- the goods are at the risk of the party in fault
- as regards any loss which might not have occurred but for such fault.

Thus, in ordinary circumstances, risk is borne by the buyer only when the property in the goods passes over to him.

However, the parties may by special agreement stipulate that 'risk' will pass sometime after or before the 'property' has passed.

Risk prima facie passes with ownership:

The **owner** of goods must bear the loss or damage of goods unless otherwise is agreed to. Under Section 26 of the Sale of Goods Act, **unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer.** After that event they are at the buyer's risk, whether delivery has been made or not.

Seller's risk-until
the property passes
to the buyer

Buyer's risk-after
the property passes
from the seller

Example 11: A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of

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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.

The aforesaid rule is, however, subject to two qualifications:

1. 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.
2. 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.

Example 12: A contracted to sell 100 bales of cotton to B to be delivered in February. B took the delivery of the part of the cotton but made a default in accepting the remaining bales. Consequently, the cotton becomes unfit for use. The loss will have to be borne by the buyer. It should, however, be remembered that the general rule shall not affect the duties or liabilities of either seller or buyer as a bailee of goods for the other, even when the risk has passed. It is their duty to take care of the goods as a man of ordinary prudence would have done.

As noted above, the risk (i.e., the liability to bear the loss in case property is destroyed, damaged or deteriorated) passes with ownership.

The parties may, however, agree to the contrary.

For instance, the parties may agree that risk will pass sometime after or before the property has passed from the seller to the buyer.

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



Sale by person not the owner (Section 27):

In general, the seller can sell only such goods of which he is the absolute owner.

The seller cannot transfer a better title to the buyer for goods than he himself has.

But sometimes a person may sell goods of which he is not the owner,

Then the question arises as to what is the position of the buyer who has bought the goods by paying price. ??

- 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.

Example 13: If A sells some stolen goods to B, who buys them in good faith, B will get no title to that and the true owner has a right to get back his

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goods from B

Example 14: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

- If this rule is enforced rigidly then the innocent buyers may be put to loss in many cases.

SO Exceptions:

- To protect the interests of innocent buyers

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;
 - If he was in possession of the goods or documents with the **consent of the owner**;
 - If the sale was made by him when acting in the **ordinary course of business** as a mercantile agent; and
 - 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).
- Mercantile Agent means an agent having in the **customary course** of business as such **agent authority** either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

2. Sale by one of the joint owners (Section 28):

- If **one of several joint owners** of goods
- has the sole possession of goods by permission of the co-owners,
- the 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.**

Example 15: A, B, and C are three brothers and joint owners of a T.V and VCR and with the consent of B and C, the VCR and T.V was kept in possession of A. A sells the T.V and VCR to P who buys it in good faith and without notice that A had no authority to sell. P gets a good title to VCR and T.V.

3. **Sale by a person in possession under voidable contract:**

- A buyer would acquire a **good title** to the goods sold to him
- by a seller who had **obtained possession** of the goods
- under a **contract voidable**
- on the ground of **coercion, fraud, misrepresentation** or **undue influence**
- provided that the contract **had not been rescinded**
- until the time of the sale (Section 29).

Example 16: X fraudulently obtains a diamond ring from Y. This contract is voidable at the option of Y. But before the contract could be terminated, X sells the ring to Z, an innocent purchaser. Z gets the good title and Y cannot recover the ring from Z even if the contract is subsequently set aside.

4. **Sale by one who has already sold the goods but continues in possession thereof:**

- If a person has sold goods but
- continues to be in possession of them or of the documents of title to them,

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- he may sell them to a third person, and
- if such person obtains the delivery thereof in good faith and
- without notice of the previous sale,
- he would have good title to them,
- although the property in the goods had passed to the first buyer earlier.
- A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [Section 30(1)].

Example 17: During IPL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. S gets a good title.

5. Sale by buyer obtaining possession before the property in the goods has vested in him:

- Where a buyer with the consent of the seller
- obtains possession of the goods
- before the property in them has passed to him,
- he may sell, pledge or otherwise dispose of the goods to a third person, and
- if such person obtains delivery of the goods in good faith and
- without notice of the lien or other right of the original seller in respect of the goods,
- he would get a good title to them [Section 30(2)].

Example 18: Furniture was delivered to B under an agreement that price was to be paid in two instalments, the furniture to become property of B on payment of second instalment. B sold the furniture before second instalment was paid. It was held that the buyer acquired a good title. (Lee Vs Butler)

- However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

Example 19: A took a car from B on this condition that A would pay a monthly

instalment of Rs. 5,000 as hire charges with an option to purchase it by payment of Rs. 1,00,000 in 24 instalments.

After the payment of few instalments, A sold the car to C. B can recover the car from C since A had neither bought the car, nor had agreed to buy the car. He had only an option to buy the car.

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.

Example 20: 'A' said to 'B', a buyer, in the presence of 'C' that he (A) is the owner of the horse. But 'C' remained silent though the horse belonged to him. 'B' bought the horse from 'A'. Here the buyer (B) will get a valid title to the horse even though the seller (A) had no title to the horse. In this case, 'C', by his own conduct, is prevented from denying 'A's authority to sell the horse. Here, 'C's silence has induced 'B' to believe that 'A' is the owner of the horse.

7. Sale by an unpaid seller:

- Where an unpaid seller who had exercised his right of lien or stoppage in transit
- resells the goods,
- the buyer acquires a good title to the goods as against the original buyer [Section 54 (3)].

