HANDWRITTEN BOOK

CHAPTER- 1

SALES OF GOODS ACT, 1930

UNIT - 1

FORMATION OF THE CONTRACT OF SALE

Scope of the Act

Applicability of the Act

Provision of this act are applicable to Contract related to

"Sale of Movable Property only"

Non Applicability of the Act

Provision of this act are not applicable to Contracts related to

Sale of Immmovable properties like

- Land
- House
- Shop etc

General provisions of Indian Contract act, 1872 shall apply when Provision of Sales of Goods Act are inconsistent with provisions of Indian Contract Act

Expression/ terms not defined in Sale of Goods Act, but defined in Indian Contract Act

the meanings of Indian Contract act shall apply

Definitions Under the Act

Buyer and Seller

Buyer.

Buyer Means a person who buys (or) Agrees to buy Goods.

Seller.

Seller Means a person who Sells (or) Agrees to Sell Goods.

Goods. [Section 2(7)]

Goods Means every kind of Movable Property Other then
- Actionable Claims
- Money.

- Goods Includes
  - Stock and Shares
  - Growing Crops,
  - Grass and
  - things attached to (or) forming part of land

Which are Agreed to be Severed
- before Sale (or)
- Under the Contract of Sale.

Goods Include both Tangible and Intangible Goods like
→ Goodwill, Copyright, Patent, Trademark etc.

- Stock and Shares
- Gas
- Steam
- Water
- Electricity

are also Considered to be Goods.

Section 176 Read with Section 2(7)

Fixed deposit Receipts [FDR] are Considered Goods.

What are Actionable Claims

Actionable Claims are Claims which Can be enforced only by
- Action (or)
- Suit

Example → Debt

A debt is not Movable Property or Goods

Classification of Goods

Goods Can be of three types

- Existing Goods
- Future Goods
- Contingent Goods

Existing Goods [Section-6]

Existing Goods are such Goods as are existence at the time of Contract of Sale
→ that is
- Owned
- Possessed
- Acquired

} by the Seller at the time of Contract of Sale.

Classification of Existing Goods

- (a) Specific Goods
- (b) Ascertained Goods
- (c) Unascertained Goods.

(a) Specific Goods

Specific Goods Means Goods identified and Agreed upon
→ at the time a Contract of Sale is Made.

Example → • From Pre Owned Car showroom among 5 Cars of different Model, Stephie agreed to buy "Santro" Car and Seller agreed to sell this, here the Car is Identified.

(b) Ascertained Goods

Ascertained Goods are those Goods which are Identified in accordance with the Agreement
→ after the Contract of Sale is Made.

This term is not defined in the act but has been judicially Interpreted.

When from a lot (or) out of Large Quantity of Unascertained Goods
→ the Number/Quantity Contracted for is Identified
→ Such Identified Goods are Called ascertained Goods.

note to self:
In Actual Practice, the term "Ascertained Goods" is used in same sense as "specific Goods"

Example → A Wholesaler of Cotton has 100 bales in his Godown. He Agrees to Sale 50 bales and these bales were selected and Set Aside. On Selection the Goods becomes Ascertained.

(c) Unascertained Goods

Unascertained Goods are those Goods which are not
- Specifically Identified (or)
- Ascertained

at the time of Making the Contract.

- They are Indicated (or) defined only by
  - Description (OR)
  - Sample.

Example → If A agrees to sell to B, one packet of salt out of lot of 100 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 seperated from the lot → it becomes Ascertained (or) specific Goods.

Example → Nancy has ten Horses. She Promises to sell one of them but does not specify which horse she will sell. It is a Contract of sale of Unascertained Goods.

Future Goods [Section-2(6)]

Future Goods Means
- Goods to be Manufactured/Produced
  (OR)
- Acquired by Seller after Making Contract of Sale.

note to self:
A Contract of Sale of Future Goods is always an Agreement to Sale

note to self:
It is never Actual Sale because, a person Cannot transfer what is not in existence

Example → Tanmay Agreed to Sell all the Oranges which will be produced in his Garden this year. It is a Contract of Sale of future Goods, amounting to
→ An Agreement to Sell.

Contingent Goods

The Acquisition of which by Seller depends upon an Uncertain Contingency [Uncertain Event] are called Contingent Goods.

- Contingent Goods also operate as "An Agreement to Sell" and not a "Sale"
  → so far as the question of Passing 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 buyer at the time of Making the Contract.

Delivery

Meaning of Delivery

Delivery Means Voluntary transfer of Possession from one Person to another

How to Make Delivery

Delivery of Goods may be made by doing anything which has the effect of putting the Goods in Possession of
- buyer
- Any Person authorised to hold them.

Forms of Delivery

- Actual Delivery
- Constructive Delivery
- Symbollic Delivery

Actual Delivery.

☞ When the Goods are physically delivered to the buyer.

- Actual deliver takes place when the sellers transfers physical Possession of Goods
  - to buyer
  - to a third person authorised to hold Goods on behalf of the buyer.
- This is most Common Method of delivery.

Constructive Delivery.

☞ When it is effected without any change in
→ Custody / Actual Possession of thing as in Case of ↓
"Delivery of 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.

Example → Where a Warehouseman, holding the Goods of A agrees to hold them on behalf of B, at A's Request.

Symbolic Delivery.

☞ When there is delivery of thing
→ in token of a transfer of Something Else.

- Delivery of Goods in Course of transit May be Made by handing over documents of title to Goods like
  - → Bill of Lading
  - → Railway Receipt
  - → Delivery Order
  - → Key of a Warehouse Containing the Goods

  } is handed over to buyer.

• When Actual delivery is not Possible
↳ there May be Delivery of Means of Getting Possession of Goods.

Section 2(3)

When are Goods in Deliverable State??

Goods are said to be in Deliverable state when they are in such a Condition that the buyer would under the Contract
↳ be bound to take delivery of them.

Example → Where A Contracts to Sell timber and Make bundels thereof,
↓
the Goods will be in deliverable state after A has put the Goods in such a Condition.

Document of title to Goods [Section 2(4)]

Document of title to Goods Includes :-

- Bill of Lading
- Dock Warrant
- Warehouse keepers Certificate
- Wharfingers Certificate
- Railway Receipt
- Multimodal Transport Document
- Warrant (or) Order for the delivery of Goods.
- Any other Document used in the Ordinary Course of business as Proof of Possession of Goods
  ↳ for authorising or purporting to authorise either by
  Endorsement (OR) Delivery

Above list is only Illustrative and not Exhaustive. Any other document which has above Characteristics will also fall under the Same Category.

YOU GOT THIS

Bill of Lading is a document to title

Mate's Receipt

A Mate's receipt is not document if it is regarded as an Acknowledgment for the Receipt of Goods

Meaning of Document

A document amounts to document of title only where it shows an Unconditional Undertakings to deliver Goods to the holder of document.

Document showing Title v/s 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 shares but Cannot endorse the shares on basis of share Certificate

Mercantile Agent [Section 2 (9)]

It Means an agent who in the Customary Course of business has authority

- To Sell Goods
- To Buy Goods
- Consign Goods for the purpose of Sale
- To Raise money on Security of Goods

Mercantile Agent Can borrow Money by Pledging the Goods.

Property [Section 2(11)]

Property here Means → Ownership OR → General Property.

General Property

Property in Goods Means the General Property ie all ownership Right of the Goods

- In Every Contract of Sale
  - Ownership of Goods Must be transferred by Seller to buyer
  - there should be an Agreement by Seller to transfer ownership to buyer

Property Means General Property and not Mere special Property.

General Property v/s Special Property.

It is Quite Possible that General Property in a thing May be in one person and the special property in the same thing May be in another

Example → When an Asset is Pledged

The General Property in a thing May be transfered subject to Special Property Continue to Remain with another person.

Example → Pledgee who has Right to Retain the Goods Pledged
↳ till payment of Stipulated dues.

Example → If A who owns Gold Pledges them to B, where A has General property in Gold and B has special property, to the extent of amount of loan advanced.

Insolvent [Section 2(8)]

A person is said to be Insolvment 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.

Price [Section 2(10)]

Price Means the Money Consideration for 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.

Quality of Goods [Section 2(12)]

Quality of Goods includes their
- State (or)
- Condition

Sale and Agreement to Sell [Section 4]

Section 4[1] — A Contract of Sale of Goods is a Contract where the Sellers
- transfer (or)
- Agrees to transfer

property in Goods to buyer for a price.

Section 4[2] — A Contract of Sale May be
- Absolute (or)
- Conditional.

Section - 4[3]

Meaning of Sale

Where under Contract of sale, the Property in Goods is transfered from seller to Buyer, the Contract is called Sale.

Meaning of Agreement to Sell.

Where transfer of property in Goods is to take place at future time or subject to such Condition thereafter to be Fulfilled.

Section - 4(4) → An Agreement to Sell becomes Sale when

- Time Elapses (OR)
- Conditions are fulfilled Subjected to which the property in the Goods is to be transfered.

note to self:

DON'T FORGET

A Contract of Sale of Goods May be
- Either Sale (OR)
- Agreement to Sell.

Example → X Agrees with Y on 10th October 2021 that he will Sell his Car on 10th November 2021 for Rs 5,00,000. It is an Agreement to Sell

When "Agreement to Sell" becomes "Sale" ??

An Agreement to Sell becomes a Sale ↓

When time elapses (or) Condition the Condition are fulfilled subjected to which the property in Goods is to be transferred.

Elements of Contract of Sale

Following Elements Must Co-Exist as to Constitute a Contract of Sale of Goods :-

- There Must be atleast two parties
  - the Seller
  - the buyer

  } and the two Must be different persons.

A person Cannot be both buyer and Seller and Sell his Goods to himself.

- The subject Matter of the Contract Must Necessarily be Goods [Covering only Movable property].

Goods May be
- Existing Goods [Owned (or) Possesed by Seller]
- Future Goods.

- A Price in Mone (not in kind) should be paid (or) Promised

Consideration Can be partly in Money and partly in kind

- A transfer of property in Goods from Seller to Buyer Must take place.

The Contract of Sale is Made by an offer to buy (or) Sell Goods for a price by One party and Acceptance by other.

- A Contract of Sale may be
  - Absolute (or)
  - Conditional.

- All other Essential elements of Valid Contract Must be present in Contract of Sale

Example
- Free Consent of Parties
- Competency of Parties
- Legality of Object and Consideration etc.

SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

Sale and Hire Purchase.

Contract of sale Resembels with Contract of hire purchase Very Closely.

Real object of Contract of hire purchase is sale of Goods Ultimately

Hire purchase Agreement are Governed by → "The Hire purchase Act, 1972"

Meaning of Hire Purchase Agreement.

An Agreement under which
- Goods are lent of hire and
- under which the hirer has an "option" to purchase them in accordance with terms of Agreement

Hire Purchase Agreement includes an Agreement under which

- Possession of Goods is delievered by owner there of to a person on Condition that such person pays the Agreed amount in periodical Installments.
- Property in Goods is to pass to such person on payment of last Installment.
- Such person has right to terminate the a Agreement at ny time before the property so passes

Distinguish between Sale and Hire Purchase

Basis of Difference	Sale	Hire- Purchase
Time of Passing property	Property in Goods is transeferred to the buyer Immediately at the time of Contract	Property in Goods passes to the hirer upon payment of last instalment
Position of the party	Position of buyer is that owner of Goods	Position of the hirer is that of bailee till he pays installment

Termination of the Contract	The buyer Cannot terminate the Contract and is bound to pay price of Goods	The hirer may, if he so likes, terminate the Contract by returning the Goods to its owner without any liability to pay last installments
Burden of Risk of Insolvency of Buyer	The Seller takes the risk of any loss resulting from the insolvency of the buyer	The owner takes no such risk, if hirer fails to pay installment, the owner has right to take back the Goods
Transfer of title	The buyer can Pass a Good title to a bonafide purchaser from him	The hirer Cannot pass any title even to bonafide purchaser until he pays the last installment
Resale	The buyer in sale, can resell the Goods	The hire purchaser Cannot resell Unless he has paid all the installments

Sale and Bailment

Bailor — Person delivering the Goods is called bailor.

Bailee — Person to whom Goods are delivered is called bailee

A Bailment is the delievery of Goods for some specific purpose under a Contract on the Condition that

- Same Goods are to be returned when the purpose is accomplished to the bailor. (OR)
- Are to be disposed of According to the directions of the bailor.

Distinguish between Sale and Bailment:

Basis of Difference	Sale	Bailment
Transfer of Property	The Property in Goods is transferred from Seller to buyer. It is transfer of General Property.	There is only transfer of Possession from bailor to bailee. 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 bailor on accomplishment of the purpose for which bailment was made
Consideration	Consideration is the Price in terms of Money.	Consideration may be Gratuitous (or) Non-Gratuitous

Sale and Contract for Work and Labour.

A Contract of Sale of Goods is one in which

- Some Goods are Sold (OR) Are to be Sold.

Where no goods are sold and there is only doing (or) Rendering of some work of labour

→ then the Contract is only for Work and Labour and not of Sale of Goods.

Example → When Dress Material is given to tailor for stiching, is the example of Contract for Work and Labour.

Contract of Sale – How Made [Section 5]

As per Section 5(1)

A Contract of Sale is Made by
- an offer to buy or sell Goods for Price
  +
- Acceptance of offer

As per Section 5(2)

Subjected to any Provisions of any law for time being in force,

A Contract of Sale May be
- Made in Writing (OR)
- by word of Mouth (OR)
- Partly in Writing and Partly by Word of Mouth (OR)
- May be Implied from Conduct of the parties.

Example

Stephie Agreed to deliver her Activa to John in Exchange for Rs 25000 and pay difference and buy a New Activa, this is Contract of Sale.

A Contract of Sale May be Made in any of following Modes :-

- A Contract of Sale is Made by an offer to buy (or) Sell the goods
  → for a price and Acceptance of such offer.
  (OR)
- There May be Immediate delievery of Goods.
- There may be Immediate payment of price,
  → but it May be Agreed that delievery is to be Made at Future date.
- There May be Immediate delivery of the Goods and Immediate Payment of price.
- It may be Agreed that the
  - Delivery
  - Payment
  - Both

  are to be Made in Instalment.
- It May be agreed that
  - Delivery
  - Payment
  - Both

  are to be Made at some future date.

Subject Matter of Contract of Sale [Section 6, 7, 8]

Existing (or) future Goods [Section 6]

The Goods which form the subject Matter of Contract of Sale May be

- Either Existing Goods, that are Acquired, Owned, Possessed by Seller.
- (OR) Future Goods

There May be a Contract for Sale of Goods the acquisition of which by Seller
→ depend upon Contingency which May (or) May not happen.

Example → A Contract of Sale of Certain Cloth to be Manufactured by Certain Mill is Valid Contract, such Contracts are Called Contingent Contracts.

Where by a Contract of Sale the Seller purports to effect a present sale of future Goods, the Contract operates as an Agreement to Sale

Goods Perishing before Making of Contract. [Section 7]

Where there is Contract for Sale of Specific Goods
→ the Contract is Void if the goods without the knowledge of Seller at the time when Contract was Made
- was perished (OR)
- become so damaged as no longer to answer to their description.

Example → A agrees to sell 50 Bags of wheat stored in A's Godown. Due to Water logging all the Goods stored in Godown were destroyed. At the time of Agreement, neither parties were aware of the fact
→ The Agreement is Void.

Goods Perishing before Sale after Agreement to sell. [Section 8]

When 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 to no longer to answer to their description in the agreement before the risk passes to buyer

↓

the Agreement is thereby
- Avoided (or)
- becomes Void.

Perishing of Future Goods

- If the Future Goods are specific, the destruction of such goods amount to Supervening Impossiblity
- The Contract shall be void.

Ascertainment of Price and Agreement to Sell at Valuation [Section - 9 and 10]

Ascertainment of Price [Section 9]

The Price in a Contract of sale May be fixed by
- the Contract
- May be left to be fixed in Manner Agreed.
- May be determined by Course of dealing between the parties.

When the Price is not determined in accordance with above [foregoing] Provisions

↓

the buyer shall pay seller Reasonable price.

What is Reasonable Price

- It is a Question of fact dependent on ↓
  - Circumstances of each Particular Case

Agreement to Sell at Valuation [Section 10]

When there is Agreement to Sell Goods on the terms that price is to fixed
↳ by Valuation of third party
↓
and third party Cannot/ does not Make such Valuation the agreement is there by avoided.

Provided that, if Goods or any part, thereof have been delivered to and appropiated by buyer, he shall pay a Reasonable price therefore.

Where such third party is prevented from Making Valuation, by fault of Seller/ Buyer
↓
the party not in fault May Maintain a suit for damages against the party in default.

Difference between Sale and An Agreement to Sell

Basis	Sale	Agreement to Sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Nature of contract	It is an executed contract i.e. contract for whichconsideration has been paid.	It is an executory contract i.e. contract for whichconsideration is to be paidat 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 thebuyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction isthe liability of the seller.
Burden of risk	Risk of loss is that of buyersince 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 thecontract
Right of resale	The seller cannot resell thegoods.	The seller may sell the goodssince ownership is with theseller.
In case of insolvency ofseller	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 ofbuyer	The official assignee willhave control over the goods.	The official assignee will not have any control over the goods.

Difference between Sale and Hire-Purchase

Basis	Sale	Hire – Purchase
Time of passing property	Property in the goods istransferred 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 theparty	The position of the buyer is that of the owner of thegoods.	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 byreturning 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 ofany 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.

Difference between Sale and Bailment

Basis	Sale	Bailment
Transfer ofproperty	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 transferof 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.

Q1 State with reasons whether the following statements are Correct or Incorrect:

(a) Actionable claim is a subject-matter of contract of sale.

Ans: **The Statement is Incorrect:** According to Sec2(7) of the Sale of Goods Act, 1930, Defination of Goods Clearly Excludes Actionable Claim. Hence Actionable claim is not a subject matter of the contract of sale as Contract of sale Just Covers Contract of sale of Goods(Movable Properties)

NOV- 1995

(b) "Exchange of goods for goods between the two parties amounts to sale under the Saleof Goods Act, 1930"

Ans: **The Statement is Incorrect:** When goods are exchanged for goods, it is not a contract for sale of goods but it is just barter (ie exchange of goods for goods) . In sale there must be consideration in the form of money which is not possible in Barter transaction, hence it does not amount to sale under the Sale of Goods Act, 1930.

MAY- 99

(c) A bailment is the devilery of goods by one person to another for some purpose.

Ans: A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished to the bailor or are to be disposed of according to the directions of the bailor.

NOV- 1999

(d) Goods' means every kind of movable property other than actionable claim and money

Ans: **The Statement is Correct:** **"Goods" means every kind of movable property** other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale

NOV- 1999

(e) "Contract of Sale can also take place by the conduct of the parties to the contract"

Ans: **The Statement is Correct:** According to the provisions of the act, Subjected to any law for time being in force, a contract of sale may be expressed or may be implied from the conduct of the parties.

MAY- 2001

(f) "In an agreement to sell, the property in the goods passes to the buyer immediately"

Ans: **The Statement is Incorrect, In an agreement to sell, property in the** goods is to be transferred to the buyers at some future date, or subjected to the fulfilment of some conditions.

NOV- 2002

Q2 A agrees to buy a new TV from a shop keeper for Rs. 30,000 payable partly in cash of Rs. 20,000 andpartly in exchange of old TV set. Is it avalid Contract of Sale of Goods? Give reasons for your answer.

Ans: It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. Ifthe 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 cashis 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 inexchange of old TV set and partly in cash of Rs. 20,000. So, in this case, it is a valid contract of sale underthe Sales ofGoods Act, 1930.

May -2002 / ICAI STUDY MAT.

Q3 **State briefly the essential element of a contract of sale under the Sale of Goods Act,1930.**

Ans: **Essential Elements of Contract of Sale** :The following elements must co-exist as to constitute a contract of sale of goods under the Sale of Goods.

1. There must be at least two parties the seller and the buyer, the two must be different persons.
2. The subject matter of the contract must necessarily be goods (covering only movable property)
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 .
6. All other essential elements of a valid contract must be present in thecontract of sale.

MTP / RTP

Q4 **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?**

Ans: 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:

(i) There is an agreement to sell between A and B

(ii) It is related to specific goods

(iii) The goods are lost because of the sinking of ship before the property or risk passes to the buyer.

(iv) The loss of goods is not due to the fault of either party.

ICAI STUDY MAT.

Q5 **Mr. Amit was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr. Amit would succeed in his claim?**

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

the buyer. Applying the provision of Section 16(2), Mr. Amit would succeed in claim for damages from the owner of the shop.

RTP

Q6 X contracted to sell his car to Y. They did not discuss the price of the car at all. Xlater refused to sellhis car to Y on the ground that the agreement was void being uncertain about price. Can Y demand thecar under the Sale of Goods Act, 1930?

Ans: 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.

In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of thecar. 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.

ICAI STUDY MAT.

Q7 Classify the following transactions according to the types of goods they are:(i) Awholesaler of cotton has 100 bales in his go down. He agrees to sell 50 bales and these bales were selected and set aside.

(i) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.

(ii) T agrees to sell to S all the apples which will be produced in his garden this year.

Ans: A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

(i) 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.

(ii) 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.

ICAI STUDY MAT.

Q8 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 goldbangles 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 the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act,1930.

(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?

Ans: 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 placeat 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.

(a) 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.

(b) 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.

RTP

Q9 **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?**

Ans: 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.

Q10 **Write short note on: "Good" in a Contract of Sale.**

Ans: **Goods:**

Goods means every kind of movable property other then actionable claims and money.

Goods includes stock and shares, growing crops, grass and things attached to or forming part of land, which are agreed to be served before sale or under the contract of sale.

Goods include both tangible and intangible goods like goodwill, copyright, patent, trademark etc.

Q11 **What is meant by delivery of goods under the Sale of Goods Act, 1930? State various modes of delivery.**

Ans: **Delivery of goods means voluntary transfer of possession of goods from one person to another.**

Various Modes Of Delivery :

1. **Actual Delivery:** When goods are physically delivered to the buyer .Actual delivery takes place when the sellers transfers physical possession of goods to buyer , to a third person authorised to hold goods on behalf of the buyer.

2. **Constructive Delivery:** When it is effected without any change in custody/ actual possession of things as in case of "Delivery of Attornment"(Acknowledgment). Constructive delivery take place when a person is 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 delivery of things in token of a transfer of something else. Delivery of goods in course of transit may be made by handing over documents of title to goods like, bill of lading, railway receipt, delivery, order, key of a warehouse containing the goods is handed over to buyers.
When actual delivery is not possible there may be delivery of means ofgetting possession of goods.

MAY- 1997

Q12 Differentiate between Ascertained and Unascertained Goods with example.

