

CHAPTER III THE SALE OF GOODS ACT, 1930

UNIT – 1: FORMATION OF THE CONTRACT OF SALE

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

Ans: -

It is necessary under the Sales of Goods Act, 1930 that the goods should be exchanged for money. If the goods are exchanged for goods, it will not be called a sale. It will be considered as barter. However, a contract for transfer of movable property for a definite price payable partly in goods and partly in cash is held to be a contract of Sale of Goods.

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

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

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.

3. X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? (Module Q) (MTP June 24 Series 3) **(RTP Sept 25)**

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 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.

4. Classify the following transactions according to the types of goods they are:
- (i) A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.
 - (ii) A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop.
 - (iii) T agrees to sell to S all the apples which will be produced in his garden this year.
- (Module Q) (MTP Jan 25 Series 2) (MTP Sept 24 Series 2) (MTP June 24 Series 2)**

Ans: -

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

(ii) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.

(iii) T agrees to sell to S all the apples which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

5. Kartik agreed to sell his laptop to Vasant for a price to be fixed by Kusum a hardware engineer. However, before the delivery of the laptop, Kartik changed his mind and did not

share any particulars and configuration of the laptop with Kusum, which made her unable to do the valuation. Kusum refused to do valuation.

Vasant needed laptop for his project, so he promised Kartik that, if the laptop is delivered to him, he would pay a reasonable price for it. However, Kartik decided not to sell his laptop to Vasant. Now, Vasant wants to know from you, being a legal expert, whether Kartik is bound by his promise as he agreed earlier to deliver his laptop to him at a reasonable price. If he does not agree to deliver what is the other remedy available to Vasant? Advise, referring to the provisions of the Sale of Goods Act, 1930. **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

Ans: -

Section 10 of the Sale of Goods Act, 1930 provides for the determination of price by a third party.

1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

In the instant case, as Kusum cannot do valuation of laptop due to non-sharing of particulars and configuration by Kartik who was bound by his promise, the agreement will be void.

The other remedy available to Vasant is that he can claim damages from Kartik as he will be liable for the damages to Vasant who is not at fault.

6. Sony, a friend of Priya wanted to buy her two-wheeler. Priya agreed to sell her two-wheeler to Sony and it was decided that price of her two-wheeler will be fixed by Priya's father, who is an auto dealer. Priya immediately handed over the keys to Sony. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. Priya expressed her inability to sell the two-wheeler to Sony and asked for return, but Sony refused to return the same. Explain-

(i) Can Priya take-back the vehicle from Sony?

(ii) Will your answer be different, if Priya had not handed over the vehicle to Sony? **(7 Marks PYQ June 24) (MTP Jan 25 Series 2)**

Ans: -

Ascertainment of price (Section 9 of the Sale of Goods Act, 1930):

By virtue of Section 9, the price in a contract of sale may be-

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

Agreement to sell at valuation (Section 10):

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

1. Where there is an agreement to sell goods on the terms that price is to be fixed by the valuation of a third party and that third party either does not or cannot make such valuation, the agreement is thereby avoided.

However, a buyer who has received and appropriated the goods, must pay a reasonable price for them.

2. In case the third party is prevented from making the valuation by the default of either party, the party not at fault may maintain a suit for damages against the party in fault.

(i) In the instant case, Priya handed over the keys of her two-wheeler to Sony and it was decided between them that price of the vehicle will be fixed by Priya's father. However, Priya's father refused to fix the price as he did not want Priya to sell her vehicle. As the keys have already been handed over to Sony, Priya cannot take back the keys from Sony and Sony shall pay reasonable price to Priya for the two-wheeler.

(ii) If Priya had not handed over the vehicle to Sony, the contract could have been avoided as Priya's father refused to fix the price of the vehicle.

7. 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? **(4 Marks PYQ June 23) (RTP June 24)**

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.

8. What are the consequences of the destruction of specified goods, before making of contract and after the agreement to sell under the Sale of Goods Act, 1930. (RTP Jan 25) (MTP June 24 Series 3) (RTP Sept 25)

Ans: -

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

(ii) Goods perishing before sale but after agreement to sell (Section 8 of the Sale of Goods Act, 1930): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

9. Akash purchased 100 Kgs of wheat from Bhaskar at `80 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed to Akash that he can take the delivery of wheat from him and till then he is holding wheat on Akash's behalf. Before Akash picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Akash wants his price on the contention that no delivery has been done by seller. Whether Akash is right with his views under the Sale of Goods Act, 1930. (RTP Sept 24) (MTP Sept 24 Series 2)

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 the seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