8. Sale under the provisions of other Acts:

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- Sale by an **Official Receiver or Liquidator of the Company** will give the purchaser a valid title.
- Purchase of goods from **a finder of goods will get a valid title** under circumstances [Section 169 of the Indian Contract Act, 1872]
- **A sale by pawnee** can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

See the Key table for exceptions on the next page -

Transfer Of Ownership And Delivery Of Goods ◀ 3.3

TRANSFER OF TITLE BY NON-OWNERS (SECTIONS 27 – 30)			
No one can give what he has not got			
S.NO.	Section	Scenario	Key Points
1	Section 27	General Rule	Seller can only transfer the title they have. Buyer does not gain better title than seller. Latin Maxim: "Nemo dat quod non habet" (No one can give what they do not have).
2	Proviso to Section 27	Sale by Mercantile Agent	Mercantile agent can transfer good title if:
			- Possesses goods/documents with owner's consent
			- Acts in ordinary course of business
3	Section 28	Sale by One of Joint Owners	- Buyer acts in good faith and is unaware of lack of authority
4	Section 29	Sale by Person in Possession Under Voidable Contract	If one joint owner sells goods in possession with consent of co-owners, the buyer in good faith gets a valid title.
5	Section 30(1)	Sale by Seller with Previous Sale	Buyer gets good title if seller obtained possession under voidable contract and contract was not rescinded before sale.
6	Section 30(2)	Sale by Buyer with Possession Before Property Transfer	Seller who has sold goods but remains in possession can sell them to a third party. The third party gets a good title if they are in good faith and unaware of the previous sale.
	Effect of Estoppel		Buyer who receives goods before property transfer can resell them. The new buyer gets a good title if they act in good faith and are unaware of any lien or other rights.
7	Section 54(3)	Sale by Unpaid Seller	Owner is estopped from denying seller's authority if the owner's conduct leads the buyer to believe the seller is authorized.
8	Sale Under Other Acts		Unpaid seller who resells goods after exercising lien or stoppage in transit gives the new buyer a good title against the original buyer.
			Sales by Official Receiver, Liquidator, finder of goods, or pawnee can convey a good title under specified circumstances.

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

The performance of a contract of sale implies -

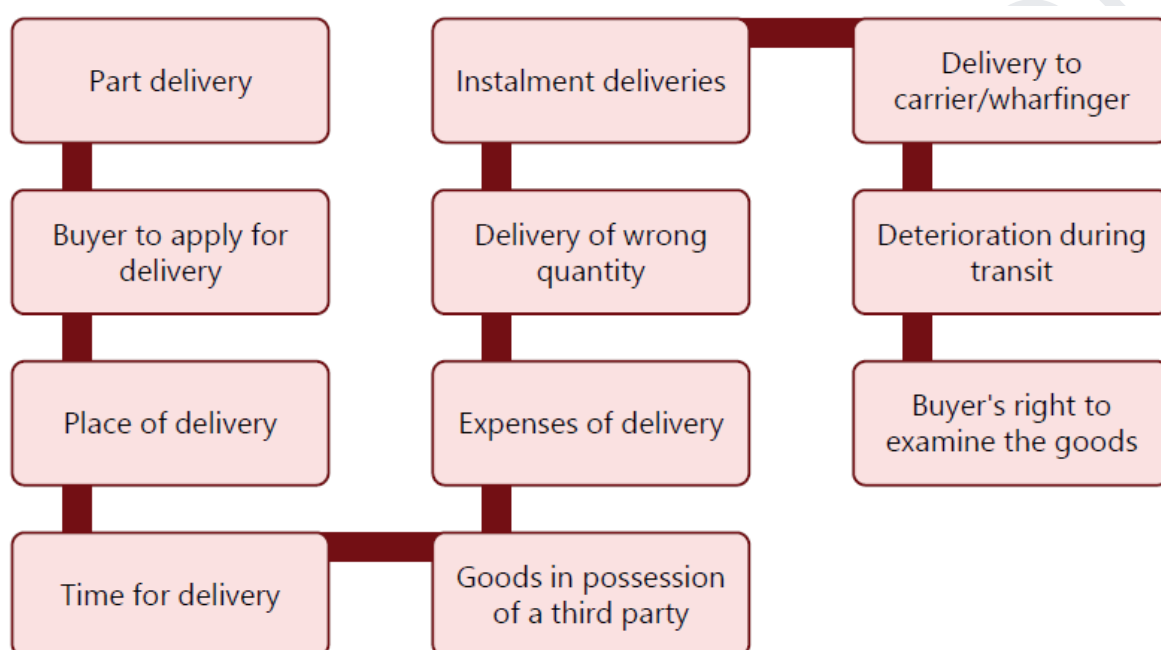
- Delivery of goods by the seller and
- acceptance of the delivery of goods and payment of price for them
- by the buyer
- in accordance of the terms of the contract.
- Definition of Delivery [Section 2(2)]:
 - Delivery means voluntary transfer of
 - possession from one person to another.
 - For delivery, physical possession is not important.
 - The buyer should be placed in a position so that he can exercise his right over the goods.
- When the possession is taken through unfair means - there will be no delivery of the goods.
- Delivery of goods sold may be made by doing anything which the parties agree, shall be treated as delivery or putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.
- Delivery of goods is of three types:
 1. Actual Delivery
 2. Symbolic delivery
 3. Constructive Delivery
- Duties of seller and buyer (Section 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 terms of the contract of sale.
- Payment and delivery are concurrent conditions (Section 32):
 - Unless otherwise agreed,
 - delivery of the goods and payment of the price

Transfer Of Ownership And Delivery Of Goods ◀ 3.3

- 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)