Ans:

1. **Ascertained Goods:**
(i) Ascertained goods are those goods which are identified in accordancewith the agreement after the contract of sale is made.
(ii) This term is not defined in the act but has been judicially interpreted.
Example: A wholesaler of cotton has 100 bales in his godown. He agrees to sale 50 bales and these bales were selected and set aside. On selection the goods becomeascertained.

2. **Unascertained Goods:**
(i) Unascertained Goods are those goods which are not specifically identified orascertained at the time of making the contract.
(ii)They are indicated or defined only by description or sample.
Example: If A agree to sell to B , one packet of salt out of lot of 100 packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.

Q13 Briefly explain the distinguish between future goods and Contingent goods.

Ans:

Future Goods:

(i) Future goods means goods to be manufactured/ produced or acquired by seller after making contract of sale.
(ii) A contract of sale of future goods is always an agreement.
(iii) It is never actual sale because, a person cannot transfer what is not in existence.
(iv) **Example:** Tanmay agreed to sell all the oranges which will be produced in his garden this year. It is a contract of sale of future goods, amounting to an agreement to sell.

Contingent Goods :

(i) The acquisition of which by seller depends on an uncertain contingency are called contingent goods.
(ii) Contingent goods also operate as "An agreement to sell" and not a " sale" so far as the question of passing property to the buyer is concerned.
(iii) In other words, like the future goods , in case of contingent goods also the property does not pass to buyer at the time of making the contract.

Q14 Distinguish between Existing goods and Contingents goods.

Ans:

Existing Goods :
Existing goods are such goods as are existence at the time of contract of sale, that is owned , possessed, acquired by the seller at the time of contract of sale.

Contingent Goods :
The acquisition of which by seller depends on an uncertain contingency are called contingent goods. Contingent goods also operate as "An agreement to sell" and not a " sale" so far as the question of passing property to the buyer is concerned

MAY- 1997

Q15 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 of4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back?

Ans: 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.

Q16 Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930?

Ans: 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 manner thereby agreed or may be determined by the course of dealing between the parties.

Even though both the parties missed to discuss 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. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

CHAPTER- 1

SALES OF GOODS ACT, 1930

UNIT - 2

CONDITIONS AND WARRANTIES

Condition and Warranty [Section-12]

Section 12(1) → A Stipulation in Contract of Sale with reference to Goods which are subject thereof may be a
- Condition
- (OR)
- Warranty

What is Condition Section 12(2)

Condition is stipulation
↳ essential to Main Purpose of the Contract
↓
the breach of which gives rise to a "Right to treat Contract as Repudiated"

What is Warranty Section 12(3)

Warranty is Stipulation
↳ Collateral to Main Purpose of the Contract
↓
the breach of which gives rise to claim for damages but not a Right to Reject the Goods and treat the Contract as Repudiated

A Stipulation May be Condition
↓
though Called Warranty in the Contract.

Whether Condition or Warranty

Where Stipulation is Condition or Warranty it depends in each case on Construction of Contract

Example for Condition

Stephie wants to purchase a Car from Chotu, which can have Mileage of 20 km/litre. Chotu pointing at a Car and says "This will suit You". After Buying the Car Mileage of Car was Top 15 km/litre. This Amount to Breach of Condition because

↳ the seller Made the Stipulation which forms the essence of the Contract

Example for Warranty.

Ram buys a New Maruti Car, the Car is guranteed against any Manufacturing defect under Normal Usage for one year. There was warranty to Replace defective part. Ram finds the horn is not working.

↳ Ram Cannot terminate the Contract, but Can get horn Replaced. Also Ram gets right to Claim for damages but not right of Repudiation.

Distinguish between Condition and Warranty

Basis of Difference	Condition	Warranty
Meaning	Condition is a stipulation essential to Main purpose of the Contract	Warranty is stipulation Collateral to main purpose of Contract
Right in Case of Breach	The Aggrieved party can repudiate the Contract or Claim damages or both in Case of breach of Condition	The Aggrieved party can Claim only damages in Case of breach of Warranty
Conversion of Stipulations	Breach of condition may be treated as breach of Warranty	Breach of Warranty Cannot be treated as breach of Condition

When Condition to be treated as Warranty [Section - 13]

(i). When the buyer altogether waives the performance of the Condition. A party May for his own benefit, waive a stipulation.

- It should be Voluntary waiver by buyer.

(ii). Where the buyer elects to treat
↳ breach of Condition as breach of warranty

- Buyer May Claim only damages, instead of Repudiating the Contract.
- Buyer has not waived the Condition but decided to treat it as a Warranty.

Example → A agrees to Supply B, 10 Bags of First Quality Sugar @ Rs 625 per Bag. B Supplied Second quality sugar @ Rs 500 per Bag. This is breach of Condition but buyer treated it as breach of warranty and accepted Second Quality Goods and Claim Compensation at Rs 25 Per kg.

(iii) Where the Contract is Non-Severable and the buyer has Accepted either the
- Whole Goods (or)
- any part thereof.

Meaning of Acceptance??	Acceptance Means Acceptance as envisaged u/s 72 of Indian Contract Act.

(iv) Where the fulfillment of any Condition (or) warranty is excused by law
↳ by Reason of
- Impossibility (or)
- Otherwise.

Waiver of Condition

Voluntary Waiver
- Waives performance of Contract.
- Elect to treat Condition as Warranty.

Compulsory Waiver.
- Non Severability of Contract
- Fulfillment of Condition Excused by law.

Express and Implied Condition and Warranties [Section 14 to 17]

Condition and Warranty May be either → Express (or) Implied

When Condition/ Warranty is Express ??

When terms Contract Expressly Stated them

When Condition/ Warranty is Express ??

When terms Contract not being Expressly Provided for

Implied Condition are in Corporated by law in Contract of Sale

Express Condition are those which

- Agreed between the parties at the time of Contract
  And
- Are Expressely provided in the Contract

Implied Conditions are those which are presumed by law to be present in Contract.

It should be Noted that an Implied Condition May be waived by an Express Agreement

Implied Conditions

Following Conditions are Implied in Contract of Sale of Goods unless the Circumstances of the Contract show a different Intention :-

- Condition as to title
- Condition as to description
- Condition as to Quality (or) Fitness
- Condition as to Merchantability
- Condition as to wholesomeness
- Sale by Sample
- Sale by Sample as well as by description.

Condition as to title [Section 14(a)]

In Every Contract of sale, unless there is an Agreement to Contrary ↓
the First Implied Condition on part of Seller is that :-

- In Case of Sale ↓ he has Right to sell the Goods
- In Case of Agreement to Sell ↓ he will have Right to sell the goods at time when property is to pass.

Final Conclusion

Condition Implied is that Seller has right to sell the Goods at time when property is to pass. If Seller title are defective the buyer Must Return the Goods and Recover Price.

Example → If A Sells to B tins of Condensed Milk of "Cow" brand and it is proved an Infringment of "Amul" Company's Trademark. It will be breach of Implied Condition that "A" had Right to Sell.

Condition as to description / Sale by description [Section - 15]

When there is Contract of Sale of Goods by description, there is Implied Condition that
↳ the Goods shall Correspond with Description.

The Rule is based on principle that ↓

"If you Contract to sell Peas, you Cannot Compell buyer to take Beans"

- The buyer is not bound to accept and pay for the Goods which are not in accordance with the description of Goods.
- If the description was essential for Identifying the Goods and buyer Agreed to purchase + Goods does not Correspond with description

} the buyer is entitled to Reject the Goods.

Condition as to Quality / fitness [Section - 16(1)]

DON'T FORGET
Ordinarily there is no Implied Condition as to Quality / fitness of goods sold for any particular Case

There is Implied Condition of the Seller that the goods supplied shall be Reasonbly fit for the purpose, provided following Condition are satisfied:-

Condition - 1 The Buyer should have Made known to Seller the particular purpose for which the Goods are Requiered.

Condition - 2 Buyer should Rely on [Skill & Judgement] of Seller.

Condition - 3 → The Goods Must be of a description dealt in by the Seller
→ whether he be Manufacturer or not.

Example → "A" bought a set of False set of teeth from "B" [a dentist], but the set was not fit for "A" Mouth. A rejected the set of teeth and claimed Refund of Price. A was entitled to same

Condition as to Wholesomness

In Case of Eatables and Provisions, in addition to the Implied Condition as to Merchantability
→ there is another Implied Condition that Goods shall be wholesome.

Applicable in case of
- Eatables
- Provisions

Example → Arvind Supplied Milk to Fatima. The Milk Contained typhoid Germs. Fatima daughter Consumed the Milk and died. Held there was a breach of Condition as to fitness and Arvind was liable to pay damages

Condition as to Merchantability [Section - 16(2)]

When the Goods are brought 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 Goods shall be of Merchantable Quality.

There are two Requirements for this Condition to apply

- Goods should be brought by description
- Seller should be a dealer in Goods of that description

DON'T FORGET

Provided that if the buyer has examined the Goods, there shall be no Implied Condition when such examination ought to have Revealed.

What is Merchantable Quality

The expression Merchantable quality is not defined, however it refers to

Goods of such a quality and Goods are in such Condition } a Man of Ordinary Prudence would accept them as Goods by description.

Example → If a person order Motor horns from a Manufacture of horns, and the horns supplied are damaged ↓ Reject he is Entitled to them as Unmerchantable.

Sale by Sample [Section 17]

In a Contract of Sale by Sample, there are 3 Implied Condition.

Condition - 1 The Bulk shall Correspond with Sample in Quality.

Condition - 2 The Buyer shall have Reasonable opportunity → of Comparing Bulk with Sample.

Condition - 3 The Goods shall be free from any defect Rendering then Un-Merchantable → which would not be Apparent on Reasonable examination of Sample.

This Condition is applicable only with Regard to defects, which Could not be discovered by an Ordinary Examination of Goods.

If the defects are latent [hidden defect], then the buyer Can avoid the Contract.

Example → A Company sold Certain shoes Made of special sole by sample for the French Army. The shoes were found Contain paper not discoverable by Ordinary Inspection. It was held that buyer was entitled to the Refund of Price plus Damages.

Sale by Sample as well as by Description [Section - 15]

When the Goods are sold by Sample as well as by description
→ the Implied Condition is that, the bulk of Goods shall Correspond both with — Sample and Description

In Case Goods Correspond with Sample but do not tally with description (or) Vice Versa (or) both
→ the buyer Can Repudiate the Contract.

SOFT DRINK SAMPLE

Let Me Give You Description

Implied Warranties

Implied warranty is warranty which law Implies into the Contract of sale.

It is the stipulation [Condition] which has not been included in Contract of Sale in express words
→ but law presumes that the parties have Incorporated it into their Contract.

note to self:

DON'T FORGET

Implied Warranties are Considered into every Contract of sale
→ Unless they are expressely excluded by express agreement of parties.

Following are Implied Warranties

- Warranty as to Undisturbed Possession
- Warranty as to non-existence of encumbrances
- Disclosure of Dangerous Nature of Goods.
- Warranty as to Quality or Fitness by Usage of trade

Warranty as to Undisturbed Possession [Section 14(b)]

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 → Stephie buys Laptop from Aravind. After purchase stephie spends some Money on Repair. It was Unknown to parties that Laptop was stolen and was taken by Stephie and delivered to its Rightful owner. Aravind shall be held Responsible for breach and stephie was entitled to damages of not only price and also cost of Repairs.

Warranty as to Non-Existence of Encumbrances [Section 14(c)]

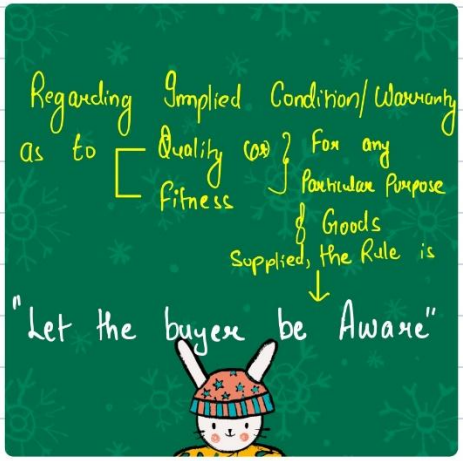
An Implied Warranty that the Goods shall be free from any [Charge (or) encumbrance] not declared or known to buyer → before or at the time the Contract is Entered into.

Example → A pledges his Car with C for a loan of ₹ 15000 and promises him to give possession on next day. A then sells Car to B, who purchased it on good faith

Now 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 Intrest.

Warranty as to Quality (or) fitness by Usage of Trade [Section 16(3)]

An Implied warranty as to [Quality (or) fitness] for a particular purpose May be [Annexed (or) Attached] by the usage of trade.



Disclosure of Dangerous Nature of Goods

When the Goods are dangerous in Nature and the buyer is Ignorant of the danger } the Seller Must Warn the buyer of the probable danger

note to self:
If there is breach of Warranty, Seller May be liable for damages.

Caveat Emptor

General Introduction

In Case of Sale of Goods, the doctrine Caveat Emptor Means "Let the Buyer be Aware".

When Sellers display their Goods in open Market, it is for the buyers to Make a proper Selection or Choice.

The Seller is not Responsible for
- Bad Selection of Buyer
- Disclosing the defects in goods which he is Selling.

Rule of Caveat Emptor [Section 16]

It states that

"Subject to Provisions of this Act or for any other law time being in Force } there is no Implied Warranty (or) Condition as to Quality (or) Fitness for any particular purpose of Goods supplied under a Contract of Sale."

Following are Condition to be satisfied

- **Condition - 1**: If buyer had Made known to Seller the purpose of his Purchase
- **Condition - 2**: The buyer Relied on the Sellers Skill and Judgement
- **Condition - 3**: Sellers business to Supply Goods of that description.

Example → "A" purchase horse from "B". A needed horse for Riding but did not Mention this fact to B. The horse is not suitable for Riding but for Carriage. Caveat Emptor Rule applies here

↓

So A can neither Reject the horse nor Can Claim Compensation.

Exceptions to Caveat Emptor

1 Fitness as to Quality (or) Use

Where the buyer Makes known to seller the particular purpose for which the Goods are Required

+

Show that he Relies on the Sellers Skill (or) Judgement

+

the Goods are of description which is in the Course of Sellers business to Supply

↓

it is duty of the Seller to supply such Goods as are Reasonably fit for that purpose

Example → An order was placed for some trucks to be Used for heavy traffic in a hilly Country. The truck supplied by Seller were Unfit for this purpose and broke down. This is breach of Condition as to fitness.

Priest v/s Last

P, a draper purchased a hot water bottle from 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 Chemist is liable to pay damages to P, as he knew that bottle was purchased for the purpose of being used as hot water bottle.

Bombay Burma Trading Corporation Ltd v/s Aga Muhammad

Timber was purchased for Express purpose of using it as Railways sleepers and when it was found to be unfit for the purpose the court held that Contract Can be avoided

2. Goods Purchased under Patent (or) Brand Name

In Case where the Goods are purchased under its

- Patent Name
- Brand Name

} there is no Implied Condition that the Goods shall be fit for any particular purpose

3. Goods Sold by description

Where the Goods sold by description, there is Implied Condition that the Goods shall Correspond with description.

If it is not so then seller is Responsible.

4. Goods of Merchant Quality

Where the Goods are bought by description from a seller who deals in Goods of that description
- there is 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 been Revealed by Ordinary Examination.

5. Sale by Sample.

Where the Goods are bought by Sample, the Rule of Caveat Emptor does not apply if
- the bulk does not Correspond with the sample.

6. Goods by Sample as well as description

Where the Goods are bought by Sample as well as description, the Rule of Caveat Emptor is not applicable
- in Case the Goods do not Correspond with
  - both the Sample and description (OR) Either of the Condition.

7. Trade Usage

An Implied Warranty (or) Condition as to Quality (or) fitness for a particular purpose May be annexed by the Usage of trade and if the seller deviates from that
- this Rule of Caveat Emptor is not applicable

Example → In Ready made Garment business, there is Implied Condition by Usage of trade that the Garment shall be Reasonably fit on the buyer.

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 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.

Difference between Condition and Warranty

Basis	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breachof 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.

Q1 State with reason whether the following statement is Correct or Incorrect:

(a) If a seller does not disclose the dangerous nature of the goods to be sold to the buyer he breaches the contract

Ans: **Incorrect:** If a seller does not discloses the dangerous nature of the good to be sold to the buyer and the buyer is ignorant of the danger, it is a breach of implied warranty. In case of implied warranty it is the duty of the seller to warn to the buyer of the probable danger of the dangerous nature of the goods. It is not breach of condition but it is merely a breach of implied Warranty and the seller will be liable for damages and not for Repudiation of contract.

NOV- 1998

(b) "Where the buyer elects to treat the breach of condition as one of warranty, he may repudiate the contract"

Ans: **Incorrect:** Section 13 of the sale of Goods Act, 1930 lays down that where the buyer elects to treat the breach of condition as one of a warranty, he may only claim damages instead of repudiating the contract

Q2 In a sale of goods , "Goods" sold must be of merchantable quality.

Ans: **Goods Must be of merchantable Quality:** When the goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer pr producer or not there is an implied condition that goods shall be of Merchantable Quality.

There are two requirements for this condition to apply :

1. Goods should be brought by description
2. Seller should be a dealer in goods of that description.

NOV- 1998

Q3 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 accept return of the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.

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

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

Ans:

(i) **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

(ii) 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.

ICAI STUDY MAT.

Q4 **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 filed a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?**

Ans: 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 good 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 judgment 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.

RTP

Q5 **Write short notes on "Implied warranties in a contract of sale"**

Ans: Implies Warranties : Implied warranty is warranty which low implies into the contract of sale. It is the stipulation which has not been included in contract of sale in express words but law presumes that the parties have incorporated it into their contract.

Implied warranties are considered in to every contract of sale unless they are expressly excluded by express agreement of parties.

MAY- 1999

Q6 **Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as Rs. 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained**

a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?
Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930?
What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

Ans: 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 the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

AlsoIn the instant case, the buyer does not have any option available to her for grievance redressal.

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

Q7 What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also explain, when a 'breach of condition' be treated as 'breach of warranty' under the provision of the Sales of Goods Act, 1930?

Ans: **Difference between conditions and warranties: Refer Notes**

Breach of condition be treated as a breach of warranty

(i) When the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be voluntary waiver by buyer.

(ii) Where the buyer elects to treat the breach of the conditions, as breach of warranty. Buyer may claim only damages instead of repudiating the contract.

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

(iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

RTP

Q8 X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests car '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?

Ans: **Condition and warranty :** A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". 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 fulfillment defeats the very purpose for which X purchases the car.X is therefore entitled to reject the car and have refund of the price.

ICAI STUDY MAT.

Q9 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 band and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M?

Ans: 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.

(i) 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.

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

RTP

Q10 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?

Ans: According to Provisions 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 judgment 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.

ICAI STUDY MAT.

Q11 "State the law relating to sale by description"

Ans: When there is contract of sale of goods by description, there is implied condition that the goods shall correspond with description.

1. If you contract to sell peas, you cannot compel buyer to take beans.
2. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.
3. If the description was essential for identifying the goods and buyer agreed to purchase and good does not correspond with description the buyer is entitled to reject the goods.

MAY- 1996

Q12 Define the term 'warranty'. What are the kinds of implied warranties under theprovisions of Sale of Goods Act, 1930?

Ans: Warranty is stipulation collateral to main purpose of the contract the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as repudiated.

Implied warranties:

(i) Implied warranty is warranty which law implies into the contract of sale.

(ii) It is the stipulation which has not been included in contract of sale in express words but law presumes that the parties have incorporated if into their contract.

MTP / NOV- 1996

Q13 Prashant reaches a sweet shop and ask for 1 kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller.

(a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930?

(b) Will your answer be different if Prashant does not taste the sweet?

Ans: 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, Prashant can return the sweet and avoid the contract.

(b) In the other case, the sale of sweet is the case of sale by description and the qualityof goods does not correspond with description made by seller. Hence, answer will besame. Prashant can return the sweet and avoid the contract.

MTP / RTP

Q14 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.

Ans: 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 .

ICAI STUDY MAT.

Q15 A person purchased bread from a baker's shop. The piece of bread contained 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?

Ans: 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.

ICAI STUDY MAT.

Q16 **"A contract of sale is not avoided even on account of breach of a condition"**

Ans: The Sale of Goods Act, 1930 defines a condition as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as having been repudiated. Thus it is clear from the definition, that the buyer gets the right to avoid the contract in case of a breach of a condition on a contract of sale of goods. But the law does not force the buyer to avoid the contract in case of breach of a condition. The buyer can treat the breach of a condition, as a breach of a warranty. He also gets a right to waive the condition.

Further, where the contract is non- severable and the buyer has accepted either the whole goods or any part thereof, then he cannot avoid the contract. Further, where the law excuses the fulfilment of a condition or warranty, then the breach of a condition shall not allow the buyer to repudiate the contract. Thus, a contract of sale can be avoided by the buyer in case of breach of a condition and therefore, the statement as given in the question is not true.

NOV- 2000

Q17 **Define the terms 'Condition' and 'Warranty' as used in Sale of Goods Act. Can a breach of warranty be treated as a breach condition and vice-versa?**

Ans: **Condition:** Condition is stipulation essential to main purpose of the contract the breach of which gives rise to a "Right to treat Contract as Repudiated."

Warranty: Warranty is stipulation collateral to main purpose of the contract the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as repudiated.

MAY-1997/2000 / NOV-2001/2002

When Condition to be treated as Warranty:

1. When the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be voluntary waiver by buyer.
2. Where the buyer elects to treat breach of condition as breach of warranty. Buyer may claim only damages, instead of repudiating the contract. Buyer has not waived the condition but decided to treat it as a warranty.

Q18 **What are the implied conditions in a Sale by Sample?**

Ans: **Following are Implied Conditions:**

(i) **Condition as to Title:** **In every contract of sale , unless there is an agreement** to contrary the first implied condition on part of seller is that in case of sale he has right to sell goods and in case of agreement to sell he will have right to sell the goods at time when property is to pass.

(ii) **Sale by Description:** **If you contract to sell peas, you cannot compel** buyer to take beans. The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods. If the description was essential for identifying the goods and buyer agreed to purchase and good does not correspond with description the buyer is

entitled to reject the goods.

(iii) **Condition as to Quality** :There is implied condition of the seller that the goods supplied shall be reasonably fit for the purpose.

(iv) **Condition as to Wholesomeness: In case of eatables and provisions, in** addition to the implied condition as to Merchantability there is another implied condition that goods shall be wholesome.

(v) **Condition as to Merchantability: When the goods are brought by** description from a seller who deals in goods of that description there is an implied condition that goods shall be of Merchantable Quality.