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

10. Distinguish between 'Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. (MTP Jan 25 Series 1)

Ans: -

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

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser until 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.
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11. Kapil entered in a contract with Rahul to purchase 1000 litres of mustard oil at the price which should be fixed by Akhilesh. Rahul already delivered 600 litres out of 1000 litres to Kapil but when remaining 400 litres was ready to deliver, Akhilesh denied fixing the price of mustard oil. Rahul asked Kapil to return the oil already delivered and avoid the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil. Advise in the light of the Sale of Goods Act, 1930. (MTP June 24 Series 1) (RTP May 25)

Ans: -

By virtue of Section 9 of the Sale of Goods Act, 1930, the price in the contract of sale may be fixed by the contract, or agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or determined by the course of dealings between the parties.

Further, section 10 provides for the determination of price by a third party in the following manner:

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

In the instant case, Kapil contracted Rahul to purchase 1000 litres of mustard oil at the price fixed by Akhilesh. After, Rahul delivered 600 litres Akhilesh denied fixing the price of mustard oil. Rahul demanded back the oil already delivered and cancel the delivery of 400 litres. Kapil sued Rahul for non-delivery of remaining 400 litres mustard oil.

On the basis of above provisions and facts, Kapil is liable to pay a reasonable price of 600 litres while for remaining 400 litres, contract may be avoided.

12. Ram Bilas Yadav is a farmer. Anna Chips Company approached him and entered in a contract to supply 100 quintals of potatoes which to be grown in the fields belonging to Ram Bilas Yadav @ `1000/- per quintal. Anna Chips Company made the payment of price but delivery to be made after six months. Before the time of delivery, the whole crop of potatoes was destroyed due to flood. Anna Chips Company demanded the payment of price which it already made by it. Ram Bilas Yadav denied returning the price by saying

that contract of sale was already entered and hence crop belongs to Anna Chips Company. Hence loss of crop must be borne by it. Referring the provisions of the Sale of Goods Act, 1930, whether Anna Chips Company can recover amount from Ram Bilas Yadav? (RTP May 25)

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 place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

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

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

UNIT – 2: CONDITIONS & WARRANTIES

1. 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? **(Module Q)**

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. [Section 16(1) of the Sale of Goods Act, 1930]

2. Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as ` 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase. The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful? Decide the fate of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act, 1930? What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice? **(Module Q) (RTP Jan 25) (MTP Jan 25 Series 1) (MTP June 24 Series 3) (RTP Sept 25)**

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.

(i) In the instant case, in the light of the provisions of Sub-Clause (b) of Sub-Section (2) of Section 17 of the Act, Mrs. Geeta will not be successful as she casually examined the sample of rice (which exactly corresponded to the entire lot) without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains.

(ii) In the instant case, the buyer does not have any option available to her for grievance redressal.

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

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

Ans: -

Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

In the instant case, the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car.

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

4. 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? **(Module Q)**

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 goods supplied. The general rule is that of "Caveat Emptor" that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the ordinary course of his business, the buyer can make the seller responsible.

In the given case, Mrs. G purchased the tweed coat without informing the seller i.e. P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs. G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.

5. 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. **(Module Q) (MTP Sept 24 Series 2)**

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 according to Section 13(2) of the Sales of Goods Act, 1930. Hence, they cannot reject the goods, but claim the damages.

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

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.

7. Q asked P, the seller for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, machine delivered and was found unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price.

With reference to the provisions of Sale of Goods Act, 1930 discuss whether Mr. P is right in refusing to exchange the washing machine? **(Module Q) (MTP Sept 24 Series 1)**

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. Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose. Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine. Therefore, Mr. Q can either repudiate the contract or claim the refund of the price paid by him.

8. Discuss the various types of implied warranties as per the Sale of Goods Act, 1930. **(3 Marks PYQ Dec 23)**

Ans: -

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

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

9. Certain goods were sold by sample by J to K, who in turn sold the same goods by sample to L and L by sample sold the same goods to M. M found that the goods were not according

to the sample and rejected the goods and gave a notice to L. L sued K and K sued J. Can M reject the goods? Also advise K and L as per the provisions of the Sale of Goods Act, 1930. (4 Marks PYQ June 23)

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

With regard to K and L, L can recover damages from K and K can recover damages from J. But, for both K and L, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods according to Section 13(2) of the Sale of Goods Act, 1930.

10. 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. (6 Marks PYQ Nov22)

Ans: -

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

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

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

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

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

Alternate Answer

According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.