RULES FOR DELIVERY - SECTION 33 TO 41			
Section	Topic	Key Points	Example
SECTION 33	Delivery of Goods	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 authorized to hold them on his behalf.	E buys a laptop from F. They agree that handing over the laptop along with its warranty papers will constitute delivery.
SECTION 34	Effect of Part	A delivery of part of goods, in progress of the delivery	Certain goods lying at the wharf were sold in a

3.3 ► Transfer Of Ownership And Delivery Of Goods

RULES FOR DELIVERY - SECTION 33 TO 41			
Section	Topic	Key Points	Example
	Delivery	of the whole, has the same effect for the purpose of passing the property in such goods, as a delivery of the whole. 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.	lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them. The buyer accepted them and took away part. It was held that there was delivery of the whole.
SECTION 35	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.	Example: G agrees to buy furniture from H. G must inform H when he wants the furniture delivered. If G does not ask for delivery, H is not obligated to deliver the furniture.
SECTION 36(1)	Place of Delivery	The place of delivery depends on the contract. If the goods are sold, they are to be delivered at the place where they were at the time of the sale. If goods are agreed to be sold, they are to be delivered at the place where they were at the time of the agreement or where they are manufactured or produced.	I purchases a custom-built machine from J. The contract specifies that J will deliver the machine to I's factory once it's ready. Since the machine was not in existence at the time of sale, it will be delivered from J's factory.
SECTION 36(2)	Time of Delivery	If the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.	K sells agricultural equipment to L and agrees to deliver it. No specific date is mentioned in the contract. K must deliver the equipment within a reasonable time, considering the season and urgency of L's

Transfer Of Ownership And Delivery Of Goods ◀ 3.3

RULES FOR DELIVERY - SECTION 33 TO 41			
Section	Topic	Key Points	Example
			requirement.
SECTION 36(3)	Goods in Possession of a Third Party	When goods 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.	M sells goods to N that are stored in a warehouse. The warehouse manager must acknowledge that he holds the goods on behalf of N for the delivery to be considered complete.
SECTION 36(4)	Time for Tender of Delivery	The demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.	O agrees to sell goods to P and says delivery will be at 2 AM. P can argue that this is not a reasonable hour, and the tender for delivery could be considered ineffectual.
SECTION 36(5)	Expenses for Delivery	The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary.	Q agrees to sell a car to R. Before delivery, Q needs to repair the car to make it roadworthy. The cost of repairs will be borne by Q unless agreed otherwise.
SECTION 37	Delivery of Wrong Quantity	- If the seller delivers less than the contracted quantity, the buyer may reject them. If the buyer accepts, he must pay at the contract rate.	S contracts to buy 50 bags of cement from T. T delivers only 40 bags. S may reject the delivery or accept the 40 bags and pay for them.
		- If the seller delivers more than the contracted quantity, the buyer may accept the contracted quantity and reject the rest, reject the whole, or accept all and pay at the contract rate.	S contracts to buy 50 bags of cement from T. T delivers 60 bags. S may reject the extra 10 bags or accept them and pay at the contract rate.

3.3 ► Transfer Of Ownership And Delivery Of Goods

RULES FOR DELIVERY - SECTION 33 TO 41			
Section	Topic	Key Points	Example
		- If the seller delivers goods mixed with goods of a different description, the buyer may accept the goods that are in accordance with the contract and reject the rest or reject the whole.	S contracts to buy 50 bags of cement from T. T delivers 40 bags of cement and 10 bags of sand. S may reject the sand or reject the entire delivery.
SECTION 38	Instalment Deliveries	Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. Rights and liabilities in such cases may be determined by the contract.	U contracts to buy 100 chairs from V. V starts delivering 10 chairs every week. U can reject the instalments unless the contract specifies that instalment deliveries are allowed.
SECTION 39	Delivery to Carrier	Subject to the terms of the contract, delivery of goods to a carrier for transmission to the buyer is deemed to be delivery to the buyer.	W orders electronics from X, who ships them via a courier service. Once X hands the goods to the courier, it is considered that delivery has been made to W.
SECTION 40	Deterioration During Transit	If goods are delivered at a distant place, the liability for deterioration necessarily incidental to transit falls on the buyer, even if the seller agrees to deliver at his own risk.	Y buys fresh produce from Z to be delivered over a long distance. By the time the produce reaches Y, it has wilted. If the deterioration was unavoidable and incidental to transit, Y must accept the goods.
SECTION 41	Buyer's Right to Examine the Goods	The buyer, who has not previously examined the goods, is entitled to a reasonable opportunity to examine them to ascertain if they conform to the contract. The seller must	AA orders textiles from BB but has not seen the samples before. Upon delivery, AA has the right to inspect the textiles before accepting them.

RULES FOR DELIVERY - SECTION 33 TO 41			
Section	Topic	Key Points	Example
		afford this opportunity on request.	

MODULE EXAMPLES RELATED TO THE RULES OF DELIVERY

Example 21: 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.

Example 22: A agrees to sell 100 quintals of wheat to B at ` 1,000 per quintal. A delivers 1,100 quintals. B may reject the whole lot or accept only 1,000 quintals and reject the rest or accept the whole lot and pay for them at the contract of sale.

Example 23: 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.

Example 24: 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.

Rule related to Acceptance of Delivery of Goods (Section 42):

Acceptance is deemed to take place when the buyer-

- intimates to the seller that he had accepted the goods or
- does any act to the goods, which is inconsistent with the ownership of the seller; or
- retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods (Section 43):

3.3 ► Transfer Of Ownership And Delivery Of 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 (Section 44):

- When the seller is ready and willing to deliver the goods and
- requests the buyer to take delivery, and
- the buyer does not take delivery of the goods
- within a reasonable time after such request
- 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.