Nov -2001/ May-2001/ Nov-1995

Q19 Discuss the various types of implied warranties as per the Sales of Goods Act 1930?

Ans: **Following types of implied warranties are provided by Sale of Goods Act,1930:**

(i) **Warranty as to Undisturbed Possession: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.

(ii) **Warranty as to Non-existence of Encumbrances:** 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.

(iii) **Warranty as to Quality or Fitness by usage of Trade:**An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

(iv) **Disclosure of Dangerous Nature of Goods:** Where the goods are dangerous innature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

JAN- 2019

Q20 Write any four exceptions to the doctrine of Caveat Emptor as per The Sale of Goods Act, 1930.

Ans: **Four exceptions to the doctrine of Caveat Emptor as per The Sale of Goods Act, 1930:**

1. **Fitness as to Quality:** Where the buyer makes known to seller the particular purpose for which the goods are required show that he relies on the seller's skill or judgment the goods are of section which is in the course of seller business to supply it is duty of the seller to supply such goods as are reasonably fit for that purpose.
2. **Goods Purchased under Patent or Brand Name:** In case where the goods are purchased under its patent or brand name there is no implied condition that the goods shall be fit for any particular purpose.
3. **Goods Sold by Description:**Where the goods sold by description, there is implied condition that the goods shall correspond with description. If it is not so then seller is responsible.
4. **Goods of Merchant Quality:** Where the goods are brought by description from a seller who deals in goods of that description there is implied condition that the goods shall be of Merchantable Quality.

May-2000 / Nov- 2020

Q21 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 thecustomers. 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. ?Explain according to the provisions of the act?

Ans: Caveat emptor means "let the buyer beware", i.e. in sale of goods, the seller is under no duty to reveal unflattering truths about the goods sold. Therefore when a person buys some goods, he must examine them thoroughly. It the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgement and makes a bad selection, he cannot blame anybody except himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930, which runs thus, "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

JAN- 2019

Q22 Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as 125 per kg. To which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entries lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

The cock on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish.

Now Mrs. Geeta wants to file a suit of fraud against the seller alleging hi of selling mix of goods and cheap quality rice. Will she be successful?

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

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

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

Ans: **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 of 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 defect, which could not be discovered by an ordinary examination of the goods. But if the defects are latent, then the buyer can avoid the contract.

In the given case: - Mrs. Geeta casually examined the sample and did not notice that sample contained mix of long and short grains. Hence, Mrs. Geeta cannot avoid the contract and will not be successful in the suit. However if the buyerhad specified her exact requirements, then seller must supply such goods which are reasonably fit for the given purpose.

RTP

Q23 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.

Ans: **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.

DEC- 2021

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.

Q24 Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

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

I. Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.

II. Whether the replacement of damaged tiles be imposed on M/ s Makrana Marbles? Explain.

Ans:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

NOV- 2022

Q25 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 th e provisions of Sale of Goods Act, 1930, discuss whether Mr. Dheeraj is right in refusing to exchange the washing machine?

Ans: 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.

1. 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.
2. Inthegiven case,Mr.VishalhasinformedtoMr.Dheerajthathewanted thewashingmachine for washing woollen clothes. However, the machine which was delivered byMr. Dheeraj was unfit for the purpose for which Mr. Vishal wanted the machine.

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

MTP

CHAPTER- 1

SALES OF GOODS ACT, 1930

UNIT - 3

TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

General Introduction

- Sale of Goods involves transfer of ownership of property from seller to buyer.

- It is essential to determine the time at which the ownership passes from seller to buyer.

Time of Transfer

General rule is that Risk prima facie passes with property

When Goods are Lost or Damaged

In case where goods are lost or damaged

Burden of loss will be borne by person who is owner at the time when Goods are lost/ damaged.

Goods damaged by Act of Third Party

When Goods are damaged by act of third party, it is the owner who can take action.

Suit for price by seller can only be filed when property is passed to buyer

Passing of Property [Section - 18 to 25]

The Rules Regarding transfer of Property in Goods from the Seller to the buyer depend on two basic factor :-

Identification of Goods [Section 18]

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 Goods are ascertained.

- The buyer Can get the ownership right on the Goods
  - only when the Goods are
    - Specific
    - +
    - Ascertained

Intention of Parties [Section 19(2)]

The Property in Goods is transfered to the buyer at such time
- as the parties to the Contract, intend it to be transfered.

Ascertaining Intention of the Parties [Section 19(2)]

For the purpose of Ascertaining the Intention of parties regard shall be :-

To the terms of the Contract + To the Conduct of the parties + To the Circumstances of the Case.

Rules for Passing of Property

Primary Rules determining the passing of Property from Sellers to Buyers are as Follows :-

Property [Specific (or) Ascertained Goods] passes when Intended to Pass [I] [Section 19 to 22]	Goods Must be Ascertained [II] [Section 23]	Goods sent on Approval (or) on Sale/Return [III] [Section 24]	Transfer in Case of Reservation of Right to Disposal [IV] [Section - 25]

I Property [Specific (or) Ascertained Goods] Passes when Intended to Pass [Section - 19]

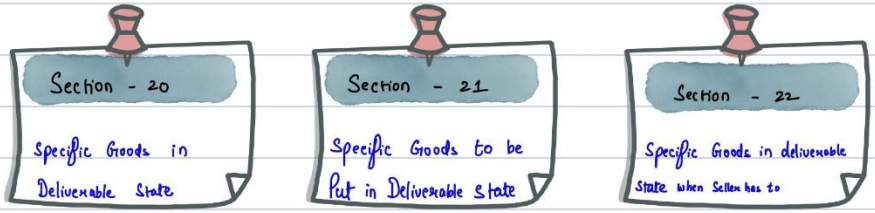
Section 19(1) → Where there is a Contract for Sale of Specific (or) Ascertained Goods, the property in them is transfered to buyer at such time
- as the Parties to the Contract intended it to be transfered.

Section 19(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.

Section 19(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 Goods is to pass to the buyer.

Stages of Goods while Passing of Property [Section 20, 21, 22]



Specific Goods in a deliverable State [Section 20]

Where there is an Unconditional Contract for the sale of specific Goods in deliverable state
↳ the property in Goods passes to the buyer when the Contract is Made.

It is Immaterial whether
- the time of Payment of price (or)
- time of delivery of Goods (or)
- both

} is postponed

Example → Arjun goes to a electronic store to buy Television. and asks for home delivery. Shopkeeper Agrees to do it. Television Immediately becomes the property of Arjun.

Specific Goods to be put into deliverable state [Section 21]

When 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 deliverable state
↓
the property does not pass until such thing is done and the buyer has notice thereof

Example → Peter buys a Laptop and asks for Home delivery. Peter wanted Windows 10 to be Installed, shopkeeper promises for the same. In this case property is transfered to Peter only after shopkeeper has Intalled windows 10, Making the Laptop ready for delivery and Intimated about it.

Specific Goods in deliverable State, when the Seller has to do anything thereto to Ascertain Price [Section 22]

When there is a Contract for the sale of Specific Goods in a deliverable state, but the seller is bound to

- Weigh
- Measure
- test
- do some other act (or) things

with reference to the Goods for the purpose of ascertaining the price

↓

the property does not pass until such thing is done an the buyer has notice thereof

Example → A sold Carpets to the Company which were required to be laid and price will be Calculated on the basis of Number of Meteres of Carpet laid. Carpets were stolen before it was laid. It was held that the Carpet was not in deliverable state, hence the property had not passed to the buyer.

II Unascertained Goods

What about Sale of Unascertained Goods

When there is contract of sale of unascertained goods,

↓

no property in goods is transfered to buyer

↓

Unless and Until the Goods are ascertained.

Rules in respect of Passing of property of Unascertained Goods

Sale of Unascertained Goods by description and Appropriation [Section 23(2)]

Appropriation of Goods involves selection of Goods with the intention of Using them in performance of the Contract with Mutual Consent of

- Buyer and
- Seller.

The Essentials are :

1. There is a Contract for the sale of Unascertained (or) future Goods
2. The Goods should Conform to description and Quality stated in the Contract.
3. The Goods Must be in a deliverable state.
4. The Goods Must be Unconditionally appropriated to the Contract either
   - by delivery to the buyer (OR)
   - his Agent (OR)
   - the Carrier
5. The Appropriation Must be Made by
   - the Seller with the Assent of the buyer **OR** the buyer with the Assent of the Seller.
6. The Assent may be
   - Express (or)
   - Implied
7. The Assent May be given either
   - Before (or) After } Appropriation.

Delivery to the Carrier [Section 23(2)]

When in pursuance of the Contract, the Seller delivers the Goods to
- the buyer (or)
- a Carrier (or)
- other bailee (whether named by 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.

In Depth analysis of Section - 23

Appropriation of Goods

Appropriation of Goods involves selection of Goods, with the Intention of Using them in performance of Contract

and

with the Mutual Consent of the Seller and Buyer.

III 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 :-

- When he Signifies his Approval (or) Acceptance to seller (or) does any other act adopting the transaction.

OR

- If he does not signify his Approval (or) Acceptance to the Seller, but Retain the Goods without giving notice of Rejection
  - then if a time has been fixed for the return of the Goods → on expiration of such time.
  - if no time has been fixed → on expiration of Reasonable time.

OR

- he does something to the Good, which is equivalent to accepting the Goods [Example → He pledges (or) Sale the Goods].

Example → "A" Sends "B" water Motor on approval (or) Return in March 2020. "B" to return it after trial in August 2020. Water Motor was not returned within Reasonable time and therefore A was not bound to Accept it, B should pay the price.

Example → Stephie delivered some Jewellery to Nancy on sale or Return basis. Nancy pledged the Jewellery with Aravind. It was held that ownership of Jewellery was transfered to Nancy.

Sale for Cash (or) Return.

Where 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 Compiled for ie Cash is paid for

Example → A delivered his Jewellery to B on sale for Cash (or) Return basis. B pledged the Jewellery with C, before paying Cash to A. It was held that ownership was not transfered to B. Hence the pledged was not Valid and hence A Can Recover the Jewellery.

IV 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

- When there is Contract of Sale of Specific Goods
  (OR)
  Where the Goods have been subsequently appropriated to the Contract as the Case May be
  } Reserve the right to dispose of the Goods Until Certain Conditions have been fulfilled.

- In such a Case inspite of the fact that the Goods have been delivered
  - to buyer
  - to Carrier
  - to bailee
  } for the purpose of transmitting the same to the buyer

  ↓
  the property therein will not pass to the buyer till the Condition Imposed by the seller have been fulfilled.

Example → X sends furniture to Company by a truck and Instructs the driver not to deliver the furniture to Company until the payment is Made to him. The Property Passes only when Payment is Made.

Circumstances Under which Right of Disposal May be Reserved.

- If the Goods are shipped [bill of lading], delivered to Railway [Railway Receipt] for Carriage
  ↓
  the Goods are deliverable to the order of the seller
  ↓
  then the seller will be prima facie deemed to have Reserved to the Right of Disposal.

- When the seller draws a bill on buyer for price and sends to him Bill of Exchange along with [Bill of Lading / Railway Receipt] as the Case May be
  ↓
  to secure payment thereof
  ↓
  the buyer Must Return the bill of lading, if he does not Accept (or) pay the bill.

DON'T FORGET
If Buyer Wrongfully Retains Bill of Lading / Railway Receipt, the property in Goods does not Pass to him.

Risk Prima Facie Passes with Property [Section 26]

According to Section 26,

Unless otherwise Agreed, the Goods Remain at Seller's risk
→ Until the property there in is transfered to buyer, but when the property there in is transfered to buyer
↓
the Goods are at buyer's Risk, whether delivery has been made or not.

Exceptions of Risk follows Ownership

It provides that where delivery of Goods has been delayed through the fault of Either buyer (or) Seller.
↓
the Goods are at Risk of party in fault [as Regards any loss which Might not have occured, but For such fault.

Ordinary Circumstances.

Risk is borne by buyer only when, the property in Goods passes over to him.

Special Circumstances.

Parties May by Special Agreement stipulate that Risk will pass Sometime after/Before "Property" has Passed

Owner of the Goods, Must bear the loss (or) Damage of Goods
↓
Unless otherwise Agreed to

According to Section 26, unless otherwise Agreed
↓
the Goods Remain at the Sellers risk until property therein has passed to the buyer.

After that event they are at Buyers Risk, whether delivery has been Made or not.

Example → A Contracted to sell 100 bales of Cotton to B, to be delivered in February. B took delivery of part Cotton but Made a default in Accepting the balance. Consequently Cotton become Unfit for Use. The loss will have to be borne by buyer.

Qualification to Above Rule.

- If Delivery has been delayed by fault of seller or Buyer, Goods shall be at Risk of party in default.
- Duties and Liabilities of Seller (or) Buyer as Bailee of Goods for other party Remain Unaffected.
→ even when the Risk has passed Generally.

Transfer of title by Non Owners [Section 27 to 30]

Subject to Provision of the Act and Any other law for time being in force

→ Where Goods are sold by person who is not the owner thereof

and

Who does not sell them under authority (or) with Consent of owner

the buyer acquires no better title to the Goods than the Seller had, unless the owner of the Goods is by his conduct precluded from denying the Sellers authority to sell.

Analysis

- The General Rule Regarding the transfer of title is seller Cannot transfer to buyer of Goods a better title than he himself has.

- If Seller is not owner of Goods then buyer will not become the owner

→ this Rule is expressed in Latin Maxim "Nemo dat quod non habet", which Means that No one Can give what he has not got.

Example → 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 goods from "B."

Exceptions

- Sale by Mercantile Agent
- Sale by One of Joint Owner
- Sale by Person Under Voidable Contract
- Sale by an Unpaid Seller
- Sale by one who already sold but Continue Possession thereof
- Effect of Estoppel
- Sale by buyer obtainning possession before property in Goods was Vested in Him
- Sale under the Provisions of other Acts.

In the following Cases, a Non-Owner Can Convey better title to bonafide purchase of Goods for Value.

Exception - 1

1. Sale by Mercantile Agent

A Sale made by a Mercantile Agent of Goods for document of title to Goods, would pass a good title to buyer in the following circumstances

- If he was in possesion of Goods/document with the Consent of the buyer.
- If the sale was Made by him when acting in ordinary Course of business as a Mercantile Agent.
- 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.

Meaning of Mercantile Agent:

Means an Agent having in the Customary Course of business as such Agent Authority

- To Sell Goods
- To Consign Goods for sale
- To buy Goods
- To Raise Money on Security of Goods

Exception - 2

2. Sale by one of the Joint Owners [Section 28]

If one of Several joint owners of Goods has sole possesion of them by permission of the Co-owner
- → the property in Goods is transfered to any person who buys them from such joint Owner in Good faith
- ↓
- and has not at the time of Contract of sale
  - → Notice that the Seller has no authority to Sell.

Example → A, B, C are three brothers and joint owners of T.V. With Consent of B and C, TV was kept in Possession of A. A Sells TV to P. P will Get Good title.

3. Sale by Person in Possesion under Viodable Contract [Section 29]

Exception - 3

A Buyer would acquire a Good title to the Goods sold to him by a Seller
↳ who obtained possession of Goods under a Contract Voidable on the Ground of
- Coercion
- Fraud
- Misrepresentation
- Undue Influence

} Provided that the Contract had not been Rescinded until the time of the Sale.

Example → Shyam Fraudently obtains Diamond Ring from Stephie. This Contract is Voidable at the option of Stephie, but before the Contract Could be terminated, Shyam sells Ring to Nancy. [an Innocent purchaser]. Nancy Gets a Good title and Stephie Cannot Recover Ring from Nancy.

4. Sale by an Unpaid Seller [Section 54 (3)]

Exception - 4

Where an Unpaid Seller who had excercised his Right of lien (or) Stoppage in transit
↳ Resell the Goods, the buyer acquires a Good title to the Goods as Against Original Buyer.

5. Sale by one who has Already Sold the Goods but Continues in Possession thereof [Sechon 30 (1)]

Exception - 5

If a person has sold Goods, but Continues in possession of Goods (or) of document of title to Goods
↳ he may sell them to a third person and if such person obtains delivery in Good faith and without notice of previous sale
↓
he would have Good title to them [although the property in Goods has passed to first buyer Earlier]

- A pledge (or) Other disposition of the Goods / Documents of title by Seller in possession are equally Valid.

6. Effect of Estoppel

Exception - 6

Where the owner is estopped by Conduct from denying the Seller's authority to sell
↳ the transferee will get a Good title as against true owner.

But before a Good title by Estoppel Can be Made it Must be shown that true owner had actively suffered (or) held out the other person in Question
→ as the true owner (or) as person authorized to Sell the Goods.

7. Sale by buyer obtainning Possession before the property in the Goods was Vested in him [Section 30(2)]

Exception - 7

Where a buyer with the Consent of seller obtains Possession of Goods before the property in them has passed to him, he may

Sell | Pledge | Otherwise dispose of the Goods

to third person and if such person obtains delivery of the Goods in good faith and without notice of lien (or) other Right of Original Seller in Respect of Goods
→ he would get a Good title to them.

A Person in Possesion of Goods under "Hire purchase Agreement which gives him only an option to buy is not Covered above, Unless it amounts to sale

8. Sale under the Provisions of other Acts

Exception - 8

Sale by an [Official Receiver / Liquidator] of the Company will give the purchaser a Valid title.

Purchase of Goods from a finder of Goods will get Valid title under Circumstances [Section 169 of Indian Contract Act 1872]

A Sale by Pawnee Can Covey a Good title to the buyer [Section 176 of Indian Contract Act 1872]

Performance of the Contract of Sale [Section 31 & 32]

Performance of Contract

Performance of Contract of sale Implies

- delivery of Goods by seller
- and
- Acceptance of Delivery
- and
- Payment of price

by buyer in Accordance of the terms of the Contract.

Meaning of Delivery

Delivery Means voluntary transfer of Possession from one Person to another

How to Make Delivery

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 buyer (or) any person authorised on buyers behalf

Types of Delivery.

(a) Actual Delivery
(b) Symbolic Delivery
(c) Constructive Delivery.

Points to Remember

- For Delivery, physical possession is not Important
- The buyer shou be .laced in a position so that he can excercise his Right over the Goods.

Delivery through Unfair Means.

If Possesion taken through Unfair Means
→ then there is no delivery of Goods

Duties of Seller and Buyer [Section 31]

It is the duty of the Seller to deliver the Goods and it is duty of Buyer to Accept and Pay for them, in accordance with the terms of Contract of sale.

Payment and Delivery are Concurrent Conditions [Section 32]

Unless otherwise Agreed, Delivery of Goods and Payment of Price are Concurrent Conditions.

The Seller shall be Ready and Willing to Give to Possession and the buyer shall be Ready and willing to pay the Price, in exchange of Goods.

Rules Regarding Delivery of Goods [Section 33-44]

Delivery [Section 33]

Delivery of Goods may be made by doing anything
- which the parties shall be treated as delivery
(OR)
- which has the effect of putting the Goods
  - in possession of the buyer
  (OR)
  - of any person authorised to hold them on his behalf

Effect of Part Delivery [Section 34]

A Delivery of part of Goods, in progress of delivery of the whole
→ has the same effect (for the purpose of passing of property in such Goods) as delivery of the whole.

DON'T FORGET

But a delivery of part of the Goods, with an Intention of Severing it from the whole, does not operate as delivery of Remainder.

Buyer to apply for Delivery [Section 35]

Apart from any Express Contract
→ the Seller of Goods is not bound to deliver them, until the buyer applies for delivery.

Place of Delivery [Section - 36(1)]

Where it is for the buyer to take possession of the Goods (OR) for the Seller to send them to buyer } is a Question depending in each Case on the Contract between the parties.

Where to Deliver the Goods ??

- Goods sold are to be delivered at a place at which they are at time of Sale
- Goods agreed to be sold are to be delivered at the place at which they are at time of Agreement to sell (or) if not then in Existence at place at which they are Manufactured (or) Produced.

Time of Delivery [Section 36(2)]

Where Under the Contract of Sale, the Seller is bound to sell the Goods to the buyer
→ but no time for Sending them is fixed, the Seller is bound to send them within Reasonable time.

Goods in Possession of a third Party [Section 36(3)]

Where Goods at time of Sale are in possession of third person, there is no delivery Unless and Until ↓ such third person acknowledges to the buyer, that he holds the goods on his behalf.

Provided nothing in this Section shall affect the operation of the Issue or transfer
→ of any document of title to Goods.

Time for Tender of Delivery [Section 36(4)]

Demand (or) Tender of Delivery May be treated as ineffectual
→ Unless Made at Reasonable Hour.

What is Reasonable Hour ??

It is a Question of Fact.

Expenses for Delivery [Section 36(3)]

What Expenses will be Borne

The Expenses of and Incidental to
↓
Putting the Goods in Deliverable state

Who Will Bear the Expenses

In the Absence of Contract to Contrary
↓
It Must be borne by Seller

Delivery of Wrong Quantity [Section 37]

Section 37(1)

When the Sellers delivers to buyer quantity of Goods less then Contracted to sell
↓
the buyer May Reject them, but if buyer Accepts the goods so delivered, he shall pay for them at Contracted Rate

Section 37(2)

When the Sellers delivers to buyer quantity of Goods Larger then Contracted to sell
↓
the buyer May
- Accept the Goods in Contract and Reject the Rest → he shall pay at Contracted Rates.
- He May Reject the whole.

Section- 37(3)

When the seller delivers to buyer the goods he contracted to sell mixed with the goods of different description not included in Contract
↳ the buyer may accept the goods which are in Accordance with the Contract and reject or may reject the whole

Section 37(4)

The Provision of this Section are subject to
- → any Usage of Trade
- → Special Agreement
- → Course of dealing between the Parties.

Example → A agrees to sell 100 Quintals of wheat to B at Rs 1000 per Quintal. A Delivers 1100 Quintal
- Accept only 1000 Quintals and Reject the Rest and pay for 1000 Quintal at Contracted Rate.
- (OR) B May Reject the whole lot

Installment Deliveries [Section 38]

- Unless otherwise Agreed, the buyer is not bound to accept delivery in Installments.

- Rights and Liabilities in Case of delivery by Installments and Payments there on } May be determined by parties of Contract.

Delivery to Carrier [Section 39 (1)]

- Subject to the terms of Contract, delivery of Goods to the Carrier for transmission to buyer
  - is Prima Facie deemed to delivery to the buyer.

Deterioration During Transit [Section 40]

- Where the Goods are delivered at a distant place
  - the liability for deterioration Necessarily incidental to Course of transit will fall on the buyer, though Seller agrees to deliver at his own Risk.