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

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

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

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

11. What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? Also state the implied warranties operative under the Act. (RTP Jan 25)

Ans: -

(i) Sale by sample [Section 17 of the Sale of Goods Act, 1930]: In a contract of sale by sample, there is an implied condition that

(a) the bulk shall correspond with the sample in quality;

(b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

(c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

(ii) The following are the implied warranties operative under the Act:

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

2. Warranty as to non-existence of encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

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

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

12. Shubhangi went to a Jewellery shop and asked the salesgirl to show her diamond necklace with Sapphire stones. The Jeweller told her that we have a lot of designs of diamond necklace but with blue stones. If she chooses for herself any special design of diamond necklace with blue stones, they will replace blue stones with Sapphire stones. But for the

Sapphire stones they will charge some extra cost. Shubhangi selected a beautiful designer necklace and paid for it. She also paid the extra cost of Sapphire stones. The Jeweller requested her to come back a week later for delivery of that necklace. When she came after a week to take delivery of necklace, she noticed that due to Sapphire stones, the design of necklace had been completely disturbed. Now, she wants to terminate the contract and thus, asked the manager to give her money back, but he denied for the same. Answer the following questions as per the Sale of Goods Act, 1930.

(i) State with reasons whether Shubhangi can recover the amount from the Jeweller.

(ii) What would be your answer if Jeweller says that he can change the design, but he will charge extra cost for the same? **(RTP Jan 25) (MTP Sept 24 Series 1)**

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 place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(i) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Shubhangi and Jeweller and not a sale. Even though the payment was made by Shubhangi, the property in goods can be transferred only after the fulfilment of conditions fixed between the buyer and the seller. As due to Sapphire Stones, the original design is disturbed, necklace is not in original position. Hence, Shubhangi has right to avoid the agreement to sell and can recover the price paid.

(ii) If Jeweller offers to bring the necklace in original position by repairing, he cannot charge extra cost from Shubhangi. Even though he has to bear some expenses for repair; he cannot charge it from Shubhangi.

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

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

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

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

The Shop owner refused to return the cloth on the plea that it was cut to specific requirements of Mrs. Reema and hence could not be resold.

With reference to the doctrine of "Caveat Emptor" explain the duty of the buyer as well as the seller. Also explain whether Mrs. Reema would be able to get the money back or the right kind of cloth as per the requirement? (RTP Sept 24)

Ans: -

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:

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

Based on the above provision and facts given in the question, it can be concluded that Mrs. Reema is entitled to get the money back or the right kind of cloth as required to serve her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by the buyer. [Section 16(1) of the Sale of Goods Act, 1930].

14. Prakash reaches a sweet shop and asks for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies 'Sir, my all sweets are fresh and of good quality.' Prakash agrees to buy on the

condition that first he tastes one piece of 'Burfi' to check the quality. The seller gives him one piece to taste. Prakash, on finding the quality is good, ask the seller to pack. On reaching the house, Prakash finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now Prakash wants to avoid the contract and return the 'Burfi' to the seller.

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

(b) Will your answer be different if Prakash does not taste the sweets? (RTP June 24)

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, Prakash can return the sweets and avoid the contract.

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

15. Write the exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930. (MTP June 24 Series 2)

Ans: -

The doctrine of Caveat Emptor given under the Sale of Goods Act, 1930 is subject to the following exceptions:

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

16. Adarsh visited an authorized car showroom and purchased a car of his choice without conducting a detailed inspection. After making the payment and taking delivery of the car, he discovered a defect in the engine that could not have been detected even with a reasonable inspection. With reference to the provisions of the Sale of Goods Act, 1930, advise, whether Adarsh can invoke the implied condition of merchantability and repudiate the contract due to the defect in the car. (3 Marks)(PYQ Jan 25) (MTP May 25 Series 2)

Ans: -

Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

There are two requirements for this condition to apply:

- (a) Goods should be bought by description.
- (b) The seller should be a dealer in goods of that description.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression “merchantable quality”, though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

In the instant case, the defect in the engine could not have been detected even with a reasonable inspection.

Therefore, Adarsh can invoke the implied condition of merchantability and is entitled to repudiate the contract due to the defect in the car.

17. Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. The company informed that tins would be packed in the boxes each containing 50 tins. On delivery, it was found that a substantial part was in boxes containing only 30 tins. Priyansh rejected the whole order as the tins were not packed according to the description given in the contract as the packing of tins was an essential part of the contract. Amjuice Ltd. sued Priyansh for the recovery of price. State with reason whether Priyansh can avoid the contract under the Sale of Goods Act, 1930? (MTP Series 1 May 25)

Ans: -

By virtue of provisions of Section 15 of the Sale of Goods Act, 1930, where there is a contract of 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 given case, Priyansh ordered 600 tins of apple juice from an American Company Amjuice Ltd. that would be packed in the boxes each containing 50 tins. Amjuice Ltd. delivered substantial part in boxes containing only 30 tins. Priyansh rejected the whole order while Amjuice Ltd. sued Priyansh for the recovery of price.