Provided further that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

“ PROBLEM KYA HAI ? - Unit 3 ”

Question Bank for the Chapter SOGA

*This section is complied with questions and suggested answers
for the chapter - SOGA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

J the owner of a Fiat car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than \$ 50,000. The agent sells the car for & 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether 1 would succeed.

(Module)

Answer 1

The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied

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

In the instant case, P, the agent, was in the possession of the car with I's consent for the purpose of sale. We assume the agent P acted in the ordinary course of business and sold the car to buyer A in good faith.

Therefore A, the buyer obtained a good title to the car. Hence, I in this case, cannot recover the car from A.

Question 2

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.

(Module)

Answer 2

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
- 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.

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.

Question 3

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?

(Module)

Answer 3

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:-

One of the several joint owners has the sole possession of them.

1. Possession of the goods is by the permission of the co-owners.
2. 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.

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.

Question 4

X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted.

Who will bear the loss and why?

(Module)

Answer 4

According to Section 21 of the Sales of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless:-

1. The seller has done his act of putting the goods in a deliverable state and
2. The buyer has knowledge of it.

Sometimes the seller is required to do certain acts so as to put the goods in deliverable state like packing, filling in containers etc. No property in goods passes unless such act is done and buyer knows about it.

In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case, according to the provisions of law, for 150 tons of wheat, sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

The wheat which was put in the sacks fulfils both the conditions that are:-

1. The wheat is put in a deliverable state in the sacks

2. The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer

Question 5

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?

(Module)

Answer 5

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:-

1. When the person to whom the goods are given either accepts them or does an act which implies adopting the transaction.
2. 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.

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. 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".

Question 6

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?

(Module)

Answer 6

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.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24].

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.

MTPs, RTPs and PYQPs

Question 1

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

(RTP May'22)

Answer 1

Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods.

One of the exceptions is sale by person in possession under a voidable contract (Section 29 of Sale of Goods Act, 1930)

1. If a person has possession of goods under a voidable contract
2. The contract has not been rescinded or avoided so far
3. The person having possession sells it to a buyer
4. The buyer acts in good faith

5. The buyer has no knowledge that the seller has no right to sell. Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title. Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of ring made by Mr. A to Mr. C is a valid sale.

Question 2

A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930?

(RTP Nov'22)

Answer 2

Delivery of different description: As per Section 37(3) of the Sale of Goods Act, 1930 where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole.

Hence, A may accept 25 chairs of the type agreed upon and may reject the other 25 chairs of some other type not agreed upon or may reject all 50 chairs.

Question 3

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

(RTP May 23)

Answer 3

As per the Proviso to Section 27 of the Sale of Goods Act, 1930, a sale made by a mercantile agent of the 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.

On the basis of above, it can be said that Ravi, the mercantile agent, sells property to Mudit who bought in good faith. Mudit obtained a good title of that residential property. Hence, Ayushman cannot recover his property from Mudit. Rather, Ayushman can recover his loss from Ravi.

Question 4

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

(RTP Nov'23)

Answer 4

Sale of unascertained goods and Appropriation (Section 23 of the Sale of Goods Act, 1930):

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 appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- E. The appropriation must be made by:
 - a. the seller with the assent of the buyer; or
 - b. 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.

Question 5

Akansh purchased a Television set from Arvind, the owner of Gada Electronics on the condition that first three days he 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. Arvind demands the price of a Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss?

(RTP Jun'24) (RTP Nov'22) (RTP Nov'21)

Answer 5

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:

1. when he signifies his approval or acceptance to the seller,
2. when he does any other act adopting the transaction, and
3. if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time"

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided

According to the above provisions and fact, the property is not passed to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Arvind.

Question 6

Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021.

The delivery of wheat and the payment was to be made in next three months i.e. by 10 th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession

even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act, 1930, discuss if such a sale made by Sohan to Vikram is a valid sale?

(MTP Mar'22 6 Marks)

Answer 6

The given question deals with the rule related to transfer of title of goods. Section 27 of the Sale of Goods Act, 1930 specifies the general rule "No man can sell the goods and give a good title unless he is the owner of the goods". The Latin maxim "NEMO DET QUOD NON HABET". However, there are certain exceptions to this rule. One of the exceptions is given in Section 30 (1) of Sale of Goods Act, 1930 wherein the sale by seller in possession of goods even after sale is made, is held to be valid. If the following conditions are satisfied, then it amounts to a valid sale although the seller is no more the owner of goods after sale.

1. A seller has possession of goods after sale
2. with the consent of the other party (i.e. buyer)
3. the seller sells goods (already sold) to a new buyer
4. the new buyer acts in good faith
5. The new buyer has no knowledge that the seller has no authority to sell.

In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods and this is with the consent of buyer i.e. Binod.

Now Sohan sell those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.

Since all the above conditions given under Section 30 (1) of Sale of Goods Act, 1930 are satisfied, therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.

Question 7

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'23 6 Marks) (MTP 6 Marks, Oct'21)

Or

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

(MTP Nov'22 4 Marks) (SM) MTP May 23 6 Marks) (RTP Nov 21) (MTP 4 Marks, Nov'21)

Answer 7

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

1. **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

- a. if he was in possession of the goods or documents with the consent of the owner;
- b. If the sale was made by him when acting in the ordinary course of business as a mercantile agent, and
- c. if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

Mercantile Agent means an agent having in the customary course of business as such agent has authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

2. **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them 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.

3. **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

4. **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such

person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [Section 30(1)].

5. **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)]-

However, a person in possession of goods under a 'hire-purchase' agreement which gives him only an option to buy 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 [Section 54 (3)].