Example → P sold Q a Certain Quantity of Iron Rods which were 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 Mechantable Quality and deterioration was not necessarily Incidental to its transmission
- It was held that Q was bound to Accept the Goods

Buyers Right to Examine Goods [Section-41]

- Where the Goods are delivered to the buyer, who has not previously Examined them
  - he is entitled to a Reasonable opportunity of examining them in order to ascertain whether they are in Conformity of the Contract.

Unless Otherwise Agreed, the seller is bound
→ on Request, to afford the buyer a Reosnable oppurtunity of Examining the Goods.

Rules 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)
- Retain 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]

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 seller
↓
but it is sufficient if he intimates to 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 Request the buyer to take delivery
→ and the buyer does not take delivery within a Reasonable time after such Request take delivery of Goods
↓
he is liable to the seller for any loss occasioned by his Neglect (or) Refusal to take delivery and also for Reasonable Charge
→ for 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 Repudiation of the Contract.

Q1	State with reason whether the following statement is correct or incorrect:
(a)	"In a sale, the property of the goods is transferred from seller to the buyer in case of generic (unascertained) goods."
Ans:	**The Statement is Incorrect: Where there is a contract for the sale of** unascertained (generic) goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

NOV- 1994

(b)	"To A railway receipt is not a document of title"
Ans:	**The Statement is Incorrect:** According to Section 2(4) of the sale of Goods Act, A railway receipt is a "document of title" and it enables the consignee to give a valid discharge in respect of the goods to which he relates.

NOV- 1996

(c)	"The seller of the goods is bound to deliver the goods whether the buyer has applied for delivery or not"
Ans:	**The Statement is Incorrect:** Apart from any express contract, the seller of goods is not bound to deliver the goods until and unless the buyer applies for delivery of the goods

MAY- 2001

(d)	"In a Sale on Approval, the property in goods passes to the buyer on the delivery of the goods"
Ans:	**The Statement is Incorrect:** According to Section 24(1) of the Sale of Goods Act, 1930,the property passes only when he signifies is approval or Acceptance to seller or does any other act adopting the transaction.

NOV- 2001

Q2	"NemoDat 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.
Ans:	**Exceptions to the Ruel "Nemodat Quod Non Habet":** The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:
(i)	**Effect of Estoppel (Section 27) :** Where the owner is stopped 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 is question as the true owner or as a person authorized to sell the goods.
(ii)	**Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely; (a)If he was in possession of the goods or documents with the consent of the owner; (b)If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.
(iii)	**Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)
(iv)	**Sale by a person in possession under voidable contract:**A buyerwould acquire a good title to the goods sold to him by seller who had obtained

possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

(v) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section30(1)]

(vi) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section30(2)]

(vii) **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 [Section54(3)]

(viii) **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.

(c) Sale by a pawnee under default of pawnor will give valid title to thepurchaser.

RTP

Q3 **J the owner of a Fiat car wants to sell his car. For this purpose, he hand over the car to P, a mercantile agent for sale at a price not less than Rs. 50, 000. The agent sells the car for Rs. 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide giving reasons whether J would succeed.**

Ans: 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, authorityeither 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.

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(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 J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

Q4 **Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock andsent 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?**

Ans: 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 buyers, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained 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. S 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.

(i) **Where the bales have been selected with the consent of the buyer's representatives:** In this case the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

(ii) **Where the bales have not been selected with the representatives:** In this case, the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. V completely.

RTP

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

(i) **Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?**

(ii) **Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?**

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

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

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

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

Referring to the above provisions, we can analyse the situation given in the question:

RTP

(i) In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.

(ii) 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., price is paid for. Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K. Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

Q6 **Mr. S agreed to purchase 100 bales of cotton from V, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?**

Ans: Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provide that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained 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. S has the right to select the goods 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.

(i) **Where the bales have been selected with the consent of the buyer's representatives:** In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

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

Q7 **J the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than Rs. 50, 000. The agent sells the car for Rs. 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated themoney also. J sues A to recover the Car. Decide given reasons whether J would succeed.**

Ans: 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 mercantile agent.

RTP

(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 J'sconsent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

Q8 **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.**

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

(a) When the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or

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

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.

ICAI STUDY MAT.

Q9 **What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sellbut before the sale is affected.**

Ans:

(i) 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. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

(ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

MTP / RTP

Q10 **What are the rules regarding delivery of goods?**

Ans: **The Sale of Goods Act prescribes the following rules of delivery of goods:**

(i) **Effect of Part delivery:** A delivery of part of goods, in progress of delivery of the whole has the some effect (for the purpose of passing of property in such goods)as delivery of the whole.

(ii) **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.

(iii) **Place of delivery:** Where it is for the buyer to take possession of the goods or for the seller to send them to buyer is a question depending in each case on the contract between the parties.

(iv) **Time of delivery:** Where under the contract of sale , the seller is bound to sell the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within reasonable time.

(v) **Goods in possession of a third party:** Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

(vi) **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.

(vii) **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be born by the seller, in the absence of a contract to the contrary.

(viii) **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. The rights and liabilities in Cases of delivery by instalments and payments there for may be determined by the by contract

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

(x) **Buyer's right to examine the goods:** Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound on request, to afford the buyer a reasonable opportunity of examining the goods.

MAY- 1996

Q11 **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?**

Ans: **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:-**

(i) One of the several joint owners has the sole possession of them.

(ii) Possession of the goods is by the permission of the co-owners.

(iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

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.

ICAI STUDY MAT.

Q12 Explain the law relating to passing of risk in case of the sale of goods.

Ans: **Passing of the risk in the property to the buyer of goods:**

(i) The general rule is, "Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, after that event they are at buyers risk, whether delivery has been made or not.

(ii) If delivery has been delayed through the fault of either buyer or seller, the goods shall be at the risk of the party in default.

(iii) Duties and liabilities of seller or buyer as bailee of goods for otherpartyremain unaffected even when the risk has passed generally.

NOV -1996/ MAY-1999/ MAY 2001

Q13 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 therewas a sudden fire and the entire stock was gutted. Who will bear the loss and why?

Ans: **Payment and Delivery are Concurrent Condition (Section 32) :**

(i) Unless otherwise agreed, delivery of goods and payment of price are concurrent conditions.

(ii) The seller shall be ready and willing to give to possession and the buyer shall be ready and willing to pay the price, in exchange of goods.

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, 150 tons 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.

ICAI STUDY MAT.

Q14 **"Delivery of the goods and payment of the price are concurrent conditions"? Enumerate?**

Ans: The section says that unless otherwise agreed the delivery of the goods and payment of the price are concurrent conditions that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of goods.

The general rule is that the obligations of the seller to deliver and that of the buyer to pay are implied concurrent conditions in the nature of mutual conditions precedent, and that neither can enforce that contract against the other without showing performance or offering to perform of averring readiness and willingness to perform his own promise.

This section lays down the rule as regards what are known as reciprocal promises to be simultaneously performed. In such a case no promisor need perform his promise unless the promise is ready and willing to perform his reciprocal promise.

NOV- 1997

Q15 **When the property in the goods passes to the buyer in case of the delivery ofthe goods to the buyer on approval basis?**

Ans: When goods are delivered to the buyer on approval or other similar terms, the properly therein passes to the buyer :

1. When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction, or
2. If he does not signify his approval or acceptance to the seller, but retain the goods without giving notice of rejection then if a time has been fixed for the return of the goods on expiration of such time. If no time has been fixed on expiration of reasonable time.

3. He does something to the good, which is equivalent to accepting the goods .

NOV -1998/ MAY-2001/ 2002

Q.16 **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?**

Ans: **According to Section 24 of the Sales of Goods Act, 1930, in case of delivery of goods on approval basis, the property in goods passes from seller to the buyer:-**

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

(ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in case no time is fixed after the lapse of reasonable time.

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 tables are already accepted by him so the buyer becomes liable under thedoctrine of "Caveat Emptor".

ICAI STUDY MAT.

Q17 **A delivered a horse to B on sale and return basis. The agreement provided that Bshould 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?**

Ans: 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.

ICAI STUDY MAT.

Q18 **A non-owner can convey better title to the bonafide purchaser of goods for value Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of Sales of Goods Act 1930?**

Ans: Subject to provision of the act and any other law for time being in force where goods are sold by person who is not the owner thereof and who does not sell them under authority or with consent of owner , the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller authority to sell.

1. The general rule regarding the transfer of title is seller cannot transfer to buyer of goods a better title than he himself has.
2. If seller is not owner of goods then buyer will not become the owner this rule is expressed in Latin Maxim "Nemodat quod non habet" which means that no one can give what he has not got

JUNE- 2019 / NOV-2020

Q19	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. Das per The Sale of Goods Act, 1930.
Ans:	When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such a request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. Provided 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.
	Thus, in the given case, Mr. D can recover damages from Mr. E and canrepudiate the contract as well.

MAY- 2018

Q20	Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The good were inspected by H's agent and were found to be in order. Later on,' dues of the goods were settled in cash. Just after receiving cash, Mr. asked Mr. H that goods should be taken away from his godown to enable him to store other good purchased by hi. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.
	Referring to the provisions of the sale of goods Act. 1930, analyse the above situation and decide who will be held responsible for the above damages. Will your answer the different. If the dues were not settled in case and still pending?
Ans:	According to the facts of this case it stands pretty much clear to the judgment of an independent observer that the property in the goods sold by Mr. G had already passed to Mr. H after the payment of dues and the examination of goods by the agent of Mr. H. Hence it can be easily concluded that the liability for damage suffered by the goods would fall on the buyer i.e. Mr. H and not Mr. G since the transfer of title of the goods had already taken place before the damage occurred.

NOV- 2018

Q21	State the various essential elements involved in the sale of unascertained goods and its appropriation as per the sale of Goods Act, 1930.
Ans:	
(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 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:
	(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.

MAY-2018 / NOV - 2019

Q22	Ms. R owns a Two-Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the Two-Wheeler from Mr. A. Will she succeed?
(i)	Examine with reference to the provisions of the sale of Goods Act. 1930, what recourse is available to Ms. R?
(ii)	Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

Ans: When the goods are delivered to the buyer on approval or on sale or return basis or other similar terms the property there in passes to the buyer.

(a) When he signifies his approval or acceptance to the seller or does any other actadopting the transaction.

(b) If he does not signify his approval or acceptance to the seller but retains the goods on the expiration of such time, if no time has been fixed, then on the expiration of the reasonable time.

(c) He does something to the goods which is equivalent to accepting the goods. But sometimes, it may be noted that where goods have been delivered by a person on 'Sale or return' on the terms that the goods well to remain the property of the sellers till they are paid for, the property therein does not pass to the buyer until the terms are complied with i.e. cash in paid for In the given case Mr. R Owns a two-wheeler which she handed over to her friend MSK on sale or return basis. After a week MSK neither returned the vehicle nor made payment for it. She instead pledge the vehicle to Mrs. A to obtain a loan.

(i) Thus, according to this case Mr. R has no right against Mr. A. He can only recover the price of the two wheeler from Mr. K.

(ii) Yes, my answer will be different if it had been expressly provided that the vehicle would remain the property of Mr. R until the price has been paid then it says that at the time of pledge the ownership was not transferred to Mr. K. Thus, the pledge was not valid and R can recover from the two wheeler from A as well.

NOV- 2020

Q.23 Mr. I was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?

(ii) What is the remedy available to Mr. M?

JAN- 2021

Ans: Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans."

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

Here in the given problem, Mr. M went to Mr. T's shop and asked for exhaust fan and approved a particular brand and paid for it. The fan which was delivered at M's house was a table fan. So, he asked Mr. T to exchange the same but Mr. T refused to do so.

Conclusion: Applying the above legal provision is the given problem we can conclude as follows:

(1) Mr. T is not right he can't refuse to exchange the fan as the goods are not according to description. Buyer has asked for exhaust fan and seller has supplied table fan condition as to description is breached.

(2) Remedy available to Mr. M- Mr. M can repudiate / rescind the contract i.e. he can return the table fan and ask for damages or both.

Q24 Avyukt purchased 100 Kgs of wheat from Bhaskar at `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.

Ans: 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.

JUN- 2023

Q25 **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?**

Ans: **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.

JUN- 2023

Q26 **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?**

Ans: **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.

MTP

CHAPTER- 1

SALES OF GOODS ACT, 1930

UNIT - 4

UNPAID SELLER

Unpaid Seller

Meaning of Unpaid Seller.

In a Contract of Sale, if Seller is under obligation to deliver Goods, buyer has to pay for it.

In Case buyer fails/ Refuses to pay, the Seller is Unpaid seller

According to Section 45(1)

The Seller of Goods is deemed to be an "Unpaid Seller" when :-

(a) the whole of Price has not been paid (or) tendered and the Seller had an Immediate Right of action for the price

(b) 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

↳ dishonour of Instrument (or) otherwise.

Meaning of Seller [Section 45(2)]

Seller includes any person who is in position of a Seller For Instance — An agent of seller to whom Bill of lading has been Endorsed OR Consignor/Agent who has himself paid OR Consignor/Agent who is directly Responsible for price

Right of an Unpaid Seller

- **Against Goods**
  - Property in Goods has passed to the Buyer
    - Lien
    - Stoppage in Transit
    - Resale
  - Property in Goods has NOT passed to the Buyer
    - Withholding Delivery
    - Lien
    - Stoppage in Transit
    - Resale
- **Against the Buyer**
  - Suit for Price
  - Suit for damages
  - Suit for Interest.

Right of Unpaid Seller Against the Goods.

The Unpaid Seller has the following Rights agains the Goods.

- Sellers Lien [Section 47]
- Stoppage in Transit [Section 50 to 52]
  - Section 50 → Right of Stoppage in Transit
  - Section 51 → Duration of Transit
  - Section 52 → How Stoppage of Transit is affected.

Other Relevant Sections

Section 48 → Part Delivery

Section 49 → Termination of Lien

Sellers Lien [Section - 47]

Rights of Lien

An unpaid Seller has right of lien on Goods for the price while he is in possession
↳ Until tender (or) Payment of Price of such Goods.

It is the Right to retain the possession of Goods and Refusal to deliver them to the buyer
→ until the price due in Respect of them is paid (or) tendered

DON'T FORGET

The Unpaid Sellers lien is a possessory lien ie
→ 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

- When Goods have been sold without any Stipulation of Credit
- OR
- When Goods have been sold on Credit but the terms of Credit has Expired.
- OR
- When the buyer becomes Insolvent

DON'T FORGET

Seller May Exercise his Right of lien even where he is in Possession of Goods as Agent (or) Bailee for the buyer

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 as to show an agreement to waive the lien.

What do you Mean by Insolument

A Person is said to be Insolvent 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"

Termination of Lien

- Where he delivers the Goods to a Carriere (or) other bailee for purpose of transmission to buyer without Reserving Right of disposal of Goods
- Where buyer (or) his Agent lawfully obtain possession of Goods
- Where Seller has waived Right of lien.
- By Estoppel, where the Seller so Conducts himself that he leads third party to belive that the lien does not Exist.

Exception → The Unpaid Seller of the Goods, having a lien thereon, does not loose his lien by Reason only that he has obtained a decree for the price of the Goods.

Example → "A" sold Car to "B" for Rs 1100.000 and delivered the same to the Railways for the purpose of transmission to the buyer. Railway Receipt was taken in the Name of B and sent to B. Now "A" Cannot exercise the Right of lien.

Right of Stoppage in Transit [Section 50 to 52]

Meaning of Right of Stoppage in Transit [Section 50]

Right of Stoppage in transit means
↳ the right of stopping goods, while they are in transit to regain the Possession and to retain them till the full price is paid.

When unpaid seller has parted with goods to a Carriere and the buyer has become insolvent, he can excercise the right of asking the Carriere
- to return the goods back (or)
- not to deliver the goods to buyer

- This is extension of Right of lien because
  - it entitles the seller to regain possession even when the seller has parted with possession of goods.

Right of Stoppage in transit is exercised only when the following Conditions are fulfilled

- The Seller must be unpaid
- He must have parted with Possession of goods
- The Goods are in transit
- The buyer has become insolvent
- The right is subject to Provisions of the act.

Example → "A" of Mumbai sold Certain Goods to "B" of Delhi. He delivered the Goods to "C" [a Common Carrier], for purpose of transmission of these Goods to "B". Before the Goods could Reach B, B became Insolvent. A Can stop the Goods in transit by giving a notice it to "C".

Duration of Transit [Section 51]

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 in that behalf takes delivery of them from such Carrier (OR) 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 Following Cases :-

- When the [Buyer (or) Bailee] obtains Delivery.
- Buyer obtains delivery before the arrival of Goods at destination It is also called "Interception by the buyer"
  - ↳ which Can be with (or) without the Consent of the Carrier.
- If the Carrier wrong fully Refuses to deliver Goods to Buyer.
- Where the Carrier (or) the bailee acknowledges to the buyer (or) his Agent
  - ↳ as soon as the Goods are loaded on ship, [Unless the seller has Reserved the Right of disposal of Goods]
- Where the Goods are delivered to the Carrier hired by the buyer, the transit Comes to an end.
- Where part of Delivery of the Goods has been Made to buyer, the transit will Comes to an end for Remainning Goods.
- Where the Goods are delivered to a ship Chartered by buyer, the transit Comes to an end.

How Stoppage in transit is effected
Section - 52

- The unpaid seller may exercise his right of stoppage in transit by
  - Taking actual Possession of Goods
  - By giving notice of his claim to the Carrier
  - by giving notice to other bailee in whose possession goods are
- Such notice shall be given to [Person in actual possession of goods (or) his principal
- If notice is given to principal, the notice to become effectual shall be given at such time and in such circumstances
  - ↳ that principal by exercise of reasonable deligence may Communicate to servant/his agent in time to prevent delivery to buyer.

When the notice of Stoppage in transit is given by [Seller (or) Other bailee] in possession of the Goods

he shall Re deliver the Goods to Seller (or) According to directions of the Seller.

Expenses of Such delivery shall be born by Seller

Distinction between Right of Lien and Right of Stoppage in Transit.

Right of Lien	Right of Stoppage in Transit
The Essence of Right of lien is to Retain Possession	Right of Stoppage in transit is Right to Regain Possession
Seller should be Under Possession of Goods to Exercise Lien.	Condition 1 → Seller should have parted with Possession. Condition 2 → Possession should be with Carrier Condition 3 → Buyer has not Acquired Possession
It Can be exercised even when buyer is not Insolvent.	It Can be Exercised when buyer is Insolvent.
It is starting point of Right of Stoppage in transit.	It Begins when Right of lien ends
Right of lien Comes to an end as soon as the Goods Go out of Possession of Seller.	Right of Stoppage in transit Comes to an end as soon as Goods are delivered to the buyer.

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 Principle that

↓

"A Second Buyer Cannot stand in a better position than his seller" [The First Buyer]

The Right of stoppage is defeated if the buyer has transfered document of title (or) Pledges the Goods Sub-buyer in Good faith and for Consideration.

Example → "A" Sold Certain Goods to "B" of Mumbai and the Goods are handed over to Railways for transmission to "B". B sold Goods to C for Consideration. "B" becomes Insolvent. "A" Can still exercise his right of Stoppage in Transit.

Exceptions where Unpaid Seller's Right of Lien and Stoppage in transit are Defeated [Proviso to Section 53]

(a) When the Seller has Assented to the [Sale, / Mortgage (or) / Other disposition of Goods] Made by the buyer

(b) Where a Document of title to Goods has been transfered to buyer and the buyer transfers the document to a person who has bought Goods in Good faith and for Price

↓

then Proviso to Subsection (1) Stipulates as follows

↓

If the last Mentioned transfer is by way of Sale

↓

Right of lien (or) Stoppage in transit is defeated.

If the last Mentioned transfer is by way of Pledge

↓

Right of lien (or) Stoppage in transit be exercised

↓

Subject to the Rights of the Pledgee.

Point to be Noted. [Subsection 2]	The Pledgee May be Required by the Unpaid Seller to Use in the first Instance ↓ Other Goods Securities of the Pledger available to him to satisfy Claims

Effect of Stoppage

- The Contract of Sale is not Rescinded when the Seller Execises 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]

In the Absence of this Right, the Unpaid Sellers other Rights against the Goods [Lien and Stoppage in Transit], would not have been Much Use because these Rights only Entitled the Unpaid Seller to Retain the Goods
→ Until paid by the buyer.

Unpaid Seller Can Exercise the Right to Resell the Goods Under the Following Conditions

(i) Where the are of Perishable Nature

In Such a Case, the buyer need not be informed of the Intention of Resale

(ii) Where he Gives Notice to the buyer of his Intention to Re-Sell the Goods

If after Receipt of such Notice, the buyer fails within a Reasonable time to pay, (or) tender the price
→ the Seller May Resell the Goods.

Sellers Entitled on Resale of Goods	(a) Recover the difference between (Contract Price → Resale Price) from Original buyer as damages (b) Retain the Profit if Resale Price higher then Contract Price.

Points to be Remembered	• If the Goods are Resold by Seller without giving notice to buyer, the Seller Cannot Recover the loss suffered on Resale. • If there is Profit on Resale, he Must Return to Original Buyer [ie he Cannot keep Surplus with him] [Section 54(2)]

(iii) Where an Unpaid Seller who has Exercised his Right of lien (or) Stoppage in Transit Resell the Goods

The Subsequent buyer acquires the Good title thereof as against Original buyer
→ despite the Fact that the notice of Re-Sale has not been given by Seller to Original Buyer.

(iv) A Re-Sale by Seller where a Right of Resale is Expressely Reserved in a Contract of Sale

Sometimes, it is Expressly Agreed between the Selle and buyer that in Case buyer Makes default in payment of the Price,
→ the Seller will Resell the Goods to s Some other Person.

DON'T FORGET

The Seller is not Required to give notice of Resale

Seller is not Requiered to Recovere damages from Original buyere even if notice Given

(V) When the Property in Goods has not Passed to the buyer

The Unpaid Seller has in addition to his Remedies a right of withholding of the Goods.

- This Right is Similar to lien and is called "Quasi - Lien"

Rights of Unpaid Seller Against the Buyer [Section 55 to 61]

Rights of Unpaid Seller Against the Buyer Personally

An unpaid seller can enforce certain rights against the
- Goods
- as well as buyer personally

Rights of Unpaid Seller against the buyer are otherwise known as
↓
"Sellers Remedies for breach of Contract of Sale"

Rights of Seller against the buyer personally are called
↓
"Rights in Personam"

They are in addition to his Rights against the Goods.

Right Against the Buyer

- Suit for Price
- Suit for Damages for Non-Acceptance
- Repudiation of Contract before Due Date
- Suit for Interest

1. Suit for Price [Section - 55]

[Section 55(1)] Where under Contract of Sale, the property in Goods has passed to the buyer and the buyer wrongfully Refuses (or) Neglects to pay for Goods, according to terms of Contract
→ the Seller May Sue him for the price of the Goods.