On the basis of above, the sale of apple juice tins was based on sale by description, but actual delivery was not as per the description given by seller at the time of contract. Hence, Priyansh is correct in rejection of the goods.

UNIT – 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

1. “Nemo Dat Quod Non Habet” – “None can give or transfer goods what he does not himself own.” Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930. (Module Q)

Ans: -

Exceptions to the Rule Nemo dat 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:

- (1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
- (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

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

- (2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of goods by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

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

(6) Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

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

(8) Sale under the provisions of other Acts:

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

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

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

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

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 a mercantile agent.
- (3) The buyer should act in good faith.
- (4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. We assume the agent P acted in the ordinary course of business and sold the car to buyer A in good faith. Therefore A, the buyer obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

3. 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? **(Module Q)**

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. Also where there is contract for the sale of unascertained or future goods by description, the property in the goods thereupon passes to the buyer. when goods of that description are put in a deliverable state and are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, Such assent may be express or implied.

Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. S has the right to select the goods out of the bulk and he has sent his men for the same purpose.

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.

4. Ms. Preeti owned a motor car which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms. Preeti. **(Module Q)**

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.

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

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.

6. X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sacks and 150 tons of wheat were put into the sacks. Then there was a sudden fire and the entire stock was gutted. Who will bear the loss and why? (Module Q)

Ans: -

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

- (i) The seller has done his act of putting the goods in a deliverable state and
- (ii) The buyer has knowledge of it.

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

In the given case, X has agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men (agent) to put the wheat in the sacks. Out of 300 tones only 150 tons were put into the sacks. There was a sudden fire and the entire stock was gutted. In this case, according

to the provisions of law, for 150 tons of wheat, sale has taken place. So, buyer X will be responsible to bear the loss. The loss of rest of the wheat will be that of the seller Y.

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

- (1) The wheat is put in a deliverable state in the sacks.
- (2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.

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

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

8. A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A file a suit against B for the recovery of price. Can he recover the price? **(Module Q)**

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. [Section 24].

Had the horse died after the expiry of given time i.e. 8 days, then B would have been held liable (if the horse was still with him) but not before that time period.

9. M/s RK Traders (Buyer) made a contract with M/s CK Traders (Seller) for purchase of 2000 kg of basmati rice specifically grown in Chhattisgarh State should be packed in pink colour bags of 25 kg each to identify the place of origin by specifying the mode of packing of basmati rice. The seller agreed for specific packing of rice grown in Chhattisgarh State. However, by misunderstanding, staff of seller packed the quantity of 1800 kg of basmati rice grown in the State of Maharashtra in white colour bags of 30 kg each and the remaining quantity of 200 kg, grown in Chhattisgarh State, in pink colour bags of 25 kg each. Referring to the provisions of the Sale of Goods Act, 1930 analyse, whether the buyer has the right to reject the entire quantity of basmati rice supplied by the seller.

On the other hand what is the remedy available to buyer if he has to accept the entire quantity to fulfil his other contracts with other parties? **(4 Marks PYQ Sept 24)**

Ans: -

According to Section 15 of the Sale of Goods Act, 1930, where there is a contract of 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.

In the instant case, the contract specified that the basmati rice should be grown in Chhattisgarh, packed in pink colour bags of 25 kg each but the seller mistakenly packed 1800 kg of rice from Maharashtra in white bags of 30 kg each, and only 200 kg of rice from Chhattisgarh in the correct pink bags.

Therefore, the buyer has the right to reject the entire quantity of basmati rice supplied by the buyer as the goods do not correspond with the description.

ANSWER TO SECOND PART

In case the buyer has to accept the entire quantity of rice to fulfil his other contracts with other parties, he can claim damages which provides that 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.

ALTERNATE ANSWER TO SECOND PART

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

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

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

According to above stated provision, there is a breach of condition, and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the entire quantity to fulfil his other contracts with other parties and claim damages.

10. Ashok, a trader, delivered a camera to Mangesh on 'sale or return' basis. Mangesh delivers the camera to Rahul on the terms of 'sale for cash only or return'. Afterward, Rahul delivered it to Vishal on a 'sale or return' basis without paying cash to Mangesh. The camera, which was in the possession of Vishal was lost by theft though he exercised due care for its safety. Referring to the provisions of the Sale of Goods Act, 1930, analyse the situation and advise, whether Mangesh, Rahul or Vishal are, jointly or severally, liable to pay the price of the camera to Ashok. **(4 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

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 when 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, Mangesh, who had taken delivery of the camera on Sale or Return basis and delivers the same to Rahul on sale for cash only or return, 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 (Camera) passes to Mangesh.