8. **Sale under the provisions of other Acts:**

a. Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

b. Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

c. A sale by pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Question 8

"Risk Prima Facie passes with property." Elaborate in the context of the Sale of Goods Act, 1930.

(MTP Nov'23 4 Marks) (MTP Nov'22 4 Marks)

Answer 8

Risk prima facie passes with property (Section 26 of the Sale of Goods Act, 1930)

According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Question 9

Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930.

(MTP Dec'23 4 Marks)

Answer 9

Sale of unascertained goods and Appropriation [Section 23(1) of the Sale of Goods Act, 1930]

Where there is a contract for the sale of unascertained goods by description and goods of that description are in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

Whereas, 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 elements 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:

1. the seller with the assent of the buyer; or
2. 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.

Question 10

X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

(PYP Dec'23 4 Marks)

Answer 10

As per section 30(2) of the Sale of Goods Act, 1930, 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.

In the instant case, furniture was delivered to Y under an agreement that price was to be paid in three instalments; the furniture to become property of Y on payment of third instalment. Y sold the furniture to Z before the third instalment was paid. Here, Z acquired a good title to the furniture, since he purchased the furniture in good faith.

Hence, X will not succeed in his suit for the recovery of the furniture as Z acquired a good title of the furniture.

Question 11

Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ 7100 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?

(PYP Dec' 23 2 Marks)

Answer 11

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.

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.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

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.

In the instant case, R delivered 700 kg of tomatoes on 15 th 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.

Considering the above provisions, we can conclude that B cannot refuse to pay for 700 kg of tomatoes to R.

Question 12

"Risk Prima Facie passes with property." Elaborate in the context of the Sales of Goods Act, 1930.

(PYP 4 Marks, Jul'21)

Answer 12

Risk prima facie passes with property (Section 26 of the Sales of Goods Act, 1930)

According to Section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Question 13

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

(MTP 6 Marks, Apr'21) (SM)

Answer 13

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 provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

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

1. Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales,

the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.

2. Where the bales have not been selected with the consent of buyer's representatives: In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

Question 14

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

(MTP 6 Marks, Nov'21)

Answer 14

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement.

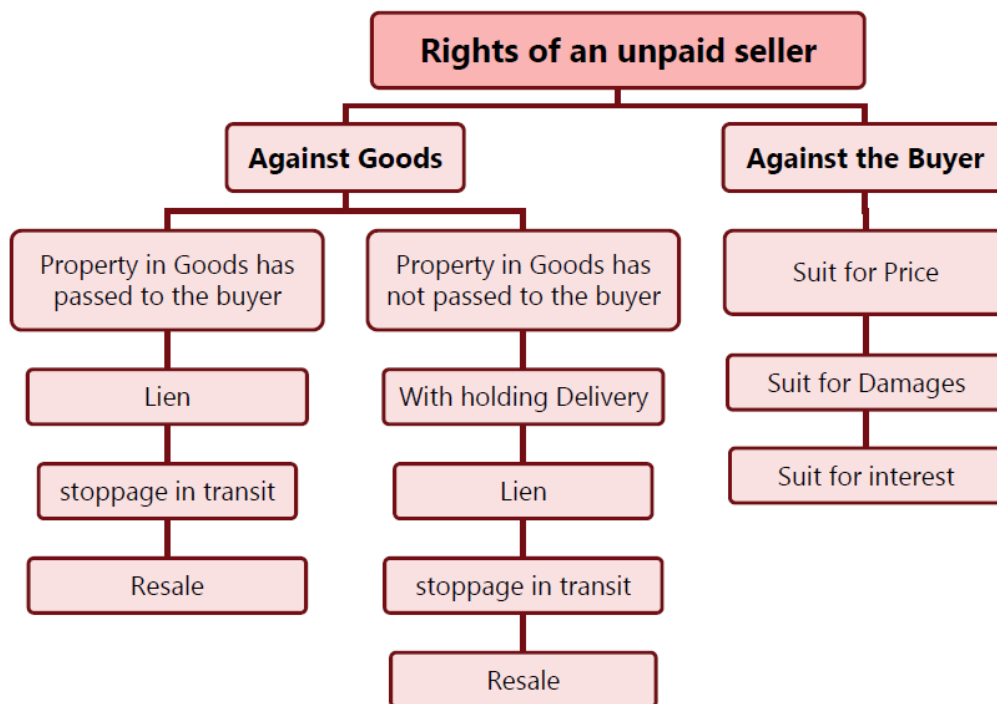
Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf. In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

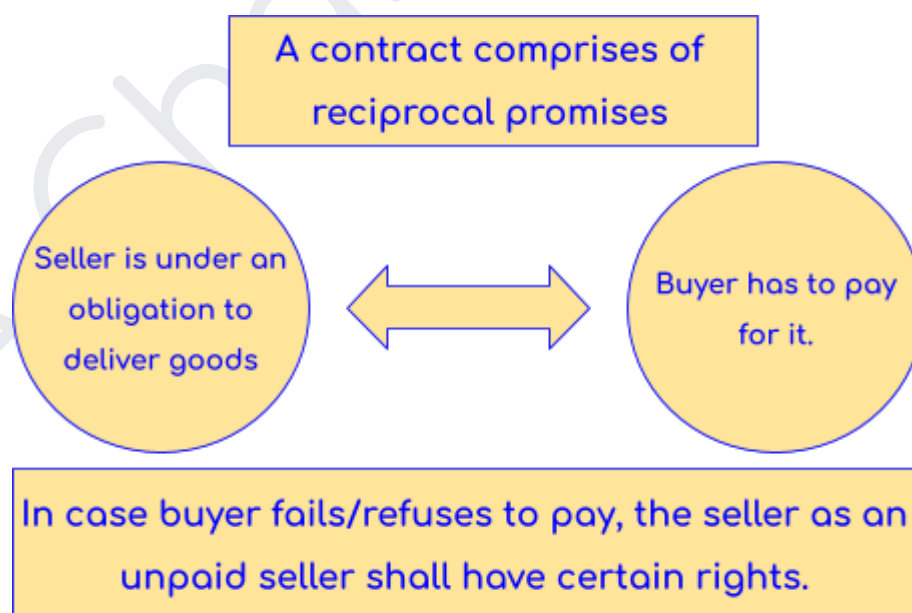
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Unit 4 - Unpaid Seller



UNPAID SELLER



Section 45(1) - 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.