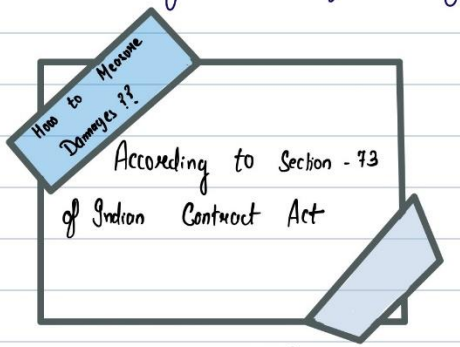
This is the Case of Contract of Sale

[Section 55(2)] Where under Contract of Sale, the Price is payable on Certain day, Irrespective of delivery
and
the buyer wrongfully Refuses (or) Neglects 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.

This is the Case of Agreement to Sell

2. Suit for Damages for Non-Acceptance [Section 56]

Where the buyer wrongfully Neglects (or) Refuses to Accept and pay for the Goods
→ the Seller May Sue him for damages for Non-Acceptance



3. Repudiation of Contract before Due Date [Section - 60]

Where the Buyer Repudiates the Contract but before the date of delivery
→ the Seller May treat the Contract as Rescinded and sue damages for the breach.

This Rule is known as
↓
Rule of Anticipatory Breach of Contract.

4. Suit for Interest [Section 61]

When there is Specific Agreement between the Seller and the buyer as to Interest on price of Goods
→ From the date on which payment becomes due.
then Seller May Recover Interest from the buyer

When there is no Specific Agreement
→ the Seller May Charge Interest on price when it becomes due from such day
→ as he May notify to the buyer.

note to self:

In the Absence of a Contract to Contrary, the Court May award Interest to Seller in Suit by him at such Rate as it thinks fit on the amount of price

- from the date of the tender of the Goods
- OR
- from the date on which the Price was payable

Remedies of Buyer against Seller

When is Breach of Contract by Seller

- Breach of Contract by Seller where he → Fails to deliver Goods at the time (or) in Manner Prescribed.
- Breach of Contract by Seller where he → Repudiates the Contract.
- Breach of Contract by Seller where he → Deliver Non-Conforming Goods and buyer Rejects and Revokes Acceptance.

Rights of Buyer.

If the Seller Commits a breach of Contract, the buyer gets the following Rights against the Seller :—

Rights of Buyer	
	• Damages for Non-Delivery • Suit for Specific Performance • Suit for breach of Warranty • Suit for Anticipatory breach • Suit for Interest.

1. Damages for Non-Delivery [Section 57]

Where the seller [Wrongfully Neglects (or) Refuses] to deliver the Goods to buyer → the buyer May Sue Seller for Damages of Non-delivery

Example → king shoes agreed to sell 100 pair of shoes to Queen shoes at the Rate Rs 1050 per pair. king shoes knew that Queen shoes was to further sale at Rs 1100 per pair. king shoes failed to deliver. Now Queen shoes Can Recover Rs 50 per pair.

2. Suit For Specific Performance [Section 58]

- Where the Seller Commits breach of Contract of Sale, the buyer Can appeal to the Court for specific Performance
- The Court Can Order for specific Performance only when Goods are [Ascertained (or) Specific.]

Court Will Allow Remedies on these Conditions

① The Contract Must be for the sale of Specific and Ascertained Goods.

② The Power of the Court to order specific performance is subject to Provision of
→ "Specific Relief Act 1963"

③ It empowers the court to order Specific performance where damages would not be an Adequate Remedy.

④ It will be granted as Remedy if Goods are of
- Special Nature (or)
- Unique.

3. Suit for Breach of Warranty. [Section 59]

- Where there is breach of Warranty on the part of the Seller (or) Where the buyer elects to treat Breach of Condition as breach of Warranty

the buyer is not entitled to Reject the Goods only on basis of such breach of Warranty But he May

- Setup against the Seller breach of Warranl in diminution Price
- Sue the Seller for damages for breach Warranty

4. Repudiation of Contract before due date [Section 60]

Where either party to Contract of sale Repudiates the Contract before date of delivery,

- the other May either treat the Contract as Subsisting and wait till date of delivery.
- OR.
- He May treat the Contract as Rescinded and Sue for damages for the breach.

5. Suit for Interest

- Nothing is this Act shall effect the Right of Seller (or) Buyer

- To Recover interest or special damage, in any Case where interest or special damage may be recoverable
- to recover money paid where the Consideration for payment of it has failed.

In the Absence of a Contract to 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 Refund of price in Case of breach of Contract on part of Seller
- From the date on which the payment was Made

Example → In Case of Sale of Cigarettes which turned out to be Unfit for Consumption

↓

damages are awarded on the basis of difference between

Contract Price **and** Price Released.

Auction Sale [Section 64]

What is Meant by Auction Sale??

- An Auction Sale is Mode of Selling property by Inviting bids publically and property is sold to highest bidder.
- An Auctioneer is an Agent governed by Law of Agency.
- When he Sells, he is only Agent of the Seller.

Legal Rules for Auction Sale

(a) <u>When Goods are Sold in lots</u>

When Goods are put up for sale in lots, each lot is prima facie deemed to be subject of Seperate Contract of Sale.

(b) <u>Completion of the Contract of Sale</u>

The Sale is Complete when auctioneer announces its Completion by Fall of hammer (or) any other Customary Manner } and Until such Announcement is Made any bidder May Retract from his bid.

(c) Right to Bid May be Reserved

Right to Bid May be Reserved expressely by (or) on behalf of the Seller and where such Right is Expressely Reserved
→ the Seller (or) any person on his behalf May bid at 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
- Employ any person to bid at such sale
- For Auctioneer knowingly to take any bid from the Seller.

and any Sale Contravening this Rule May be treated as Fraudelent by buyer.

(e) Reserved Price

The Sale May be notified to be subject to

- Reserve (or)
- Upset Price

(f) Pretended Bidding

If the Seller Makes Use of Pretended bidding to Raise the price
→ the sale is Voidable at the option of the buyer.

Inclusion of Increased (or) Decreased Taxes in Contract of Sale [Section 64A]

Where after a Contract has been Made but before it has been performed, tax Revision takes place.

Where tax is being
- Imposed
- Increased
- Decreased
- Remitted

in Respect of any Goods without any stipulations to the payment of tax

the parties would become entitled to Read just the price of Goods Accordingly.

Following taxes are applied on the Sale (or) Purchase of Goods

- Any duty of Custom (or) Excise on Goods
- Any tax on sale (or) purchase of Goods.

Points to be Remembered.

① The buyer have to pay the Increase price where tax Increases

② The buyer have to pay the decreased price where tax decreases

③ Seller May add Increased taxes in price.

- The effect of Provision Can however is excluded by an Agreement to Contrary.
- It is open to the parties to stipulate anything Regard to taxation.

Q1 State with reasons whether the following statement is Correct or Incorrect:

(a) An unpaid seller who is in possession of goods sold, can exercise the right of lien even when the property has passed to the buyer

Ans: **The Statement is Correct:** According to Sec. 47(2) of the Sale of Goods Act, the seller may exercise his right of lien notwithstanding that he is in possession of goods as agent or bailee of the buyer. Hence Unpaid Seller can exercise right of Lien even when the buyer is the owner of the goods.

NOV- 1999

(b) (i) A seller can never bid at an auction sale.

(ii) An unpaid seller can exercise the right of stoppage of goods in transit if the buyer becomes insolvent.

Ans:

(i) **The Statement is Incorrect:** Right to bid may be reserved expressely by or on behalf of seller and where such right is expreselly reserved , the seller or any person oh his behalf may bid at auction.

(ii) **The statement is Correct:** when the buyer of goods becomes insolvement the unpaid seller who has parted with possession of goods, he has a right of stopping them in transit.

MAY- 1995

(c) When goods are delivered to the buyer and he refuses to accept them, he is not bound to return the goods to the seller.

Ans: **The statement is Correct:** Section 43 of the Sale of Goods Act clearly provides that where goods are delivered to the buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient the intimates to the seller that he refuses to accept them.

NOV- 1996

(d) "The right of lion by an unpaid seller can be exercised for the nonpayment of price ofgoods and other charges"

Ans: **Incorrect:** The unpaid seller is given right of lien' over the goods, only in case of non-receipt of the price of goods and not for any other charges.

MAY- 1997

(e) (i) In an auction sale, goods to be auctioned can be put for sale in lots.

(ii) Right of lien' and right to stoppage the goods in transit may beexercised simultaneously by an unpaid seller.

Ans:

(i) **The statement is Correct:** Section 64 of the Sale of Goods Act, 1932 provides that in the auction sale where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) **The Statement is Incorrect:** Right of lien is exercisable as long as the seller is in possession of goods, whereas right of Stoppage in transit is exercisable as long as the goods are passing through channels of communication for the purpose of reaching in the hands of the vendor.

NOV- 1997

(f) (i) After completion of the sale in an auction, the property in the goods and the risk of the loss caused in an accident to the auctioned property therein, is transferred to the bidder.

(ii) Where the goods are of perishable nature the unpaid seller re-sellthe goods without any notice to the buyer.

Ans:

(i) **The statement is Correct:** Section 26 of the Sale of Goods Act, 1930 lays down that unless otherwise agreed, the goods remains at the seller's risk until the property therein is transferred to the buyer. When property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Therefore, the property in the

goods and risk of loss thereof has been passed to the bidder and the buyer has to bear the loss.

(ii) **The Statement is Incorrect:** According to Section 53(2) and (3) of the sale of GoodsAct, 1930, a unpaid seller should give a notice to the buyer of hisIntention to re-sell the goods. However, in respect of perishable goods no such noticeappears to be compulsory.

MAY- 1998

(g) "In an auction sale, seller or any other person on his behalf may bid at the auction"

Ans: **Correct:** A bid can be made provided such a right is expressly reserved by the seller. According to Section 64(3) of the Sale Of Goods Act, 1930, in the case of a sale by auction, a right of bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions herein after contained bid at the auction.

NOV- 1998

(h) "Right of lien is linked with the possession of goods"

Ans: **Correct:** The unpaid seller has a lien on the goods, for the price, while he is in possession of goods, until the payment or the tender of the price. A lien is a right to retain possession of goods, until payment of the price.

MAY- 2000

(i) "In an auction sale, a bid once made connote be withdrawn by the bidder"

Ans: **Incorrect:** The bidder can withdraw his bid any time before the fall of the hammer i.e. Completion of sale.

NOV- 2000

(j) "A seller of goods shall be called an 'Unpaid seller' even when a part payment of theprice of goods sold has been made to him by a buyer"

Ans: **Correct:** According to Section 45 (1) of Sale of Goods Act, 1930 a seller of goods is deemed to be an unpaid seller when the whole of the price has not been paid. Hence to seller shall be called an unpaid seller even when a part payment of the price of goods has been made.

MAY- 2002

(k) "In an auction sale, seller or any other person on his behalf may bid at the auction, if such a right is expressly reserved"

Ans: **Correct:** According to Section 4(3) of the Sale Of Goods Act, 1930 in an Agreement to sell the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled. Hence the property in the goods does not pass to the buyer immediately.

NOV- 2002

Q2 When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?

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

(i) The goods have been sold without any stipulation as to credit;

(ii) The goods have been sold on credit, but the term of credit has expired;

(iii) 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 losses his right of lien thereon-
(i)	When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
(ii)	When the buyer or his agent lawfully obtains possession of the goods;
	Yes, he can exercise his right of lien even after he has obtained a decree for the price of goods from the court.

ICAI STUDY MAT.

Q3	What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale of Goods Act, 1930?
Ans:	If the seller commits a breach of contract, the buyer gets the following rights against the seller:
1.	**Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2.	**Suit for specific performance (Section 58):** Where the seller commits 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.
3.	**Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
	(i)set up against the seller the breach of warranty in diminution or extinction of the price or
	(ii)sue the seller for damages for breach of warranty.
4.	**Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date ofdelivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
5.	**Suit for interest:** Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
	In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

RTP

Q4	Mr. D sold some goods to Mr. E for Rs. 5, 00,000 on 15 days credit. Mr. D delivered the goods. On due date, Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930.
Ans:	**Position of Mr. D:** Mr. D sold some goods to Mr. E for Rs. 5, 00,000 on 15 dayscredit.Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
	Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannotexercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:
(i)	**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.

(ii) **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.

(iii) **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.

ICAI STUDY MAT.

Q5 **Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paidRs. 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.**

Ans: **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**

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

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

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.

RTP

Q6 **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?**

Ans: **Right of stoppage of goods in transit:** The Case Discussed 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:-

(i) The seller must be unpaid

(ii) He must have parted with the possession of goods

(iii) The goods must be in transit

(iv) The buyer must have become insolvent

(v) The right is subject to the provisions of the Act.

ICAI STUDY MAT.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100bales of cloth sent by railway as these goods are still in transit.

Q7 **Rachit arranges an auction to sale an antic wall clock. Megha, being one of thebidders, 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?**

Ans: 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.

RTP

Q8 **Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 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. Advice Suraj as to what remedy is available to him against Sohan.**

Ans: **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:**

(i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods.

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

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.

ICAI STUDY MAT.

Q9 **A agrees to sell certain goods to B on a certain date on 10 days credit. The periodof 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?**

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

Section 47(1) of the Sales of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in thefollowing 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.

ICAI STUDY MAT.

Q10	**Who in an unpaid seller'? Discuss briefly his rights under the Sale of Goods Act.**
Ans:	**Meaning of an Unpaid Seller** The seller of goods is deemed to be an 'Unpaid Seller' when:
(a)	The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price
(b)	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 dishonor of instrument or otherwise.
	Rights of an Unpaid Seller:
(i)	**Against Goods** :Property in goods has passed to the buyer lien,stoppage in transit resale. Property in goods has not passed to the buyer withholding delivery, lien , stoppage in transit, resale.
(ii)	**Against the Buyer** :
	Suit for price ,
	Suit for damages,
	Suit for interest.
	Rights of an unpaid seller against the goods: The unpaid seller has the following rights against the goods
1.	**Right Of Lien (Sec. 47):** He 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.
	This right of lion can be exercised by him in the following cases only:
(a)	Where gods have been sold without any stipulation of credit
(b)	Where goods have been sold on credit but the term of credit has expired, or
(c)	Where the buyer becomes insolvent.

MTP / NOV- 1994

	However, the unpaid seller loses his right of lien under the following circumstances:
	(i)When he delivers the goods to a carrier or other bailee for the purpose oftransmission to the buyer without reserving the right of disposal of the goods.
	(ii)Where the buyer or his agent lawfully obtains possession of the goods.
	(iii)Where seller has waived the right of lion.
	(iv)By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lion does not exist
2.	**Right Of Stoppage in Transit:** When the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of goods has the right of dropping them in transit.
	In other words, seller may resume possession of goods as long as they are in course of transit and may retain them until paid or tendered price of the goods.
3.	**Right of re-sale:In the absence of this right ,the unpaid seller other** rights against the goods , would not have been much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.
Q11	**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 RailwayAuthorities 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?**
Ans.	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.

In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent. According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

ICAI STUDY MAT.

Q12 J sold a machine to K. K gave a cheque for the payment. The cheque was dishonored. But J handed over a delivery order to K. K sold the goods to R onthe basis of the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provision of the Sale of Goods Act, 1930?

Ans: 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:-

When the buyer has made the transaction with the consent of the seller
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.

ICAI STUDY MAT.

Q13. Describe the law relating to the "right of resale" available to an unpaid seller in the Sales of Goods Act, 1930.

Ans: **Right of resale:** This right of resale available to an unpaid seller may be described as follows:-

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 receipt of such notice , the buyer fails within a reasonable time to pay or tender the price the seller may resell the goods.
3. **Where an unpaid seller who has exercised his right of lion or stoppage in transit resells the goods:** The buyer acquires the good title thereofas against the original buyer, despite the fact that the notice of resale 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 contractof sale:** Sometimes, it is expressly agreed between the seller and buyer that in case buyer makes default in payment of the price, the seller will resell the goods to some other person.

MAY- 1996

Q14 **Discuss the remedies available to seller against the buyer in case of breach of contract of sale.**

Ans: **Remedies available to the seller against the buyer:** Following remedies are available to the seller against the buyer in case of the breach of contract of sale:

(i) **Suit for price:** Where under contract of sale, the property in goods has passed to the buyer and the buyer wrongfully refuses or neglects to pay for goods, according to terms of contract the seller may sue him for the price of the goods.

(ii) **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.

MAY- 1998

Q15 **What do you Mean by Stoppage in transit?**

Ans: **Right Of Stoppage in Transit:** When the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of goods has the right of dropping them in transit.

In other words, seller may resume possession of goods as long as they are in course of transit and may retain them until paid or tendered price of the goods.

Example : "A" of Mumbai sold certain goods to "B" of Delhi. He delivered the goods to "C" ,for purpose of transmission of these goods to "B" . Before the goods could reach B , "B" becomes insolvent . "A" can stop the goods in transit by giving a notice it to "C".

MTP / NOV- 1999

Q16 **State the provisions given under Sale Of Goods Act relating to "Auction Sale".**

Ans: **The provisions given under Sale Of Goods Act relating to Auction Sale:**

(a) **When goods are sold in lots:** When goods are put up for sale in lots, each lot is prima facie deemed tobe subject matter of a separate contract of sale.

(b) **Completion of the Contract of Sale:** **The sale is complete when the** auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

(c) **Right to Bid May Be Reserved :** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, 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 the right of the seller 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 and any sale contravening the 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. Upset Price is the Minimum Price at which seller is willing to sell

(f) **Pretended Bidding:** If the seller makes use of pretended bidding to raise the price, the sale if voidable at the option of the buyer.

May -2000/ Nov-2002/ Jan-2021

Q17	AB sold 500 bags of wheat to CD. Each bag contains 50 Kilograms of wheat. AB sent 450 bags by road transport and CD himself took remaining 50 bags. Before CD receives delivery of 450 bags sent by road transport, he becomes bankrupt. AB being still unpaid, stops the bags in transit. The official receiver, on CD's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.
Ans:	**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, CD, the buyer becomes insolvent, and 450 bags are in transit. AB, the seller, can stop the goods in transit by giving a notice of it to CD. The official receiver, on CD's insolvency cannot claim the bags.

DEC- 2021

CHAPTER - 2

THE COMPANIES ACT, 2013

Introduction

Old Act ↓
The Companies Act 1956

New Act ↓
The Companies Act, 2013

Contents of Act

Companies Act have
- # 470 Sections
- # 7 Schedules
- # Divided into 29 Chapters

Why Companies Act. 2013

- Companies Act 2013 Aims to Improve Corporate Governance
- Simplify Regulations
- Strengthen the Interest of Minority Investor

Applicability of Companies Act, 2013

The Provision of the Act shall apply to :-

- Companies Incorporated under [this Act / Under any Previous Company Law.
- Insurance Companies [Except whether the provision of said Act are Inconsistent with Provisions of
  - Insurance Act, 1938
  - IRDA Act, 1999
- Banking Companies [Except whether the provision of said Act are Inconsistent with Provisions of Banking Regulation Act, 1949]
- Companies engaged in the Generation (or) Supply of Electricity [Except whether the provision of said Act are Inconsistent with Provisions of Electricity Act, 2003]
- Any other Company Governed by any Special Act for the time being in force.
- Such body Corporate which are Incorporated by any Act for time being in force and
  - as Central Government May by Notification Specify in this behalf.

Meaning of Company
Section - 2(20)

According to Section 2(20) of the Companies Act 2013, Company Means a Company

- Incorporated Under this Act
- OR
- Under any Previous Company Law.

Features of a Company

- Separate Legal Entity
- Perpetual Succession
- Limited Liability
- Artificial Judicial Person
- Common Seal.

I Separate Legal Entity

- Where a Company is Registered, it is clothed with a legal Personality. Company have almost the same Rights and Powers as a human being.

- Company Existence is distinct and Seperate from that of its Members

- A Company Can
  - Own Property
  - Have Bank Account
  - Raise Loans
  - Incur Liabilities
  - Enter into Contracts.

- A Company is at law
  → a person which is different from the subscribers to Memorandum of Association.

- Even Members Can Contract with Company, acquire the Right against it (or) Incur liability to it.

note to self:
For the debts of Company only its Creditors Can Sue it and not its Members

Case Law → Macaura v/s Northern Assurance Co. Ltd (1925)

CASE LAW

Macaura (M) was the holder of Nearly all [Except one] share of timber Company. He was also a Major Creditor of Company M Insured Company timber in its own Name. Timber was lost in Fire. M claimed Insurance Compensation. Insurance Company was not liable to him as no shareholder has Right in Property of Company

II Perpetual Succession

- Members May die (or) change
  → but the Company goes on till it is wound up on the Grounds specified by the Act.

- The shares of the company May change hands infinitely but that does not affect existence of Company.

- Since a Company is an Artificial Person Created by Law, Law alone Can bring end to its life.

Example → There was a Company which has 7 Members and all of them died in an Aircraft, Despite this Company still Exists

III Limited Liability

The Liability of Member depends upon the kind of Company in which he is Member

Limited Liability Company

The liability of the Members of Company is limited to
- Extent of Nominal Value of shares held by them. [ie Amount unpaid on shares]

- In No Case the shareholder be asked to pay anything More then Unpaid Value.

Company Limited by Guarantee

When Company Goes into liquidation Members are liable only to the extent of Amount Guaranted by them.

Unlimited Company

The liability of Members is Unlimited.

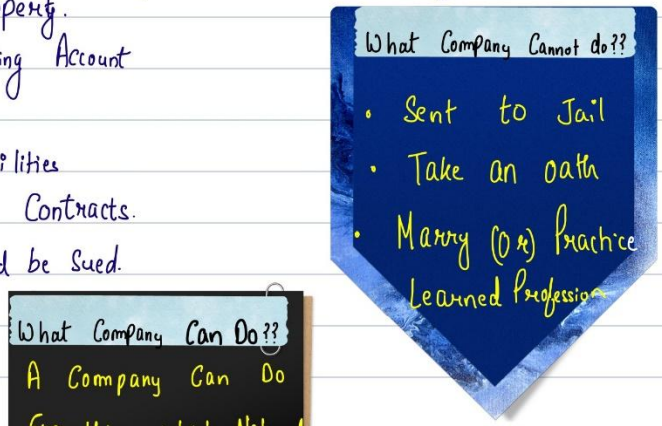
IV Artifical Legal Person.

- A Company is an Artificial Person as it is Created by a Process
  - other than Natural Birth.

- A Company is a person, since it is Clothed with all Rights of Individual.

- It is [Legal (or) Judicial] as it is Created by Law.