Now, Rahul delivered it to Vishal on a sale or return without paying cash to Mangesh. Since Rahul did not pay cash and had not exercised the option to purchase, ownership of the camera did not pass to Rahul. Therefore, Rahul is not liable to pay the price of the camera either.

Since Vishal did not accept the goods and the camera was lost by theft (despite his due care), Vishal is not liable for the price of the camera as ownership had not passed to him.

Therefore, Mangesh is solely liable to pay the price of the camera to Ashok, as he accepted the camera on a "sale or return" basis and did not return it within a reasonable time.

11. Explain the provisions relating to the delivery of the wrong quantity of goods as per the provisions of the Sale of Goods Act, 1930. (3 Marks PYQ Sept 24) (RTP May 25)

Ans: -

Delivery of wrong quantity [Section 37 of the Sale of Goods Act, 1930]: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole. [Sub-section (3)]

The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Sub-section (4)]

12. J, a wholesaler of premium Basmati rice delivered on approval 100 bags of rice of 10 kg each to a local retailer, on sale or returnable basis within a month of delivery. The

next day the retailer sold 5 bags of rice to a regular customer K. A week later K informed the retailer that the quality of rice was not as per the price.

The retailer now wants to return all the rice bags to J, including the 4 bags not used by K. Can the retailer do so?

Also briefly describe the provisions underlying in this context of the Sale of Goods Act, 1930, **(7 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 2)**

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, J (seller) has delivered on approval 100 bags of rice of 10 kg each to local retailer (buyer) on sale or returnable basis within a month of delivery. Out of these 100 bags, the local retailer sold 5 bags to K (customer). It implies that the local retailer has accepted 5 bags out of 100.

A week later, local retailer received the complaint of some defect in the rice bags, so, he wanted to return all the bags to the J (seller).

According to the above provisions, the local retailer is entitled to return only 95 bags to the J (seller) and not those 4 bags which are not used by K. Because, as per clause (i) above, the local retailer has already sold 5 bags, signifying that he has done an act which implies adopting the transaction relating to those 5 bags.

13. (i) X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930. **(4 Marks PYQ Dec 23)**

(ii) Against B's tender, R agrees to sell and deliver 1,000 kg tomatoes @ `100 per kg which shall be delivered on 15th July, 2023. Due to the rise of the prices of tomatoes in the market, R delivered only 700 kg of tomatoes on 15th July, 2023 and agrees to deliver the balance quantity in the next month. B accepted 700 kg of tomatoes sent by R. Later, R failed to deliver the balance quantity and so B refused to pay the price of 700 kg of tomatoes to R as he had failed to fulfill the tender conditions stipulated in the contract of sale.

Can B refuse to pay R as per the provisions of the Sale of Goods Act, 1930? **(2 Marks PYQ Dec 23)**

Ans: -

(i) As per section 30(2) of the Sale of Goods Act, 1930, where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them.

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

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

(ii) According to Section 37(1) of the Sale of Goods Act, 1930, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if he accepts the goods so delivered, he shall pay for them at the contract rate.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

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

Important Note: The answer can also be given as per Section 34 of the Sale of Goods Act, 1930, which provides that a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.

In the instant case, R delivered 700 kg of tomatoes on 15th July, 2023 and agrees to deliver 300 kg in the next month. Later R failed to deliver the balance quantity and B (buyer) refused to pay the price of 700 kg of tomatoes.

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

14. Discuss the essential elements regarding the sale of unascertained goods and its appropriation as per the Sale of Goods Act, 1930. (4 Marks PYQ Nov22) (MTP June 24 Series 3) (MTP June 24 Series 1) (RTP Sept 25)

Ans: -

Sale of unascertained goods and Appropriation:

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

Whereas, Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials elements are:

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

15. Samuel purchased a Television set from Arun, the owner of Gada Electronics, on the condition that for the first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Arun demands the price of Television set from Samuel. Whether Samuel is liable to pay the price under the Sale of Goods Act, 1930? Who will ultimately bear the loss? (RTP Sept 24) (RTP June 24)

Ans: -

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

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

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

Samuel purchases a Television set from Arun, the owner of Gada Electronics, on sale or approval for three days. Before Samuel could take any decision, the Television set spoiled due to earthquake.

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

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

Ans: -

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

- (1) Sale by a Mercantile Agent: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell (Proviso to Section 27).