Section 45(2)

- Seller = **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**

Example 1: X sold certain goods to Y for Rs. 50,000. Y paid Rs. 40,000 but fails to pay the balance. X is an unpaid seller.

Example 2: P sold some goods to R for Rs. 60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

RIGHTS OF AN UNPAID SELLER

Section 46

- Sub-section (1)

Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that -

The property in the goods may have passed to the buyer,

the unpaid seller of goods, as such, has by implication of law (buyer के पास

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property चली भी गई हो तो भी Unpaid Seller के पास ये rights हैं)

- 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** after he has parted with the possession of them;
 - a **right of re-sale** as limited by this Act.
- Sub-section (2)
 - Where the **property in goods has not passed** to the buyer,
 - the unpaid seller has, **in addition to his other remedies**,
 - a **right of withholding delivery**
 - similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.
 - An unpaid seller has been expressly given the rights against -
 - The **goods** as well as
 - The **buyer** personally

RIGHT OF UNPAID SELLER AGAINST THE GOODS

The unpaid seller has the following rights against the goods:



1. Seller's lien (Section 47)

Rights of lien:

- An unpaid seller has a right of **lien** on the goods for the price

- while he is in possession,
- until the payment or tender of the price of such goods.
- It is the right to 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.

The unpaid seller's lien is a possessory lien i.e. the lien can be exercised as long as the seller remains in possession of the goods.

Exercise of right of lien:

This right can be exercised by him in the following cases only:

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

Example 3: 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.

Seller may exercise his right of lien even where he is in possession of the goods as agent or bailee for the buyer.

Insolvent means a person -

- who has ceased 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".

Part delivery (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

3.4 ► Unpaid Seller

- as to show an agreement to **waive the lien**.

Termination of lien (Section 49):

The unpaid seller loses his right of lien under the following circumstances:

1. 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.
2. Where the **buyer or his agent lawfully** obtains **possession** of the goods.
3. Where seller has **waived the right of lien**.
4. **By Estoppel** i.e., where the **seller so conducts himself** that he leads third parties to believe that the lien does not exist.

Exception:

- 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.
- This means even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.

Example 4: 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.

<i>Maggi Table (Revise in just 2 minutes)</i>	
<i>Topic - LIEN ON GOODS as a right of an US</i>	
Section	Key Points
Section 47 Seller's Lien	Rights of Lien: Retain possession until payment.
	Possessory Lien: Active while in possession.
	Exercise of Lien: Conditions for exercise - Cash sale, Expired credit, Buyer's insolvency.
Section 48 Part Delivery	Part Delivery: Right of lien on remaining goods.
	Waiver: Lien waived if part delivery shows agreement.
Section 49 Termination of Lien	Loss of Lien: Delivery to carrier/bailee without disposal rights.
	Possession: Buyer/agent lawfully obtains goods.
	Waiver: Seller waives the lien.
	Estoppel: Seller's conduct indicates no lien.
	Exception: Lien retained despite court decree.

2. Right of stoppage in transit (Section 50 to 52):

Meaning of right of stoppage in transit (Section 50):

- 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

As it entitles the seller to *regain* possession even when the seller has parted with the possession of the goods.

3.4 ► Unpaid Seller

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

- a. The seller must be **unpaid**.
- b. He **must have parted with the possession** of goods.
- c. The goods are **in transit**.
- d. The buyer has **become insolvent**.
- e. The right is subject to provisions of the Act. [Section 50]

Example 5: A of Mumbai sold certain goods to B of Delhi. He delivered the goods to C, a common carrier for the purpose of transmission of these goods to B. Before the goods could reach him, B became insolvent and A came to know about it. A can stop the goods in transit by giving a notice of it to C.

Duration of transit (Section 51):

- The goods are deemed to be in course of transit
- from the time when they are delivered to a carrier or other bailee
- for the purpose of transmission to the buyer,
- until the buyer or his agent on that behalf
- takes delivery of them from such carrier or other bailee.
- 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:

1. When the **buyer** or other bailee **obtains delivery**.
2. 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.
3. 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.
4. If the carrier **wrongfully refuses to deliver** the goods to the buyer.
5. Where goods are **delivered to the carrier hired by the buyer**, the transit comes

to an end.

6. 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.
7. Where the **goods are delivered to a ship** chartered by the **buyer**, the transit comes to an end. [section 51]

How stoppage in transit is effected (Section 52) :- (Notice to be given)

1. The unpaid seller may exercise his right of stoppage in transit either by
 - a. taking **actual possession** of the goods, or
 - b. by **giving notice** of his claim to the carrier or other bailee
 - c. in whose possession the goods are.
 - d. Such **notice** may be given either to the person **in actual possession** of the **goods or to his principal**.

When given to the principal -

- The notice, to be effectual, shall be given at such time and in such circumstances, that the principal,
- by the exercise of reasonable diligence,
- may communicate it to his servant or agent in time
- to prevent a delivery to the buyer.