The Company being Seperate Legal Entity Can
- Own Property.
- have banking Account
- Raise loan
- Incur liabilities
- Enter into Contracts.
- Can Sue and be Sued.



- The Company is an Artificial Person, it can act only through some Human Agency ie Directors.

- Directors Cannot Control affairs of the Company and Acts as Agency [Agent of Company]
  - but not Agents of Members of Company.

- The Director Can either
  - on their own
  - through Common Seal

  } Can authenticate its formal Acts

- Thus a Company is called an Artificial Legal Person.

V Common Seal

- The Common Seal is a Seal used by Corporation as the symbol of its Incorporation.

- Common Seal is the official Signature of a Company, which is affixed by officers and employee of the Company on its every document.

- According to The Companies [Ammendment] Act, 2015
  - It is optional for a Company to have Common Seal.

Who Can Give Authorization

if Company do not have Common Seal

Company has appointed Company Secretary	Company has NOT appointed Company Secretary
↓	↓
Authorisation shall be made by 2 directors	Authorisation shall be made by a director and Company Secretary.

Corporate Veil Theory

Corporate Veil refers to a legal concept where by the Company is Identified separately from the Members & the Company.

Meaning of Corporate Veil

The term Corporate Veil refers to the Concept that Members of Company are shielded from the liability Connected to Company's Action

- If Company Incurs any debts (or) Contravenes any law, the Corporate Veil Concept Implies that
  - → Members should not be liable for those Errors. ie they enjoy "Corporate Insulation"
- The shareholders are protected from the Acts of the Company.

Salomon v/s Salomon and Co. Ltd.

CASE LAW

The Salomon v/s Salomon and Co. Ltd laid down the foundation of the Concept of
- Corporate Veil
- (OR)
- Independent Corporate Personality.

In Salomon v/s Salomon & Co. Ltd, it was laid that a Company is a person distinct and separate from its Members.

- In this case one Salomon incorporated a Company named Salomon Co. ltd with Seven Subscribers including
  - Himself
  - His Wife
  - Four Sons
  - One Daughter
- This Company took over the Personal business Assets of Mr. Salomon £ 38 782 and in turn, Salomon took
  - 20,000 shares of £1 each
  - Debentures worth £ 10,000 of Company.
  - Balance in Cash.
- His Wife, Daughter and four Sons took One £1 share each.
- Subsequently the Company went into liquidation due to General trade depression.
- The Unsecured Creditors to the tune of £ 7000, Contended that Salomon Could not be treated as Secured Creditor of Company in Respect of debenture held by him.

- As Salomon was the Managing Director of one-Man Company, which was not different from Salomon
  ↓
  and the cloak of Company was a Mere sham and Fraud.

Conclusion by Lord Mac Naughten

The Company is at law a different Person altogether from the subscribers to Memorandum and

though it May be that after Incorporation the business is precisely the same it was before

and

the same persons are Managers and the same hands Received the profit

} the Company is NOT in law the Agent of the subscribers (or) trustees for them.

- Nor are the subscribers, as Members
  ↳ liable, in any shape (or) Form, except to extent and in the Manner provided by the Act.

Meaning of "Lifting the Veil"

Lifting the Veil Means, looking behind the Company as a Legal Person
↓
ie Dis Regarding the Corporate Entity and paying Regard instead to
↳ the Realities behind legal facade.

When Corporate Veil be lifted

Where the Court Ignore the Company and Concern themselves directly with

Members (or) Managers

↓

the Corporate Veil May be said to be lifted.

Only in appropriate Circumstances, the Court are willing to lift the Corporate Veil and that too

↓

when Question of Control are Involved Rather then Merely a Question of Ownership.

Lifting of Corporate Veil

Following are the Cases where Company Law disregards the Principle of Corporate Personality

1. To Determine the character of the Company ie to find out whether Co-Enemy or Friend

Daimler Co Ltd v/s Continental Tyre and Rubber Company

CASE LAW

The Leading Case in this point is, if the public Interest is not likely in jeopardy, the Court May not be willing to Crack Corporate shell

→ But it May Rend [Pick] the Veil for ascertaining whether the Company is an enemy Company.

Enemy Company

A Company May be Characterised as an enemy Company, if its affairs are under Control of People of an enemy Country.

For this purpose Court May Examine the Character of Person who are Really at helm of affairs of Company

2. To Protect Revenue/Tax

S. Berdensen Ltd v/s Commissioner of Inland Revenue

CASE LAW

In Certain Matters Concerning the law of { taxes, duties, Stamps } Particularly when Questio of Controlling Interest is in Issue.

Juggilal v/s Commissioner of Income Tax

CASE LAW

When Corporate Entity is Used to Evade (or) Circumvent tax, the Court Can disregard the Corporate Entity

Dinsha Manekjee Petit

CASE LAW

The Asessee earned huge Income by way of dividend and Interest So he opened some Companies and purchase their share in Exchange of his Income by way of dividend and Interest.

↓

The Income was transferred back to Assessee by way of loan

↓

The Court decided that the Private Companies were a sham and the Corporate Veil was lifted to decide the Real Owner of Income.

3. To Avoid Legal obligation

Where it is found that the sole purpose for the formation of the Company was to Use
↳ it was a device to Reduce the Amount paid by way of Bonus to Workmen
↓
the Supreme Court upheld the piercing of the Veil to look at Real transaction.

4. Formation of Subsidaries to Act as Agents.

A Company May Sometimes be Regarded as an Agent (or) trustee of its Members or of another Company.
↳ and May therefore be deemed to have lost its Individuality of its Principal.

Here the Principal will be held liable for acts of Company

Merchandise Transport Limited v/s British Transport Comission [1962]

A Transport Company wanted to obtain licences for its Vehicles, but could not do if Applied in its own Name.

It therefore Formed a Subsidary Company and Application for licence was Made in name of Subsidary. The Vehicle were transferred to the Subsidary Company. Held the Parent and the Subsidary were one Commercial Unit and the Application For licence was Rejected.

CASE LAW

5. Company Formed For
- Fraud
- Improper Conduct
- To Defeat Law.

Where the device of Incorporation is adopted for Some Illegal (or) Improper Purpose

CASE LAW
Gilford Motor Co. v/s Horne.

Example →
- To Defeat Law
- To Defraud Creditors
- To Avoid legal obligation

Classification of Company

I On the basis of Liability
- Company limited by shares
- Company limited by Guarantee
- Unlimited Company

II On the Basis of Members
- One Person Company
- Private Company
- Public Company

III On the Basis of Control
- Holding and Subsidiary Company
- Associate Company

IV On the basis of Access to Capital
- Listed Company
- Unlisted Company

V Other Companies
- Government Companies
- Foreign Company
- Nidhi Company
- Dormant Company
- Public financial Institution
- Formation of Company for Charitable objects

I On the Basis of Liability

Company Limited by shares | Company Limited by Guarantee | Unlimited Company

I(a) Company Limited by Shares Section 2(22)

Section 2(22) of Companies Act 2013, defines that when the liability of the Members of Company is

↓

"limited by Memorandum of Association [MoA] to the Amount [if any] Unpaid on shares held by them" it is known as Company Limited by shares.

Points to be Noted.

- Shareholder is a Co-owner of Company, he is not Co-owner of the Company's Asset.
- The Ownership of Assets Remains with the Company, because of its Nature as Legal Person.
- The Extent of Rights and Duties of a Shareholder as Coowner is Measured by his shareholdings.

I (b) Company Limited by Guarantee Section 2(21)

Section 2(21) of Companies Act 2013, defines it as a Company having the liability of its Members limited by Memorandum to such Amount as the Members May
→ Respectively Undertake by Memorandum to Contribute to the Assets in the event of its being wound up.

Common Features of Guarantee Company and Company Having share Capital

- Both the Companies have Legal Personality and Limited liability.
- Both Companies have to State in Memorandum that Members liability is limited

Guarantee Company v/s Company Having Share Capital

Guarantee Company	Company Having Share Capital
• Members may be called upon to discharge these liability only after after Commencement of winding up and Subjected to Certain Conditions	• They may be called upon to do so at any time [Either during life time [Or during its winding up

CASE LAW — **Narendra Kumar Agarwal v/s Saroj Maloo**

- The Supreme Court has laid down that the Right of Guarantee Company to Refuse to Accept the transfer of Members Interest is on different Footing than that of Company limited by shares. Membership of Guarantee Company May Carry Privileges Much different to those of Ordinary Shareholders

I (c) Unlimited Company Section 2(92)

Section 2(92) of Companies Act 2013, defines Unlimited Company as a Company not having any limit on the liability of Members

- In such a Company, the liability of a Member ceases when → he ceases to be Remember.

note to self:

Liability is not Unlimited till the time Company is not wound up. Members Can be Called to Contribute only in the event of winding up of Company

note to self:

- Liability of Each Member extends to Amount of Company Debts & Liabilities
- However he Can claim from other Members

II On the Basis of Members

One Person Company. | Private Company | Public Company.

II (a) One Person Company

Section 2(62) of Companies Act 2013, defines one Person Company as Company which has → only Person as Member.

- OPC has been Introduced to encourage Entrepreneurship and Corporatization of business.

Section 3(1)(c) → OPC is Private Limited Company with Minimum paid up share Capital [as Prescribed] and having one member.

ABOUT "OPC"

- Only One Person as Member
- Minimum Paid up Capital → No limit Prescribed.

Other Person.

- The Memorandum of OPC shall Indicate "the Name of other Person", who shall in the event of { Subscribers death (or) his Incapacity to Contract } become the Member of the Company.
- The "other Person" whose Name is given in the Memorandum shall give his Prior written Consent and shall be filed with Registrar at the time of Incorporation
- Such other Person May be given the Right to withdraw Consent
- The Member of OPC May at any time Change the Name of such other Person by giving Notice to Company and Company shall Intimate to Registrar.
- Any such Change in the Name of Person shall not be deemed to be an Alteration of the Memorandum.

ABOUT "OPC"

Member of OPC

- Only a Natural Person who is an Indian Citizen whether Resident in India (or) otherwise
  - Eligible to Incorporate OPC
  - a Nominee for Sole Member of OPC

Resident Meaning
Person who stayed in India for a period of not less then 120 days during Immediately Preceeding F.Y.

- No Person shall be Eligible to
  - Incorporate More then One Person Company. (OR) Become Nominee in More then One such Company

- No Minor shall become Member (or) Nominee of the OPC (or) Can hold share with beneficial Interest.

What OPC Cannot Do?

- Such Company Cannot be Incorporated (OR) Converted into a Company under Section 8 of the Act.
  - → Though OPC Can be Converted to Private (or) Public Companies in Certain Cases

- Such Company Cannot Carry out
  - → Non Banking Financial Investment Activity [including Investment in Securities of any body Corporate]

ABOUT "OPC"

Penalty Provisions.

If One Person Company (or) Any officer of such Company } Contravens the Provision, they shall be punishable with Fine

- which May Extend to 10,000 Rs and
- Further fine which May Extend to 1000 Rs for Every day [after the First day during which such Contravention Continues]

II (b) Private Company Section 2(68)

Private Company Means a Company having a Minimum paid up share Capital [as May be Prescribed] and which by its articles

- Restricts the Right to transfer its shares
- Limits the Number of Member to 200 [Except in OPC]
- Prohibits any Invitation to the public to subscribe for any Securities of the Company.

Who are not Included in Members?

(a) Persons who are in the employment of Company

and

(b) Persons who have been formerly in the employment of Company

↓

were Members of the Company while that in employment and Continued to be Member after the employment Ceased.

Joint Member/ Single Member

When two or More Person held shares in a Company Jointly

↓

they shall be treated as Single Member

Crux of Private Company

- No Minimum Paid up Capital Requirement
- Minimum Members → 2
  [In Case of OPC Minimum Member - 1]
- Maximum Number of Member → 200
  Excluding — Present Employee Cum Members
  Erstwhile Employee Cum Members
- Right of transfer of shares → Restricted
- Prohibition on Invitation to subscribe to Securities of the Company.
- OPC Can be formed only as Private Company.

DON'T FORGET

Small Company is always a Private Company.

SMALL COMPANY

Section 2(85)

Small Company Means a Company other then a public Company

Paid up share Capital

Paid up share Capital of which does not Exceed
- Rs 4 Crore (or)
- Such Higher as May Amount be prescribed

Higher Amount Prescribed which shall not be More then 10 Crore Rs.

and

Turnover

Turnover as per Profit/Loss Account for Immediately Preceeding F.Y. does not exceed
- Rs 40 Crore
- Such Higher as May Amount be prescribed

Higher Amount Prescribed which shall not be More then 100 Crore Rs.

- This clause shall not apply to
  - A Holding Co.
  - A Subsidiary Co.
  - Company Registered u/s 8
  - A Company (or) Body Corporate Governed by Special Act.

II (c) Public Company
Sec - 2(71)

Public Company Means a Company which

- is not Private Company and
- has Minimum paid up share Capital [as May be Prescribed]

A Company which is Subsidiary of Company [Not being Private Company] ↓ Shall be deemed to be Public Company, even when such Subsidiary is a Private Co. through Articles.

Crux of Public Company

- Shares are Freely transferable.
- No Minimum paid up Capital Requirement

- Minimum No. of Members → 7.
- Maximum No. of Members → No Limit.
- Subsidiary of Public is deemed to be public Company.

III on the basis of Control

- III (a) Holding and Subsidary Company
- III (b) Associate Company.

III (a) Holding and subsidary Company.

Subsidiary Company Section 2(87)

Subsidiary Company in Relation to any other Company [ie Holding Company] Means a Company in which holding Company

- Controls the Composition of Board of directors
- Exercise (or) Controls More then half of total Voting Power either at its own (or) together with one (or) More Subsidiary Company.

Holding Company Section 2(46)

A Company is holding Company in Relation to one or More other Companies

↓

Means a Company of which other Company are Subsidiary Company.

note to self:

Provided that such class (or) classes of Holding Company as May be prescribed shall not have Layers of subsidaries beyond such Numbers as May be Prescribed

Example → Infosys will be subsidiary of Reliance if Reliance Controls Composition of Board of director ie Reliance [without Approval of Others] May appoint / Remove Majority of director of Infosys.

Example → Infosys will be Subsidiary of Reliance, if Reliance holds More then 50% of the share Capital of Infosys.

Private Company which is subsidiary to Public Company.

According to Section 2(71), a private Company which is subsidiary of public Company shall be deemed to be public Company for the purpose of this Act.

↓

Even where such subsidiary Company is Private Company in its articles

III (b) Associate Company. Section-2(6)

In Relation to another Company, Means a Company in which that other Company has Significant Influence
↳ but which is not a subsidiary Company
of Company having such Influence
and
Includes Joint Venture Company.

Significant Influence

The term Significant Influence Means

Control of atleast 20% of total Voting Power **OR** Control of (or) participation in business decision under Agreement

Joint Venture

Joint Venture Means Joint Agreement where by the parties that have Joint Control of the Arrangement
↳ have Rights to the Net Assets of the Arrangement

Total Share Capital

Total Share Capital Means Aggregate of the
- Paid up Equity share Capital
- Convertible Preference share Capital

note to self:

MCA has clarified that shares held by Company in another Company in a fiduciary Relationship shall not be Counted for purpose of determining Associate Company.

Example→ A Ltd is a public Company and holds 23% shares in B Ltd and 15% share in C Ltd. Now B Ltd will be Associate of A ltd and C ltd will not be Associate of A Ltd [as holding is less then 20% and also no Significant Influence]

IV On the Basis of Access to Capital

- Listed Company
- Unlisted Company.

IV (A) Listed Company. Section 2(52)

Listed Company is a Company which has any of its securities listed on any Recognised Stock Exchange.

IV (B) Unlisted Company.

Unlisted Company Means a Company other then listed Company.

Example→ Scan Steel Rods Ltd is a public limited Company whose shares are listed in the Stock Exchange Kolkata. Hence now the Company is a listed Company. The Reason for Calling it "Listed" because the [Company / Stock Exchange] have Signed a listing Agreement for trading in shares in the Capital Market

V Other Companies

- Government Company
- Nidhi Company
- Dormant Company
- Formation of Company with Charitable objectives [Section 8]
- Foreign Company
- Public financial Institution

V (a) Government Company Section - 2(45)

Government Company Means any Company in which not less then 51% of paid up share Capital is held by

- Central Government
- OR
- State Government/ Governments
- OR
- Partly by Central Government and partly by one or More state Government.

note to self:
Paid up share Capital shall be Construed as
↓
Total Voting Power

V (b) Foreign Company. Section - 2(42)

It Means any Company (or) Body Corporate incorporated outside India which

- has a place of business in India whether
  - Itself (or) through an Agent
    - Physically (or) through Electronic Mode.
- and
- Conducts any business Activity in India in any other Manner.

V (c) Nidhi Companies Section - 406(1)

Nidhi Companies (or) Mutual Benefit Society, Means a Company, which Central Government May by Notification in the official Gazette
↳ declare to be
- Nidhi (or)
- Mutual Benefit Society.

V(d) Dormant Company [Section - 455]

Where a Company is formed and Registered under this act for

- A Future Project OR To hold an Asset or Intellectual property

AND

has No Significant accounting transactions

Inactive Company

May make an application to registrar in such manner as may be prescribed to obtain status of dormant Company.

Meaning of Inactive Company	Meaning of Significant Accounting Transaction

Inactive Company means a Company
- which has not been carrying any business or operation
- has not made any significant accounting transaction during last two financial year
- has not filed
  - Financial Statement
  AND
  - Annual Return
during last two financial years
	Significant accounting transactions means any transactions other then
	- Payment of fees by Company
	- Payment made by it to fulfill requirements of this act
	- Allotment of shares
	- Payment for Maintainence of its office and Records.

V (e) Public Financial Institution Section 2(72)

The following Institutions are to be Regarded as Public Financial Institutions :-

- the Life Insurance Corporation of India
  - Established under LIC, Act 1956.
- the Infrastructure Development Finance Company Limited.
- Specified Company referred to in
  - Unit Trust of India [Transfer of Undertaking and Repeal] Act, 2002
- Institution notified by CG under Section 4A(2) of the Companies Act, 1956
  - So Repealed under Section 465 of this Act.
- Such other Institutions as May be notified by Central Government
  - in Consultation with Reserve Bank of India.

Conditions for an Institution to be notified as PFI

No Institution shall be notified Unless :-

(a) It has been Established (or) Constituted by (or) under any Central (or) State Act
  - other then this Act (or) Previous Co. Laws

(b) Not less then 51% of paid up share Capital is held (or) Control by

Central Government	State Government (or) Governments	Partly by Central Government and partly by One (or) More State Govt.

II (f) Formation of Company with charitable objects [Section - 8 Company]

Section 8 of The Companies Act, 2013 deals with Formation of Companies which are formed to

↓

- Promote the Charitable objects of

Commerce, Arts, Science, Sports, Education, Research, Social Welfare, Charity, Religion, Protection of Environment.

Such Company Intends to apply its Profit in
- Promoting its objects and
- Prohibiting the Payment of dividend to its Members.

Power of CG to Issue the License

Section 8 allows Central Government to Register such Person (or) Association of Person as a Company with Limited Liability without the addition of words "Limited" (or) "Private Limited" to its name

↓

by Issuing Licence on such Condition as it deems fit.

The Registrar shall on application Register such Persons (or) Association of Person as a Company under this Section.

On Registration
→ the Company shall enjoy same privileges and obligations as of a limited Company.

Revocation of License

The Central Government May by Order Revoke the License of Company where :-

- the Company Contravens any of the Requirements (or) Conditions of this Section Subjected to which a license is Issued

OR

- Where the affairs of the Company are
  - Conducted Fraudulently
  - Violative of the objects of the Company
  - Prejudicial to public Interest

note to self:
On Revocation the Registrar shall put "Limited" (or) "Private Limited" against Company name in Registrar

Before Revocation, CG Must give Written notice and opportunity to be heard

Order of the Central Government

Where a License is Revoked there the CG May, in the public Interest Order that

↓

Company Registered under this section should be Amalgamated with another Company, Registered under this Section having Similar objects, to form Single Company with such

- Constitution
- Properties
- Power
- Rights
- Interest
- Authority
- Privileges

and with such liabilities, duties and obligations as May be specified in Order

(OR)

the Company May be wound up.

Penalty / Punishment in Contravention

If a Company Makes any default in Complying with any of the Requirements laid down in this Section [Sec-8 Companies]

↓

Company shall be punishable with fine Varying from

↓

Ten lakh Rupees to One Crore Rupees

Director and Every officer of Company who is in default shall be punishable with

↓

Fine which shall not be less than 25000 Rs but which Extend to Rs 25,00,000

DON'T FORGET

Where it is proved that the affairs of Company were Conducted fraulently

→ Every officer in default Shall be liable for action u/s 447 which deals with fraud

Points to Remember About Section - 8 Company

- Requirements of Minimum share Capital do not apply.
- Need not Use word Ltd/ Pvt. Ltd.
- On Revocation, CG May direct it to,
  - Converts its Status and Change its Name
  - Wind up
  - Amalgamate with Another Company having Similar object.
- Can Call its General Meeting by giving a Clear 14 days Notice
  - → Instead of 21 days
- Requirement of Minimum No. of directors, Independent directors do not apply.
- Need not Constitute
  - Nomination and Renemuration Committe
  - Shareholders Relationship Committee
- A Partnership Firm Can be Member of Section 8 Company.

PROMOTERS Section 2(69)

Promoter Means a Person

- Who has been named as such in Prospectus (or) is Identified by Company in the Annual Return reffered in Section - 92
- OR
- who has Control Over the affairs of the Company directly / Indirectly whether as
  - Shareholder
  - Director
  - Otherwise.
- OR
- in Accordance with whose
  - Advise
  - Directions
  - Instructions

  → the Board of directors is Accustomed to Act.

Formation of Company Section - 3

Public Company

7 (or) More Person Can Form Public Co by Subscribing there Names to Memorandum

Private Company.

2 (or) More Person Can Form Public Co by Subscribing there Names to Memorandum

One Person Can Form One Person Company.

Incorporation of Company Section - 7

Section 7 of Companies Act 2013, Provides for Procedure to be followed for Incorporation of a Company.

. The Procedure is a 7 Step Procedure.

Step 1:- Filing of Documents and Information with the Registrar

Step-2 Issue of Certificate of Incorporation on Registration

Step-3 Allotment of Corporate Identity Number [CIN]

Step-4. Maintainence of Copies of all Documents and Information.

Step-5 Furnishing of False (or) Incorrect Information (or) Supression of Material Fact at the time of Incorporation.