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

(2) Sale by one of the joint owners (Section 28): If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

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

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

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

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

(6) Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

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

(8) Sale under the provisions of other Acts:

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

17. Mr. G sold some goods to Mr. H for a certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending? **(MTP June 24 Series 2) (RTP Sept 25)**

Ans: -

According to section 44 of the Sale of Goods Act, 1930, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

(a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

(b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

18. (i) MNO Limited, a supplier of electronic components, entered into a contract on August 1, 2023, with PQR Enterprises for the sale of 1000 units of microchips. The contract specifically identified the microchips by serial numbers and confirmed that they were in a deliverable state, stored in MNO Limited's warehouse. The contract stipulated that the goods would be delivered on September 1, 2023.

On August 10, 2023, a flood occurred, damaged the warehouse and destroyed the entire stock of microchips, including the 1000 units intended for PQR Enterprises. Examine, with reference to the provisions of the Sale of Goods Act, 1930 who shall suffer the loss? What will be your answer if the microchips are not specifically identified and marked for PQR Enterprises at the time of the contract? (4 Marks)

(ii) A purchases a motorcycle from B and uses it for some time. It turns out that the motorcycle sold by B to A was a stolen one and had to be returned to a rightful owner. A brings action against B for the return of the price. Will he succeed? Examine this with reference to the provisions of the Sale of Goods Act, 1930. (3 Marks) **(PYQ Jan 25) (MTP May 25 Series 2)**

Ans: -

(i) According to Section 18 of the Sale of Goods Act, 1930, where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.

According to section 20 of the Sale of Goods Act, 1930, where there is an unconditional contract for sale of specific goods in deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of

price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

In the instant case, since the microchips were specifically identified and were in a deliverable state when the contract was formed on August 1, 2023, ownership (and risk) likely passed to PQR Enterprises on August 1, 2023.

Therefore, PQR Enterprises will suffer the loss.

Goods are not specifically identified and ascertained:

If the microchips were not specifically identified and marked for PQR Enterprises at the time of the contract, MNO Limited will suffer the loss, as the risk would not have transferred to PQR Enterprises.

(ii) As per Section 27 of the Sale of Goods Act, 1930, “no one can transfer a better title than they themselves have.” This means that a person who is not the owner of goods cannot convey ownership unless authorized by the true owner.

Also, Section 14(a) imposes an implied condition in every contract of sale that the seller has the right to sell the goods means he should be the real owner. If the seller’s title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

In the instant case, A will succeed in his action against B for the return of the price, as B had no title to sell the stolen motorcycle, and the sale was in breach of the implied condition.

19. The Institute of Science, Pune (the buyer), placed an order for various chemicals worth ₹ 1,50,000 from a supplier in Delhi (the seller). The buyer made full advance payment, and the seller dispatched the consignment via a courier of his own choice, without reserving any right of disposal over the goods. The consignment was lost in transit, and now the buyer seeks a refund of the purchase price. With reference to the provisions of the Sale of Goods Act, 1930, assess the validity of the buyer's claim for a refund. (4 Marks PYQ Jan 25) (MTP May 25 Series 2)

Ans: -

Delivery of the goods to the carrier [Section 23(2) of the Sale of Goods Act, 1930]: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and

does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

In the instant case, the Institute of Science, Pune placed an order for various chemicals worth ₹ 1,50,000 from a supplier in Delhi. The seller dispatched the consignment via a courier without reserving any right of disposal over the goods. The consignment was lost in transit. According to Section 23(2), it is an unconditional appropriation of goods because of which the Institute of Science, Pune (buyer) has become the owner of the goods. Therefore, it will bear the risk of loss of the consignment in the way. Hence, the buyer's claim is not valid.

20. Saurabh purchased electric scooter of Vivek for ₹ 5000 only on the gun point. Vivek decided to file the complaint and to avoid the contract on the basis of coercion applied against him by Saurabh. But before he could do that, Saurabh sold the scooter to Vinay who had no idea about the situation on which the scooter was purchased by Saurabh. Vivek sued Saurabh and Vinay for recovery of scooter. Referring to the provisions of the Sale of Goods Act, 1930, whether Vivek was correct in his decision? (RTP May 25)

Ans: -

By virtue of provisions of Section 29 of the Sale of Goods Act, 1930, a buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale.

In the instant case, Saurabh purchased electric scooter of Vivek for ₹ 5000 only by applying coercion. Before Vivek avoid the contract, Saurabh sold the scooter to Vinay who was an innocent buyer. Now, Vivek sued Saurabh and Vinay for recovery of scooter.