2. When notice of stoppage in transit is given by the seller
 - a. to the carrier or other bailee in possession of the goods,
 - b. **he shall re-deliver** the goods to, or
 - c. according to the **directions** of, the seller.
 - d. **The expenses of such re-delivery shall be borne by the seller.**

3.4 ► Unpaid Seller

<i>Maggi Table (Revise in just 2 minutes)</i>	
<i>Topic - STOPPAGE IN TRANSIT as a right of an US</i>	
Section	Key Points
Section 50: Right of Stoppage in Transit	Meaning: Right to stop goods in transit and regain possession.
	Conditions: Unpaid seller, Goods in transit, Buyer's insolvency.
	Extension of Lien: Right applies even after possession is parted.
Section 51: Duration of Transit	Transit Period: From delivery to carrier until buyer/agent takes delivery.
	End of Transit: Delivery obtained by buyer/bailee, Interception, Acknowledgment by carrier, Wrongful refusal by carrier, Part delivery, Delivery to chartered ship.
Section 52: Effecting Stoppage in Transit	Exercise: Take possession or give notice to carrier/bailee.
	Notice: Effective if communicated in time.
	Re-delivery: Carrier must return goods as directed by seller.
	Expenses: Borne by the seller.

Distinction between Right of Lien and Right of Stoppage in Transit

Aspect	Right of Lien	Right of Stoppage in Transit
Possession	Seller retains possession of goods.	Seller regains possession after sending goods.
Conditions	Seller has the goods.	Seller sent the goods; goods with carrier; buyer hasn't received them.
Insolvency	Can be exercised even if the buyer isn't insolvent.	Applies only if the buyer is insolvent.
Timing	Ends when goods leave the seller's possession.	Starts when lien ends; ends when buyer gets the goods.

Sometimes it is said that right of stopping the goods in transit is nothing but an extension of right of lien.

Effects of sub-sale or pledge by buyer (Section 53):

- 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.

This is based on the principle that a second buyer cannot stand in a better position than his seller. (The first buyer).

Example 6: 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. Here we assume that seller did not give his assent for sub sale, therefore he can still exercise his right of stoppage in transit.

3.4 ► Unpaid Seller

- 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. (खुद ही Seller ने permission दिया है की बेचो)

Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd)

Example 7: 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 (

- 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)].

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.

Right of re-sale [Section 54]:

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:

Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.

Conditions for Resale:

- **Perishable Goods:** Seller can resell without informing the buyer.
- **Notice to Buyer:** If the buyer fails to pay after being notified, the seller can resell. The seller can:
 - Recover losses if the resale price is lower than the original contract price.
 - Keep profits if the resale price is higher, but only if notice was given.

Resale Without Notice:

- If no notice is given, the seller cannot claim losses or keep profits.

Good Title to Subsequent Buyer:

- If the seller resells after exercising lien or stoppage in transit,
- the new buyer gets good title, **even without notice to the original buyer.**

Express Right in Contract:

- If the contract explicitly allows resale on default,

3.4 ► Unpaid Seller

- the seller can resell without notice and recover damages.

Quasi-Lien:

- If the property in goods **hasn't passed** to the buyer, the seller can **withhold delivery**, similar to a **lien**.
- This is the additional right used in case of agreement to sell.

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

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 -

- ❖ Known as seller's remedies for breach of contract of sale.
- ❖ 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)

- Section 55(1) - *This is the case of 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(2) - *This is the case of agreement to sell*
 - When the price is payable on a **certain day**
 - **irrespective of delivery** and

- the buyer wrongfully neglects or refuses to pay such price,
- the seller may sue him for the price
- although the property in the goods has not passed and
- the goods have not been appropriated to the contract.

2. Suit for damages for non-acceptance (Section 56):

- Where the buyer wrongfully neglects or refuses to accept and pay for the goods,
- the seller may sue him for damages for non-acceptance.
- Measure of damages, Section 73 of the Indian Contract Act, 1872

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.

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REMEDIES OF BUYER AGAINST THE SELLER

Breach of contract (अनुबंध का उल्लंघन)

By seller

Breach of contract by seller, where he-
<ul style="list-style-type: none">• Fails to deliver the goods at the time or in manner prescribed• Repudiates the contract• Deliver non-conforming goods and buyer rejects and revokes acceptance

If the seller commits a breach of contract,

The buyer gets the following rights against the seller:

<i>Maggi Table (Revise in just 2 minutes)</i>	
REMEDIES OF BUYER AGAINST THE SELLER	
Section	Crux / Key Words
Section 57	Damages for non-delivery by seller.
Section 58	Suit for specific performance; applies to specific goods.
Section 59	Breach of warranty; buyer's remedies.
Section 60	Repudiation of contract before due date; damages.
Suit for Interest	Right to recover interest or special damages.

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.

Example 8: A' a shoe manufacturer, agreed to sell 100 pairs of shoes to 'B' at the rate of Rs. 10,500 per pair. 'A' knew that 'B' wanted the shoes for the purpose of further reselling them to 'C' at the rate of Rs. 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 Rs. 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:

- 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**.

Example 9: '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).

3.4 ► Unpaid Seller

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.

Example 10: 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.

Example 11: In case of absence of transfer of title or registration, the purchaser cannot claim damages for breach of conditions and warranties relating to sale.

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:

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.

3.4 ► Unpaid Seller

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.

Example 12: 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)

When a contract is made and taxes change (revision) before it's fulfilled or performed, the price can be adjusted based on the new tax rates:

- **Types of Taxes:** Customs duties, excise duties, and sales taxes.
- **Price Adjustment:**
 - If taxes increase, the buyer pays the higher price.
 - If taxes decrease, the buyer benefits from the lower price.
- **Agreement Exception:** Parties can agree not to adjust the price based on tax changes.