Step-6 → Company Already Incorporated by Furnishing any False, Incorrect Information (or) Representation (or) by Supressing any Material Fact [ie Post Incorporation]

Step-7 → Order of Tribunal

Step 1:- Filing of Documents and Information with the Registrar

For the Registration of the Company following documents and Information are Requiered to be filed with Registrar within whose jurisdiction, the Registered office of the Company is proposed to be situated :-

→ The Memorandum and Articles of the Company duly Signed by all Subscribers to Memorandum.

→ A declration by

- Person who is engaged in the Formation of the Company ie by
  - An Advocate
  - A Chartered Accountant
  - Cost Accountant
  - OR
  - Company Secretary

  in practice.

  and

- By Person Named in Articles
  - Director of Company
  - Manager of Company (OR)
  - Secretary of Company.

that all the Requirements of this Act and Rules Made there under in Respect of Registration and Matter Precedent (or) Incidental thereto have been Compiled with.

→ A declaration from Each of the Subscribers to Memorandum and from Person named as first director [if any], in the Articles Stating that :-

(a) he is not Convicted of any offence in Connection with
- Promotion (or)
- Formation (or)
- Management of Company.

OR

(b) he has not been found Guilty of
- any Fraud (or)
- Misfeasance (or)
- any breach of duty

to any Company under this Act (or) any previous Company Law during the Last 5 Years.

(c) And all the Documents filed with the Registrar for Registration of Company
↳ Contain information that is Correct and Complete and true to best of his knowledge and belief

→ The Address for Correspondence, till its Registered office is established

→ The Particulars [Names, Surnames, Residential Address, Nationality] of every subscribers to Memorandum along with Proof of Identity and
↳ in Case of subscribers being body Corporate, such particulars as May be prescribed.

→ The Particulars [Names, Surnames, Residential Address, Director Identification Number, Nationality]
↓
of other Person Mentioned in Articles as Subscribers to Memorandum and such other particulars (including Proof of Identity] as May be prescribed.

→ The Particulars of the Interests of the Person Mentioned in the Articles
↳ as the first director of the Company in other Firms (or) Body Corporate
↓
along with their Consent to act as director of Company in such Manner and Form as May be Prescribed.

Step-2 Issue of Certificate of Incorporation on Registration

The Registrar on the basis of Documents and Information filed, shall Register all the Documents and Information in the Register
→ and Issue Certificate of Incorporation in the prescribed Form to the effect that the proposed Company is Incorporated under this Act.

Step-3 Allotment of Corporate Identity Number [CIN]

On and From the date Mentioned in Certificate of Incorporation, Registrar shall Allot to Company a
→ "Corporate Identity Number", which shall be distinct Identity for the Company and which also be included in the Certificate.

Step-4. Maintainence of Copies of all Documents and Information.

The Company shall Maintain and Preserve at its Registered office copies of all documents and Information as Originally filed
→ till its dissolution under this Act.

Step-5 Furnishing of False (or) Incorrect Information (or) Supression of Material Fact at the time of Incorporation.

If any Person
- Furnishes any false/Incorrect particulars of any Information
- (OR)
- Suppression of Material Information of which he is aware

↓

in any of the documents filed with Registrar in Relation to the Registration of a Company

↓

he shall be liable for action of fraud under Section-447

Step-6 → Company Already Incorporated by Furnishing any False, Incorrect Information (or) Representation (or) by Supressing any Material Fact: [ie Post Incorporation]

Where at any time after Incorporation of the Company it is proved that

→ the Company has been Incorporated by

→ Furnishing any false (or) Incorrect Information (or) Representation (or)
→ by Supressing any Material Fact (or) Information.

↓

in any of Documents Filed (or) Made for Incorporating such Company (or) by any Fraudelent Action

↓

- the Promoters
- the Person named as First Director
- the Person Making declaration under this Section

} Shall each be liable for action for fraud under section 447.

Step-7 Order of Tribunal.

Where a Company has been got incorporated by
- furnishing false information
- furnishing Incorrect information/representation
- supressing any material fact/information

} in any of the documents or declaration filed or made for incorporating such Company (or) by fraudlent action

the Tribunal may
- on application made by it (OR)
- being satisfied that the situation so warrants

Pass such orders as it may think fit, for the regulation of management of Company including Changes (if any) in its memorandum and articles in public interest or in interest of the Company and its members and Creditors	Direct that liability of Members shall be unlimited.	Direct removal of the name of Company from Register of Companies.	Pass an order for the winding up of the Company.	Pass such other orders as may deem fit.

SPICe

Full Form → Simplified Proforma for incorporating Company electronically.

MCA has simplified the process of filing & forms for incorporation of Company through SPICe

Effect Of Registration [Section - 9]

According to Section-9, from date of incorporation [Mentioned in Certificate of incorporation], the subscribers to Memorandum and all other persons who become members from time to time, become members of Company.

Such registered Company shall be capable of

- Exercising all the functions of an incorporated Company
- Having Perpetual Succession
- Power to hold, acquire, dispose of both Movable/ Immovable/ Tangible/ Intangible
- To Contract
- Can Sue and Can be Sued.

CASE LAW

Hari Nagar Sugar Mills Ltd v/s S.S. Jhunjhun wala

From the date of incorporation mentioned in certificate, the Company becomes a legal person seperate from incorporators and there comes into existence a binding Contract between Company and members as evidenced by MOA and AOA

CASE LAW

State Trading Corporation of India v/s Commercial Tax officer

A legal personality emerges from the moment of Registration of Company and from that moment the person subscribing to MOA and other person joining as members are regarded as body Corporate or Corporation in aggregate and legal person begins to function as entity.

A Company on registration acquire seperate existence and the law recognises it as legal person seperate and distinct from its members.

CASE LAW

Spencer and Co. Ltd. Madras v/s CWT Madras

It may be noted that under the provisions of the act, a Company purchases shares of another Company and thus becoming a controlling Company However merely because a Company purchases all shares of another Company, it will not serve as a means of putting an end to Corporate character of another Company and each Company is seperate juristic entity

CASE LAW

Heavy Electrical Union v/s State of Bihar

The Mere fact that entire share capital has been contributed by Central Government and all its shares are held by President of India and other officers of Central Government does not make any difference in position of Registered Companies and it does not make Company an agent of either
- President (or)
- Central Government.

Effects of Memorandum and Articles

As per Section- 10 of Companies Act 2013, Where Memorandum and Articles were registered
↓
Shall bind the Company and Members thereof to the same extent as if they were respectively had been signed by Company and each member and by each member and an Agreement to observe all Provisions of Memorandum and Articles

All Monies payble by any Member to the Company under the memorandum (or) Articles shall be debt due from him.

Classification of Capital

☞ In Relation to Company limited by shares
↳ the word Capital Means "Share Capital"
↓
ie the Capital (or) figure in terms of so many Rupees divided into shares by Fixed Amount.

☞ In other words, the Contributions of persons to Common stock of Company from the Capital of the Company.

☞ The Proportion of Capital to which each Member is entitled, is his share.

- Authorised Capital
- Issued Capital
- Subscribed Capital
- Called up Capital
- Paid up Capital

Authorised Capital Section 2(8)

Also known as ↓ Nominal Capital

Also known as ↓ Registered Capital

- It Means such Capital as is Authorised by Memorandum of Company to be Maximum Amount of share Capital of Company.

- It is the Sum stated in the Memorandum as the Capital of Company with which it is to be Registered
  - ↳ being the Maximum Amount which it is Authorise to Raise by Issuing Shares
    - ↓ and upon which it pays "Stamp Duty"

- It is Usually Fixed at the Amount, which it is estimated the Company will need
  - ↳ including
    - Working Capital and
    - Reserve Capital [if any]

Issued Capital Section 2 (50)

Issued Capital Means such Capital as the Company Issues from time to time for subscription.

- It is that part of Authorised Capital which Means such Capital as Company Issues from time to time for subscription and Includes
  - ↳ the shares Allotted for Consideration other then Cash.

Schedule III of Companies Act Makes it obligatory for Company to disclose its Issued Capital in Balance Sheet.

Subscribed Capital Section 2(86)

Such Part of Capital which is for time being subscribed by Members of a Company.

- It is the Nominal Amount of shares taken up by public.

- Where any
  - Notice
  - Advertisment
  - other official Communication
  - Any business letter
  - Bill Head or letter paper

  of Company states Authorised Capital ↓ Subscribed, Paid up Capital Must also be stated in equal Conspicuous Characters.

Penalty Provisions [Section 60]

Default in this Regard will Make Company and Every officer who is in default to pay penalty.

Called up Capital Section 2(15)

- Called up Capital as such part of the Capital, which has been called for Payment.
- It is the total Amount called up on the shares Issued.

Paid up Capital

- Paid up Capital is the total Amount → Paid (or) Credited } as paid up on shares Issued.

note to self:

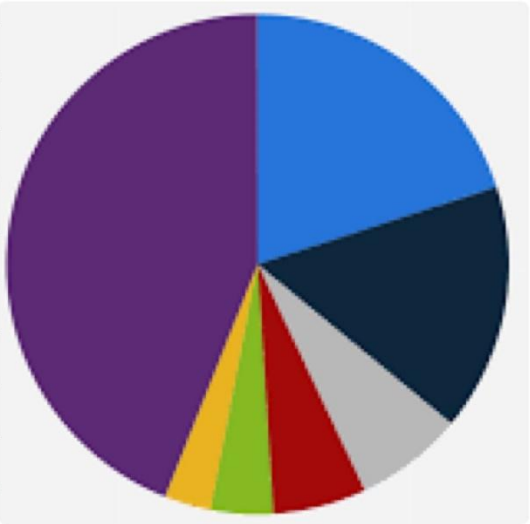
Called up Capital
(-) Calls in Arrears
Paid up Capital

SHARES

Meaning of Shares Section 2(84)

Section 2(84) of the Companies Act, 2013 defines the term share which Means
→ a share in share Capital of Company and Includes Stock

- A share thus Represents such portion of Interest of the Shareholder → as the Amount paid up thereon bears to the Capital payable to the Company.
- It is a Measure of the Interest in Company Assets → to which a person holding a share is entitled.



Points to Remember about "Shares"

Shares are a Movable Property Section-44

According to Section 44 of Companies Act 2013

[the Shares / Debentures / Other Interest] of any Member in a Company shall be Movable property transferable in the Manner provided by Articles of the Company.

Shares Shall be Numbered [Section-45]

- Every share in Company having a share Capital, shall be distinguished by its distinctive Number [Every share shall be Numbered]

Section 45 shall not apply to Shares held by Person whose Name is entered as holder of Beneficial Interest
↓
in Records of Depository.

Kinds of Share Capital

- Equity share Capital
  - With Uniform Voting Rights
  - Without Uniform Voting Rights
- Prefrence Share Capital

According to Section 43, the share Capital of a Company limited by shares shall be of two Kinds Namely

- Equity shares
- Prefrence shares

Equity shares
- With Voting Rights
- With Differential Right as to
  - Dividend
  - Voting Rights
  - Otherwise

in Accordance with Prescribed Rules.

Equity share Capital

Equity share Capital with refrence to any Company limited by shares Means
↳ all share Capital which is not Prefrence Share Capital

Prefrence share Capital

Prefrence share Capital with Refrence to any Company limited by shares, Means that part of Issued share Capital of the Company which Carries (or) would carry a Prefrential Right with Respect to

Payment of Dividend

- Either as Fixed Amount
  (OR)
- An Amount Calculated at Fixed Rate which either May be
  - Free
  - Subject to Income Tax.

Repayment

- Repayment in Case of winding up (or) Repayment of Capital
  ↓
  of the Amount of the share Capital paid up (or) deemed to have been paid up
  ↓
  Whether (or) not, there is preferential Right to payment of any Fixed premium (or) premium of any Fixed scale, Specified in Memorandum (or) Articles of Company

When Capital shall be deemed to be Prefrence Capital

Capital shall be deemed to be prefrence Capital, despite that it is entitled to either (or) both of following Rights

In Respect of Dividend

That in Respect of dividend, in addition to prefrential Rights to the amount specified above
↓
it has Right to Participate whether fully (or) to limited Extent, with Capital not entitled
→ to the Prefrential Right aforesaid.

In Respect of Capital

That in Respect of Capital, in addition to prefrential Right to Repayment on winding up
↓
it has Right to participate whether fully or to limited Extent, with Capital not entitled to that prefrential Right
↓
in any Surplus which May Remain after the entire Capital has been Repaid.

note to self:
Section 43 shall not apply to Private Companies where Memorandum (or) Articles of Private Company so Provides

Memorandum of Association

Meaning of Memorandum of Association.

- The Memorandum of Association of Company is infact its charter.

- It defines its Constitution and Scope of the Powers of the Company with which it has been established Under the Act.

- It is the very Foundation on which the whole edifice of Company is built.

Object of Registering MoA

- It Contains the object for which the Company is formed and therefore it Identifies the possible Scope of its operation beyond which its actions Cannot Go.

- It enabels
  - Shareholders
  - Creditors
  - All those who deal with Company

  to know
  - what its Powers are
  - what Activities it Can Engage in.

- The Shareholders Must know the purposes for which his Money Can be Used by the Company
  → and what Risk he is taking in Making Investments.

DON'T FORGET

- Memorandum of Company is public Document [Section - 399]

- Consequently, every person entering into Contract with the Company is presumed to have knowledge of the Conditions Contained there in.

Section - 4

As per Section 4, Memorandum of a Company shall be drawn up in such Form as given in
→ Table A, B, C, D, E in Schedule I of The Companies Act, 2013.

note to self:

MoA and AoA of a Company Must be as closed to Model forms, depending upon the Circumstances

Table A	Company Limited by shares	Table A is a Form for Memorandum of Association of a Company Limited by Shares.
Table B	Company Limited by Gurantee	Table B, is a form for Memorandum of Association of Company Limited by Gurantee and not having a share Capital.
Table C	Company Limited by Gurantee having share Capital	Table C, is a form for Memorandum of Association of Company Limited by Gurantee and having share Capital.
Table D	Unlimited Company	Table D, is a form for Memorandum of Association of an Unlimited Company.
Table E	Unlimited Company having share Capital.	Table E, is a form for Memorandum of Association of an Unlimited Company having share Capital.

Content of Memorandum

Name Clause

The Name of Company
- with Last Word "Limited" in case of Public Limited Company.
- OR
- the Last Words "Private Limited" in Case of Private Limited Company.

This clause is not applicable on Company Formed under Section 8 of the Act.

The Companies [Incorporation] Rules, 2014

For the Companies Under Section 8, the Names shall Include the Words
- Foundation
- Forum
- Federation
- Chamber
- Confederation
- Council
- Association
- Electoral Trust and like etc.

The Name including phrase "Electoral Trust" May be allowed for Registration of Company to be formed under Section 8 of the act, in accordance with Electoral Trust Scheme, 2013 [Notified by CBDT]

Registered office Clause

The State in which Registered office of Company is to be situated.

Object Clause

The objects for which the Company is proposed to be Incorporated and any Matter Considered Necessary in Furtherance thereof.

Liability Clause

- Company Limited by shares
- Company Limited by Guarantee

Company Limited by shares

- In Case of Company limited by shares, that the liability of its Members is limited to
  - Amount Unpaid [if any], on the shares held by them.

Company Limited by Guarantee

The Amount upto which each Member

- Undertakes to Contribute to the Assets of the Company in the event of its being wound up
  - while he is a Member (or) within one year after he Ceases to be Member
    - For Payment of debts and liabilities of Company or of such debts and liabilities as May have been Contracted before he cease to be a Member as the Case May be
- Undertakes to Contribute to
  - the Costs Charges and Expenses of winding up

and for Adjustment of the Rights of the Contributories among themselves.

Capital Clause

The Amount of Authorized Capital divided into share of Fixed Amounts and the Number of shares
→ with the subscribers to Memorandum have agreed to take [which shall not be less then one share]

- A Company not having share Capital need not have this clause.

Association Clause

The Memorandum shall Conclude with the Association Clause.

- Every subscriber to Memorandum shall take atleast one share
  → and shall write Against his Name, the Number of shares taken by him.

In Case of OPC, the name of Person who, in the event of death of subscriber shall become Member of Company.

Points to Remember About Memorandum

The Memorandum Must be → Printed
→ Divided into Paras
→ Numbered Consequetively

Signing the Memorandum

- It Must be Signed by atleast → Seven Persons [Public Co.]
  → Two Person [Pvt. Co.]
  → One Person [OPC]

It Must be Signed in presence of atleast One witness
→ who will attest the Signatures.

The Particulars about the Signatories to the Memorandum as well as witness as to their → Address, description, Occupation etc } Must also be entered.

It is to be noted that a Company being a Legal person Can through its Agent, Subscribe to Memorandum.

A Minor Cannot be Signatory to Memorandum as he is not Competent to Contract.

- The Guardian of Minor, who subscribes to the Memorandum on his behalf, will be deemed to have subscribed in his Personal Capacity.

The Above clauses of Memorandum are called Compulsory Clauses (or) Memorandum

In addition to these Memorandum Can Contain other Provisions

- The MOA of Company Cannot anything Contrary to the Provision of Companies Act.
- All other document of Company Must Comply with the Provisions of Memorandum.

Doctrine of Ultra Vires

The Meaning of term Ultra Vires is
→ "Beyond their Powers"

- The legal phrase "Ultra Vires" is applicable only to Acts done in Excess of legal Powers of the doers.
- So this presupposes that Powers in their Nature are limited
- It is Fundamental Rule of Company Law that the objects of the Company as stated in Memorandum Can be departed only to Extent Permitted by Act.

Impact of the Doctrine of Ultra Vires

- The Impact is Company Can Neither be Sued on Ultra Vires transaction nor it Can Sue on it.
- Since Memorandum is public Document, it is open to Public Inspection.
- Therefore when one deals with Company, one is deemed to know about powers of the Company

DON'T FORGET
If in spite of this you enter into transaction which is ultra Vires the Company, you Cannot enforce against the Company.

note to self:
An Act which is Ultra Vires the Company, being Void
→ Cannot be Ratified by shareholders of Company

- If the Act is Ultra Vires the Power of director the Shareholder Can Ratify it.
- If it is ultra Vires the Articles of the Company the Company Can alter the Articles
  → if the Act is within the Power of Company but is done Irregularly
  → the Shareholder Can Validate it.

Case Law

Ashbury Railway Carriage and Iron Company Limited v/s Riche- (1875)

Main objects of Company Were :-

- To Make, Sell or Lend on Hire, Railway Carriages and Wagons
- To Carry on the business of Mechanical Engineers and General Contractors
- To Purchase, Lease, Sell and work Mines
- To Purchase and Sell as Merchants / Agents Coal, timber, Metals etc.

The directors of Company entered into with Riche, for Financing Construction of Railway line in Belgium and the Company further Ratified this Act of director by Passing S.R. The Company however Repudiated the Contract as being ultra Vires.

Riche brought a Case for damages for breach of Contract. Contention of Riche was Contract was well within the Meaning of word General Contractors and hence within Powers. Moreover it had been Ratified by Majority of Shareholder.

However it was held by the Court the Contract was Null and Void.

Court said that term General Contractors was associated with Mechanical Engineers, ie it had to Read in Connection with Company's Main business.

If the term General Contractors was not so Intepreted it would authorize Making Contracts of any kind and every description. For Example → Fire and Marine Insurance

Summary of Doctrine of Ultra Vires

When an Act is performed, which though legal in Itself, is not Authorized by the object Clause of Memorandum or by the Statue, it is said to be Ultravires the Company and hence Null and Void.

- An Act which is Ultravires
  ↳ the Company Cannot be ratified even by Unanimous Consent of all the Shareholders
- An Act which is UltraVires the Directors
  ↳ but UltraVires the Company Can be ratified by Members of Company through a Resolution passed at General Meeting.
- If an Act UltraVires the Articles
  ↳ it Can be Ratified by Altering the Articles by Special Resolution at a General Meeting

Articles of Association

The Articles of Association of Company are its Rules and Regulation, which are Framed to Manage its Internal Affairs.

General Functions of the Articles have been Summed up in this Case Law.

CASE LAW

Ashbury Carriage Co. v/s Riches

- The Articles plays a part subsidary to Memorandum of Association
- They Accept the Memorandum as the Charter of Incorporation and so Accepting the Articles
- Article define duties
- Rights and Power of Governing Bodies as between themselves and Company.
- Mode and form in which business of Company has to be Carried.

Contents and Model of Article of Association [Section - 5]

(1) Contains Regulation

- The Articles of Company shall Contain the Regulation for the Management of the Company.

(2) Inclusion of Matters

- Articles shall also Contain such Matters, as are prescribed under the Rules.

- However a Company May also Include such additional Matters in Articles as May be Considered Necessary for Management.

3. Contain Provisions for Entrenchment

- The Articles May Contain Provisions for Entrenchment [to Protect Something] → to the effect that Specified Provisions of Articles May be Altered only if

Conditions / Procedure as that are More Restrective than those applicable in Case of Special Resolution are Met (or) Compiled with.

4. Manner of Inclusion of the Entrenchment Provision :-

The Provision of entrenchment shall be Made either

- On Formation of Company
- OR
- By Ammendment in Articles
  - Agreed by all Members in Case of Private Companies
  - Agreed by Special Resolution in Case of public Company

5. Notice to Registrar of the Entrenchment Provision

- Where the Articles Contain Provisions for Entrenchment whether Made on Formation (or) Ammendment → the Company shall Give notice to the Registrar of such Provision → in such Form and Manner as May be prescribed.

6. Forms of Articles

The Articles of Company shall be in Respective forms Specified in

- Table F
- Table G
- Table H
- Table I
- Table J

as May be Applicable to such Company.

Given under Schedule - I

7. Model Articles

A Company May Adopt

- All (or) Any

of the Regulations Contained in Model Articles of such Company.

8. Company Registered after the Commencement of this Act

- In Case of Company, which is Registered after Commencement of this Act
  - ↳ in so far as the Registered articles of such Company do not exclude/Modify the Regulatio Contained in Model articles applicable to such Company
  - ↓
  - those Regulation so far as applicable be the Regulation of that Company in same Manner and to the Extent
    - ↳ as if they were Contained in duly Registered Articles of Company.

Difference Between MOA v/s AOA

1. Objectives

MOA

MOA defines the objectives of Company

AOA

- AOA lays down the Rules and Regulation of the Internal Management of Company
- Articles define how objectives of Company May be Acheived.

2. Relationship

MOA

Memorandum defines Relationship of the Company with the Outside World.

AOA

Articles define the Relationship between the Company and its Members.

3. Alteration.

MOA

- Memorandum of Association Can be Altered only under Certain Circumstances.
- Permission of Regional Director (or) Tribunal is Requiered.

AOA

- Articles Can be Altered Simply by Passing a Special Resolution.

4. Ultra Vires

MoA	AoA
• Acts done by Company beyond the scope of Memorandum are Ultra Vires and Void	• Acts Ultra Vires the Articles can be Ratified by Special Resolution of the Shareholders ↴ Provided they are not beyond the Provisions of Memorandum.
• These Cannot be Ratified even by Unanimous Consent of all the Shareholders	

Doctrine of Indoor Management

Doctrine Of Constructive Notice

According to Section 399, Any Person by Electronic Means

- Inspect any document kept by Registrar
- Make a Record of Same
- Get a Copy of (OR) Extract of document [Including Certificate of Incorporation]

} on Payment of Prescribed fees.

MoA and AoA of Company when Registered, becomes Public document ↴

as they are Available for Inspection on Payment of Nominal fees.

If Person Enters into Contract, which is beyond the Powers of Company as Given in Memorandum/ Articles ↴

He Cannot Acquire any Right Under the Contract against the Company.

What is Constructive Notice

- Whether a Person Reads a document or not, he is presumed to have knowledge of the Contents of document.
- He is not only Presumed to have Read but also understand them in True Prespective
- Every Person dealing with the Company is also Presumed to have Constructive Notice of all other Related document Filed with Registrar Ex- Special Resolution.

Doctrine Of Indoor Management

- Doctrine of Constructive Notice is no Sense Mean that Outsiderers are deemed to have Notice of Internal Affairs of the Company

Doctrine of Indoor Management is the Exception of Doctrine of Constructive Notice

- Example → If an Act is authorised by Article or Memorandum, an outsider can Assume that all detailed Formalities for doing an Act have been observed ↓

This Can be Explained with the help of Landmark Case The Royal British Bank vls Turquand.

Doctrine of Indoor Management Popularly know as ↓ "Turquand Rule"

Royal British Bank vls Turquand

CASE LAW

Mr Turquand was the official Manager [Liquidator] of Insolvment Company. It was Incorporated under the "Joint Stock Companies Act, 1844."

The Company had Given bond of £2000 to the Royal British Bank, which Secured Company Drawing on its Current A/c. The bond was Under Companies Seal and Signed by 2 directors and the Secretary.

When the Company was sued, it alleged that under a Registered deed of Settlement [Article of Association] directors only had Power to borrow upto an Amount Authorise by Company Resolution. A Resolution was passed but not specifying how Much directors could borrow.

Held that, it was decided that the bond was Valid, So Royal British Bank could enforce the terms. He said the bank was deemed to be aware that directors could borrow only upto the Amount Resolutions is allowed.

AoA was Registered with Companies House, so there was Constructive Notice, But Bank Could not be deemed to know which Ordinary Resolution Passed because these

was not Registrable.

The bond was Valid because there was No Requirement to Look into the Companies Internal Working.

Exception to Doctrine of Indoor Management.

- Actual or Constructive knowledge of Irregularity.
- Suspicion of Irregularity
- Forgery.

Actual (or) Constructive knowledge of Irregularity.

- The Rule does not Protect any Person when the Person dealing with the Company has Notice whether
  - Actual
  - Constructive

} of Irregularity.

Howard v/s Patent Ivory Manufacturing Co.

- Where the directors could not defend, the Issue of debentures to themselves because they should have known the Extent to which they were lending Money to Company
  - → Required the Assent of the General Meeting which they had not obtained.

CASE LAW

Morris v/s Kansseen

- A director could not defend an allotment of shares to him as he participated in the Meeting, which Made the allotment.

CASE LAW

- His Appointment as a director also fell through because none of director appointed him was validly in office.

Suspicion of Irregularity

- The doctrine in no way, Reward those who behave Negligently.
- Where the Person dealing with the Company is put upon an Enquiry, it is duty of outsider to Make Necessary Enquiry.

Example → When transaction is Unusual (or) not in Ordinary Course of business.

Anand Bihari Lal v/s Dinshaw and Co.

Plantiff Accepted a transfer of Companies property from its Accountant and the transfer was held Void.

CASE LAW

Plantiff could not have Supposed, in the Absence of a Power of attoney that the Accountant had authority to effect transfer of Companies Property.

Protection of Turquand Rule is also not Available where the Circumstances Surrounding the Contract are Suspicious ↓ and therefore Invite Enquiry.

Forgery

The Doctrine of Indoor Management applies only to Irregularities which Might otherwise affect the transaction but it Cannot apply to Forgery which Must be Regarded as Nullity.

Forgery May in Circumstance Exclude the Turquand Rule

CASE LAW

Ruben v/s Great Fingall Consolidated

In this case the Plantiff was the transferee of share Certificate issued Under seal of the Defendants Company.

The Company Secretary who has affixed the seal of the Company and Forged the Signature of two directors Issued the Certificate.

The Plantiff Contended that whether the Signature were Genuine (or) forged was part of Internal Management
↳ and therefore the Company should be estopped From Denying Genuineness of the document.

But it was held that the Rule has Never been Extended to Cover such a Complete Forgery.

Q1 Naveen incorporated a "One Person Company" making his sister Navita as the nominee.Navita isleaving India permanently due to her marriage abroad. Dueto this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

(a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One PersonCompany?

Ans:

(a) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as a natural person who is an Indiancitizenand whether resident in India or otherwise and has stayed in India for a period of not less then **120 days** during the immediately preceding financial year shall be a nominee in OPC.

(b) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than **120 days** during the immediately preceding financial year.

Q2 What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act 2013? Mention the conditions of the issue and revocation of the licence of such company by the government

OR

A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31" March, 2018 due to some Favorable policies declared by the Government of India and implemented by thecompany. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

OR

A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from Ist April, 2017 onwards.

However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013. Discuss what powers can be exercised by the central government against ABC club, in such a case?

Ans: **Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to:**

- Promote the charitable objects of commerce, art, science, sports, education,research, social, welfare, religion, charity, protection of environment, etc.
- Such company intends to apply its profits
- Prohibiting its object and
- Prohibiting the payment of nay dividend to it members.

Powers of Central Government to issue license :

(i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'limited or private limited to its name, by issuing Licence on such conditions as it deems fit.

(ii) The registrar shall on an application register such person or association as a company under this section.

(iii) On registration the company shall enjoy same privileges and obligation as of a limited company.

MAY-2019 / NOV-2018 / RTP

Revocation of license:

The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this section subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.

Before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard inthe matter.

On revocation of the licence, the Register shall put 'limited or 'private limited' against the name of the company in its register.

Q3 **"The Memorandum of Association is a charter of a company". Discuss. Alsoexplain in brief the contents of Memorandum of Association.**

Ans. The Memorandum of Association of Company is in fact its charter, it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company it built.

Contents of Memorandum:

(a) **Name Clause:** the name of the company must end with the words "limited" in case of Public Limited Company or "private limited" in case of Private Limited Company

(b) **Registered Office Clause:** The state in which the registered office of the company is situated.

(c) **Object Clause:** **The objects for which the company is proposed to be** incorporated and any matter considered necessary in furtherance therefore, is state in this clause.

(d) **Liability Clause:** The liability of members of the company, whether limited or unlimitedand also states how the liability is limited. Company limited by shares and companylimited by guarantee.

(e) **Capital Clause:** The amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed totake. A company not having share capital need not have this clause.

(f) **Association Clause:** **The Memorandum shall conclude the association** clause. Everysubscriber tothe memorandum shall take at least one share, and shall write againsthis name, thenumber of shares taken by him.

NOV- 2019

Q4 **Examine the following whether they are correct or incorrect along with reasons:**

(a) **A company being an artificial person cannot own property and cannot sue or be sued.**

Ans:

(a) **Incorrect:** A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

RTP/MAY 2020

(b) **A private limited company must have a minimum of two members, while a publiclimited company must have at least seven members.**

Ans: **Correct:**Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names tomemorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

Q5 **Briefly explain the "doctrine of ultravires" under the Companies Act, 2013.What are the consequences of ultravires acts of the company?**

Ans: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company asstated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in lawand is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandumis a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.

ICAI STUDY MAT.

Q6 **Mike Limited Company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis onwhether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act,2013?**

Ans: **Foreign company means any company or body corporate incorporated outside India, which:.**

(a) Has a place of business in India, whether by itself or through agent physically orthrough electronic mode and;

(b) Conduct any business activity in India in any other manner.

According to the given case, Mike Limited Company incorporated in India having liaison office at Singapore.

Thus, as it is incorporated in India it is an Indian Company and not a foreigncompany.

NOV - 2022 / NOV - 2020

Q7 **ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs. 15 Crores and issued Non-Convertible Debentures worth Rs. 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is Rs. 100 Crores and Non-Convertible Debentures stands at Rs. 120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?**

Ans: As per Section 2(6) of the Companies Act, 2013, an Associate Company inrelation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary

company of the company having such influence and includes a joint venture company.

The term "significant influence" means control of at least 20% of total share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the-

(a) Paid-up equity share capital; and

(b)Convertible preference share capital.

In the given case, as ABC Ltd. has allotted equity shares with voting rightstoXYZ Limited of Rs. 15 cr, which is less than requisite control of 20% oftotal share capital (i.e. 100cr) to have a significant influence of XYZ Ltd. Since the said requirement is not complied, therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013. Holding/allotment of non-convertible debentures has no relevance for ascertaining significant influence.

RTP MAY 21/ MAY 2020/ JUNE 2023/ NOV-2020

Q8 **SK Infrastructure Limited has a paid up share capital divided into 6,00,000equity shares of Rs. 100 each. 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.**

Ans: Government Company means any company in which not less than 51% ofthe paid-upshare capital is held by-

(i) The Central Government, or

(ii) By any State Government or Governments, or

(iii) Partly by the Central Government and partly by one or more State Governments, andthe section includes a company which is a subsidiary company of such aGovernmentcompany.

In the instant case, paid up share capital of SK Infrastructure Limited is 6,00,000 equity shares of Rs. 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000which is more than 51% of total paid up equity shares.

Hence, SK Infrastructure Limited is a government company.

RTP/JAN 2021

Q9 **Popular Products Ltd. is company incorporated in India, having a total ShareCapital of 20 Crores. The Share capital comprises of 12 Lakh equity shares of Rs. 100 each and 8 Lakhs Preference Shares of Rs. 100 each. Delight Products Ltd. And happy products Ltd. Hold 2,50,000 and 3,50,000 shares respectively in Popular Products ltd. Another company Cheerful products ltd. holds 2,50,000 shares in Popular Products Ltd.. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products ltd; Cheerful products ltd. Can Jovial Ltd., be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.**

Ans: **A subsidiary company in relation to any other company means a company in which the holding company-**

(i) Controls the composition of the Board of Director, or

(ii) Exercises or controls more than one-half of the total voting power either atits own ortogether with one or more of its subsidiary companies.

A company is holding company in relation to one or more other companies means a company of which other company are subsidiary company.

In the given case Jovial Ltd. is controlling the composition of the Board of Director of Popular Products Ltd. and hence it can be called as Holding Co. of Popular Products Ltd. and Popular Products Ltd., its subsidiary.

MAY-2019

Q10 Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicitcustomers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. Theytook over Dhruv's business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

Ans: It was decided by the court in the case of **Gilford Motor Co. Vs. Horne,** that if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

On considering the decision taken in Gilford Motor Co. Vs. Horne and facts of the problem given, it is very much clear that Seven Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Dhruv and Sunmoon Timber Private Limited. Hence, Seven Stars Timbers Private Limited is just a sham or cloak and separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

RTP

Q11 ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

Directors and their relatives	190
Employees	15
Ex-employees (Shares were allotted when they were employees)	20
others (Including 10 joint holders holding shares jointly in the name of father and son)	20

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion

Ans: "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, (except in case of One Person Company, limits the number of its members to two hundred).

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purpose of this clause, be treated as a single member.

It is further provided that-

(a) Person who are in the employment of the company; and

(b) Persons who, having been formerly in the employment to the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

In the instant case, Total No. of Members of ABC Ltd. will be counted as follow:

1.Directors & their relatives-	190
2.Other (10 couple) (10 x 1) -	10
	200

RTP/JAN 2021

Since No. of member do not exceed 200. Therefore, there is no need for reduction in the number of members.

Q12 NarendraMotors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of Rs. 100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?

Ans: **According to the provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of thepaid-up share capital is held by-**

(i) The Central Government, or

(ii) By any State Government or Governments, or

(iii) Partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

According to Section 2(87), "subsidiary company" in relation to any other company(that is to say the holding company), means a company in which the holding exercises or controls more than one-half of the total voting power either at its own or togetherwith one or more of its subsidiary companies.

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited becauseNarendra Motors Limited is holding more than one-half of the total voting powerin Shah Auto Private Limited.

Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

RTP / DECEMBER 2023/RTP / NOV. 2021

Q13 Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under section 8 or a private company?

Ans: Section 2(62) of companies'act , 2013 defines one person company as company which has only person as member

OPC has been introduced to encourage entrepreneurship and corporatization ofbusiness.

Rules regarding OPC membership :

1. Only a natural person who is an Indian citizen and whether resident in India or otherwise and has stayed in India for a period of not less then **120 days** during the immediately preceding financial year be eligible to incorporate OPC and a nominee for sole member of OPC.
2. No person shall be eligible to incorporate more than one person company or become nominee in more than one such company.
3. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

RTP/MAY 2018

Convrsion of a non-profit company under section 8 or a private company :

Such company cannot be incorporated or converted into a company under section 8 of the act, though OPC can be converted to private or public companies in certain cases.

Q14 **There are cases, where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct fromits shareholders or members. Elucidate.**

Ans. **The cases on the basis of which the principle of Corporate Personality of a company can be disregarded under the Companies Act, 2013 are:**

1. To determine the character of the company i.e. to find out whether company is an enemy or friend:A company may be charactised as an enemy company , if its affairs are under control of people of enemy country. (Case law - Diamler co Ltd vs Continental Tyre and Rubber

Company)

2. To protect revenue / tax: In certain matters concerning the law of taxes duties and stamps particularly where question of the controlling interest is in issue. (Case law –S Berendsen Ltd Vs Commisoner of Inland Revenue)

3. To avoid a legal obligation: Where it was found that the sole purpose for the formation of the Company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the supreme court upheld the piercing of the veil to look at Real Transaction. (Case Law – Workmen of Associated Rubber industry Lts V/s Associated Rubber Industry Ltd)

4. Formation of subsidiaries as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company

5. Company formed for fraud/ improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper, purpose e.g. to defeat or circumvent law, to defraud creditors or to avoid Legal obligations.

NOV- 2018

Q15 **Ravi Private Limited has borrowed 35 crores from Mudra Finance Ltd. Thisdebtis ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?**

OR

ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires. With reference to the same, briefly explain the doctrine of "ultravires" under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

Ans. The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company If you have lent money to the company on such a transaction, you cannot recover itfrom the company. But, if the money has not been expended, then lender may bring an injunction order on the Co. to stop it from parting from it. This is because companydoes not becomes owner of it. However, if themoney has been used, then lender slips into the shoes of the debtor paid - off and consequently can recover his loan tothat extent. In the given case, the transaction is ultra-vires and hence the company Ravi Private Limited is not liable to pay the debt. Mudra Finance Ltd. maybeing injunction order on Ravi Pvt. Ltd. to stop it from parting with the funds.

MAY - 2018 / DEC - 2021 / RTP

Q16 **Mr. X had purchased some goods from M/s ABC on credit. A credit period of one month was allowed to Mr. X. Before the date Mr. X went to the company and wanted to repay the amount due him. He found only Mr. Z there, who was the factory supervisor of company. Mr. Z told Mr. X that the accountant and the cashier were leave, he is in-charge of receiving money and he may pay the amount to him Mr. Z issued a money receipt under his signature. Aftertwo months M/S ABC Limited issued a notice**

to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free from his liability.

Ans: In this case according to the facts provided it is clearly observable that thesituation points towards the applicability of the Doctrine of Indoor Management in relevance to the affairs of the company M/s ABC Limited. According to the terms of the Doctrine of Indoor Management if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. Here in this case if we view the facts from the perspective of applicability of the Doctrine.

NOV - 2018 / NOV - 2022

Q17 Sound Syndicate ltd, a public company, its articles of association earn power the managing agents to borrow both short and long arm loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Lid, a non-banking finance company for a loan Rs. 25,00,000 in name of the company.
The Lender agreed and provided the above said loan. Later on Sound SyndicateLtd, refused to repay the money borrowed on the pretext that noresolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.
Analyses the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?

Ans: In case of The Royal British Bank Vs. Turouand, this doctrine was clearly explained.As per the doctrine of indoor Management, outsiders are entitled to assume allthe detailed formalities for doing an act authorised by the articles, and Outsider, is not at all required to inquire into the internal affair of the company.

The bond signed by the director and secretary on behalf of the company, was held to be valid and bank was not required to inquire whether any ordinary resolution was passed or not. This is the Indoor Management rule, that the company's indoor affair are company's problem.
In the given case, the articles of the company, authorize the director to borrow on behalf of the company. Mr. Liddle a director borrowed money but, later on company denied its liability to repay on the pretext that no resolution was so passed and lender should have enquired about the same prior to providing the loan. Held, the contention of Sound Syndicate Ltd. is not correct, as the outsider is not obligated to enquire into the internal affair of the company.

ICAI STUDY MAT.

Q18 Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.

Ans: **Dormant Company (Section 455 of the Companies Act, 2013)**
Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.
"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

"Significant accounting transaction" means any transaction other than –

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

(d) payments for maintenance of its office and records.

RTP/MAY 2018

Q19 **The Articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.**

Ans: According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Since, the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

RTP

Q20 **When a company is registered, it is clothed with a legal personality. Explain.**

Ans: When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

(a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.

(b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.

A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

RTP

Q21 **F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into threeparts in a bid to reduce his tax liability.**

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

Ans: The House of Lords in Salomon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and

therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

(1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

(2) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in Re Sir DinshawManeckji Petit AIR 1927 Bom.371 and Juggilal vs. Commissioner of Income Tax AIR (1969) SC (932).

RTP / MAY 19

Q22 **Some of the creditors of Pharmaceutical Appliances Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.**

Ans: **Corporate Veil: Corporate Veil refers to a legal concept whereby the** company is identified separately from the members of the company. The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation. Thus, the shareholders are protected from the acts of the company. However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts , the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

(i) To determine the character of the company i.e. to find out whether co-enemy or friend

(ii) To protect revenue/tax

(iii) To avoid a legal obligation

(iv) Formation of subsidiaries to act as agents

(v) Company formed for fraud/improper conduct or to defeat law.

RTP

Q23 **Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 1956. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.**

Ans: **Doctrine of Indoor Management (Companies Act, 2013):** According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence

of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

RTP

(a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

In **Howard vs. Patent Ivory Manufacturing Co.** where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in **Morris v Kansseen**, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

(b) **Suspicion of Irregularity: The doctrine in no way, rewards those who** behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of **Anand Bihari Lal vs. Dinshaw& Co. the plaintiff accepted a transfer of a company's** property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property. Similarly, in the case of **Haughton & Co. v. Nothard, Lowe & Wills Ltd.** where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

(c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

Forgery may in circumstances exclude the **'Turquand Rule'.** The only clear illustration is found in the **Ruben v Great Fingall Consolidated.** In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.

The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

Q24	Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1 st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:
(a)	Whether Jagannath Oils Limited is required to reduce the number of members.
(b)	Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?
Ans:	According to Section 2(68) of Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—
(i)	restricts the right to transfer its shares;
(ii)	except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that—
(A)	persons who are in the employment of the company; and
(B)	persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
(iii)	prohibits any invitation to the public to subscribe for any securities of the company;
(a)	Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.
(b)	On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company

RTP

Q25	A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013.
Ans:	If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company. The facts of the case are similar to the case of Merchandise Transport Limited vs. British Transport Commission (1982), wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the

parent and the subsidiary were held to be one commercial unit and the application for licences was rejected.

Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

RTP

Q26 **Nolimit Private Company is incorporated as unlimited company having share capital of` 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?**

Ans: Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability wil l arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

RTP

Q27 **In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:**

(i) **Is Flower Fans Private Limited no longer in existence?**

(ii) **Further is it correct to say that a company being an artificial personcannot own property and cannot sue or be su**

RTP

Ans.

(i) **Perpetual Succession –** A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence.

The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(ii) **The statement given is incorrect.** A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

Q28 **Explain the classification of the companies on the basis of control as per the Companies Act, 2013.**

Ans. **In line with the Companies Act, 2013, following are the classification of the Companies on the basis of control:**

(a) **Holding and subsidiary companies:** 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. **[Section 2(46)]**

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

(b) **Associate company [Section 2(6)]:** In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

The term "Total Share Capital", means the aggregate of the –

(1) Paid-up equity share capital; and

(2) Convertible preference share capital.

MTP

Q29 **BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ` 30 Lakhs (3 Lakhs equity shares of ` 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60, 000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?**

Ans: **Section 2(87) of the Companies Act, 2013 defines "subsidiary company"** in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power eitherat its own or together with one or more of its subsidiary companies:

MTP

For the purposes of this section —

(i) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(ii) "layer" in relation to a holding company means its subsidiary or subsidiaries.

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

Q30 **What is the main difference between a Guarantee Company and a Company having Share Capital?**

Ans: **Difference between Guarantee Company [Section 2(21) of the Companies Act, 2013] and a Company having share capital [Section 2(22)].**

In case of guarantee company, the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; whereas in the case of company having share capital, members may be called upon to discharge their liability at any time, either during the company's life -time or during its winding up.

It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

In **Narendra Kumar Agarwal vs. Saroj Maloo**, the Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

JULY 21

Q31 **What do you mean by the term Capital? Describe its classification in the domain of Company Law.**

Ans: **Meaning of capital:** The term capital has variety of meanings. But in relation to a company limited by shares, the term 'capital' means 'share capital'. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

Classification of capital: **In the domain of Company Law, the term** capital can be classified as follows:

(a) **Nominal or authorised or registered capital:** This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.

(b) **Issued capital:** It means such capital as the company issues from time to time for subscription.

(c) **Subscribed capital:** As such part of the capital which is for the time being subscribed by the members of a company.

(d) **Called up capital:** As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.

(e) **Paid-up capital:** It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

DECEMBER 2021

Q32 **Explain listed company and unlisted company as per the provisions of the Companies Act, 2013**

Ans: **Listed company:** As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

NOV 2022

Q33 ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ` 35 lakhs and turnover of ` 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.

Ans: **Small Company:** Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—

(i) paid-up share capital of which does not exceed ` 4 crore or such higher amount as may be prescribed which shall not be more than ₹ 10 crore; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ` 40 Crore or such higher amount as may be prescribed which shall not be more than ` 100 crore:

Exceptions: This clause shall not apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, since the paid-up capital of ABC Private Limited is ` 35 Lakhs and turnover is ` 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

JUNE 2023