This means the seller can add the increased taxes to the price, but the effect can be excluded by mutual agreement.

“ PROBLEM KYA HAI ? - Unit 4 ”

Question Bank for the Chapter SOGA

*This section is complied with questions and suggested answers
for the chapter - SOGA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

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.

(Module)

Answer 1

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

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

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

Question 2

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?

(Module)

Answer 2

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.

1. The seller must be unpaid
2. He must have parted with the possession of goods
3. The goods must be in transit
4. The buyer must have become insolvent
5. The right is subject to the provisions of the Act.

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.

Question 3

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.

(Module)

Answer 3

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

1. 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)].
2. 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)].

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:-

1. Interest on the remaining amount
2. Interest during the pendency of the suit.
3. Costs of the proceedings.

Question 4

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?

(Module)

Answer 4

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 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.

Question 5

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?

(Module)

Answer 5

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:-

- A. When the buyer has made the transaction with the consent of the seller
- B. 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.

Question 1

A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent.

A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?

(RTP May'23) (SM)

Answer 1

Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

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

Question 2

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 Nov'23)

(PYP Dec'21 3 Marks)

Answer 2

Right of stoppage in transit (Section 50 of the Sale of Goods Act, 1930):

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.

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

In the instant case, 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.

Question 3

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:

1. State, whether Mr. Shankar was right in his decision?
2. What would be your answer if Mr. Ganesh became insolvent within five days of contract?

(RTP Jun'24)

Answer 3

According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an

"Unpaid Seller" when-

- a. The whole of the price has not been paid or tendered.
- b. A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

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:

- 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.

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.

1. 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.
2. 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

Question 4

When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act, 1930? 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?

(MTP Jun'22 6 Marks) (RTP Nov'22) (SM) (MTP 6 Marks, Nov 21)

Answer 4

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

1. the goods have been sold without any stipulation as to credit;
2. the goods have been sold on credit, but the term of credit has expired;
3. the buyer becomes insolvent.

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

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

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;

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

Question 5

Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930.

(MTP Nov'22 6 Marks) (MT Mar'22 6 Marks) (PYP 6 Marks, Jul'21)

Answer 5

The right against the buyer are as follows:

1. **Suit for price (Section 55 of the Sale of Goods Act, 1930)**

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

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)].

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

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

4. **Suit for interest [Section 61]:** Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

Question 6

Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr.

Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan. Mr. Shekharan who is being unpaid seller wants to exercise his right to stoppage in transit.

A. State with reason, can Mr. Shekharan do so under the Sale of Goods Act, 1930?

B. Whether your answer would be same if Mr. Ravi have knowledge of Mr. Raghwan's insolvency at the time of buying the goods?

(MTP May/23 6 Marks)

Answer 6

According to Section 50 to 52 of the Sale of Goods Act, 1930, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and he may resume possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price. However right of stoppage in transit is available only in the following conditions:

1. The seller must be an unpaid seller.
2. When the buyer becomes insolvent; and
3. When the goods are in transit.

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

a. On the basis of above provisions and facts, it can be said that even Mr. Shekharan is an unpaid seller, he cannot apply his right of stoppage in transit as goods has been taken by Mr. Ravi in good faith.

b. Further, if Mr. Ravi has knowledge of Mr. Raghwan's insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Shekharan can exercise his right of stoppage in transit.

Question 7

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

(MTP 6 Marks, Nov'23) (PYP 6 Marks, Nov 22)

Answer 7

Right of re-sale [Section 54 of the Sale of Goods Act, 1930]:

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

1. **Where the goods are of a perishable nature:** In such a case, the buyer need not be informed of the intention of resale.
2. **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)].

3. **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.

4. **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.

5. **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"

Question 8

Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale under Sale of Goods Act, 1930.

(MTP Dec'23 6 Marks) (PYP Jun'23 6 Marks)

Answer 8

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

1. **Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance (Section 58):** Where the seller commits 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 and where damages would not be an adequate remedy.
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 or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer 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:**
 - a. The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.
 - b. In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for

the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

Question 9

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.

(PYP Jun'23 2 Marks)

Answer 9

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.

Question 10

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?

(PYP Dec' 23 6 Marks)

Answer 10

Seller's lien (Section 47 of the Sale of Goods Act, 1930): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

- a. where the goods have been sold without any stipulation as to credit;
- b. where the goods have been sold on credit, but the term of credit has expired;
- c. where the buyer becomes insolvent.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

As per the provisions of 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.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-

- a. when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- b. when the buyer or his agent lawfully obtains possession of the goods;
- c. by waiver thereof.

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. [Sub-section (2)]

Question 11

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

(RTP Nov'21)

Answer 11

By virtue of provisions of Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner. In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock. On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.

Question 12

What are the rules which regulate the Sale by Auction under the Sale of Goods Act, 1930?

(PYP 4 Marks, Jan'21)

Answer 12

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

1. **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.
2. **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.
3. **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.
4. **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.
5. **Reserved price:** The reserved price is the lowest price at which a seller is willing to sell an item. The auction sale may be notified to be subject to a reserve or upset price; and
6. **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Question 13

What do you understand by the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?

(MTP 6 Marks, Apr'21)

Answer 13

Unpaid Seller: According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- a. the whole of the price has not been paid or tendered.
- b. bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonored.

Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

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

- a. The seller must be unpaid.
- b. The seller must have parted with the possession of goods.
- c. The goods must be in the course of transit.
- d. The buyer must have become insolvent.
- e. The right is subject to provisions of the Act.

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xx *The Chapter Ends* xx