According to above provisions, even Saurabh purchased the electric scooter by applying coercion, Vinay got good title as he was an innocent buyer and purchased the scooter before setting aside the contract by Vivek. Hence, Vivek cannot recover the scooter from Vinay. However, Vivek may claim damages from Saurabh.

21. "Explain the rules relating to the delivery of goods under the Sale of Goods Act, 1930" with reference to the following:
(i) Effect of part delivery
(ii) Place of delivery
(iii) Delivery of wrong quantity." (MTP May 25 Series 1)

Ans: -

(i) Effect of part delivery (Section 34 of the Sale of Goods Act, 1930): A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

(ii) Place of delivery [Section 36(1)]: Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract,

- ◆ goods sold are to be delivered at the place at which they are at the time of the sale, and
- ◆ goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or
- ◆ if goods are not then in existence, at the place at which they are manufactured or produced.

(iii) Delivery of wrong quantity [Section 37]: Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sub-section (1)]

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sub-section (2)]

Where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject or may reject the whole. [Sub-section (3)]

The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. [Sub-section (4)]

22. S purchased a dress from a reputed showroom and made the payment in cash. The dress she purchased require some alteration. The shopkeeper assured S that it would take just one day to get the dress altered. It was agreed that once the dress was altered the shopkeeper would inform S through phone and she would collect the dress. Next day, by evening the dress was altered and kept ready to be delivered to S. The shopkeeper however forgot to inform S that the dress was ready.

In the meantime, a short circuit occurred near the delivery counter of the shop and some packets ready for delivery caught fire. After waiting for 10 days, when, S went to collect her dress she was informed that she came late and her dress was burnt in fire. S, then asked for refund of money what she paid. The shopkeeper refused, by

saying that the dress was kept ready the very next day of purchase and the loss due to fire occurred after a week. He refused to bear the liability by saying that if S had collected the dress on time, it would not have been burnt. S insisted that she was waiting for a call from the shop and thus, entitled to claim the refund of cost of dress.

Examine, with reference to the provisions of the Sale of Goods Act, 1930, whether shopkeeper will be liable to refund the cost of dress to S? (7 Marks) (PYQ May 25)

Ans: -

Specific goods to be put into a deliverable state (Section 21 of the Sale of Goods Act, 1930): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

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

However, Section 26 also lays down an exception to the rule that ‘risk follows ownership.’ It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

In the instant case, S had paid in full and purchased a specific dress but the dress required alteration, and it was agreed that the shopkeeper would inform S after alteration for collection. The ownership had already passed to S when she paid for the dress, subject to alteration. The delivery was conditional upon the shopkeeper informing S after alteration.

Even though the ownership may have passed to S, the seller (shopkeeper) failed to complete the delivery by not informing S. Under Section 26, when delivery is delayed due to the fault of the seller, the loss falls upon the party at fault.

Therefore, the shopkeeper is liable to refund the cost of the dress to S.

Alternative Answer

The given problem is based on the concept “Agreement to Sell” under section 4 of the Sale of Goods Act, 1930. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell.” Thus, whether a

contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date. Hence, in an agreement to sell, the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

In the instant case, though S had paid and purchased a specific dress, but the dress required alteration. Shopkeeper assured S that it would take just one day to get the dress altered and it was agreed that he would inform S after alteration for collection. This reflects that transfer or property in goods is to be transferred subject to fulfilment of the condition i.e., after the alteration.

Further, Reservation of right of disposal given under Section 25, is applicable here. This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled. In such a case in spite of the fact that the goods have already been delivered to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

Therefore, still the ownership lies with the seller on account of non-fulfilment of condition as to informing to the S that the dress is altered and is ready.

Further the plea taken by Shopkeeper that 10 days were passed after the alteration done and he is not liable for damage caused, is not justifiable on account of not being a reasonable circumstance and a ground.

Hence, in the light of the given facts, the shopkeeper is liable to refund the cost of the dress to S.

23. With reference to provisions of the Sale of Goods Act, 1930, answer the following:

(i) What do you mean by Reservation of right of disposal? State the circumstances under which right of disposal may be reserved. (RTP Sept 25)

(ii) Sometime breach of condition will be treated as breach of warranty as a result of which buyer loses his right to rescind. State the circumstance where a contract cannot be avoided even on account of breach of condition. (7 Marks) (PYQ May 25)

Ans: -

(i) Reservation of right of disposal: Section 25 of the Sale of Goods Act, 1930, preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.

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

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

(1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.

(2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

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

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

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

(ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

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

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

UNIT – 4: UNPAID SELLER

1. 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? **(Module Q)**

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 loses his right of lien thereon-

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;

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

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

Ans: -

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

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

(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.

3. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Can Ram exercise right of stopping the goods in transit? **(Module Q) (MTP Jan 25 Series 2) (MTP June 24 Series 2)**

Ans: -

Right of stoppage of goods in transit: The problem is based on Section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (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.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. He may recover the price of other 100 bales sent by lorry by using his rights against the buyer.

4. Suraj sold his car to Sohan for ` 75,000. After inspection and satisfaction, Sohan paid ` 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on, Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan. **(Module Q) (RTP Sept 24)**

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.

5. A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? **(Module Q) (MTP June 24 Series 1)**

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 the following cases:-

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

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

6. A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller? **(Module Q)**

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. (Section 50, 51 and 52)

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

According to the Sale of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of

the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods.

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

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:-

- (i) When the buyer has made the transaction with the consent of the seller
- (ii) When the buyer has made the transaction on the basis of documents of title such as bill of lading, railway receipt or a delivery order etc.

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.

8. Rachit arranges an auction to sale an antic wall clock. Deepa, being one of the bidders, gives the highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Deepa wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? **(Module Q) (MTP June 24 Series 3) (RTP Sept 25)**

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, Deepa gives the highest bid in the auction for the sale of an 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 the 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. Deepa will not be liable for loss and can avoid the contract.

9. Ansari of Jaipur sold 100 smart TV set @ ` 50,000/- per set to Baburam of Delhi. He delivered the TV sets to Chetan, a transport carrier for transmission to Baburam. Baburam further sold these 100 TV sets to Shayamlal @ ` 60,000/- per set. On reaching the goods at the destination, Baburam demanded the delivery but Chetan, wrongfully, refused to deliver the goods to Baburam. That is why; he failed to deliver TV sets to Shayamlal and suffered a huge loss on account of non-delivery. Ansari came to know about this. He directed Chetan to stop the delivery to Baburam and re-deliver the goods to him at Jaipur.

Answer the following questions under the provisions of the Sale of Goods Act, 1930:

(A) Whether Ansari has right to stop the goods in transit?

(B) Whether Baburam can claim loss suffered due to nondelivery from Ansari? **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

Ans: -

According to Section 51 of the Sale of Goods Act, 1930, when the carrier wrongfully refuses to deliver the goods to buyer, the right of stoppage in transit is lost and transit comes to an end.

On the other hand, according to section 57 of the Sale of Goods Act, 1930, where buyer suffers losses due to non-delivery, he can sue seller for damages on account of non-delivery.

In the instant case, the transit came to an end when Chetan wrongfully refused to deliver the goods to Baburam, and he suffered a huge loss due to non-delivery. Hence, Ansari cannot exercise the right of stoppage of goods in transit as the transit has already come to an end.

Baburam can claim loss suffered due to non-delivery from Ansari.

10. Explain the legal rules of auction sale relating to the following points as per provisions of the Sale of Goods Act, 1930:

(A) Bid by seller with or without notification

(B) Bidder to retract from his bid

(C) Effect of pretending bidding (4 Marks PYQ Sept 24) (RTP May 25)

Ans: -

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

(A) Bid with notification: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

Bid by seller without notification: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(B) Bidder to retract from his bid: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

(C) Effect of pretending bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

11. PTC Hotels in Bombay decided to sell their furniture by auction sale. For this purpose, they appointed RN & Associates as auctioneer. They invited top ten renowned Architects in Bombay for bidding. A right to bid was not notified by them. Furniture was put up in lots for sale. It was decided that for every lot of furniture there will be a reserve price. On 25th Feb 2024, Auction sale was started at 10.am in the lawn of PTC Hotels Bombay. For a special lot of furniture three parties came for bidding Mr. Neel, Mr. Raj and Mr. Dev on behalf of their respective companies. Bidding was as follows:
Mr. Neel ` 5.70 lakh

Mr. Raj ` 4.85 lakh

Mr. Dev ` 6.10 lakh

The sale was completed in favour of Mr. Neel by RN & Associates by fall of hammer. Mr. Dev's Bid was rejected on ground that Right to bid was reserved and company of Mr. Dev was not invited to bid.

For another bid of Italian Furniture was made by two parties as follows:

Mr. Dheer ` 15 lakh

Mr. Madhu (on behalf of R N & Associates) ` 15.20 lakh

Sale was completed in favour of Mr. Dheer instead of Mr. Madhu.

Mr. Dev and Mr. Madhu argued that auction sale was not lawful. Give your opinion with reference to provisions of the Sale of Goods Act, 1930 whether Auction Sale will be considered lawful or not? (7 Marks PYQ June 24)

Ans: -

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. Section 64 of the Sale of Goods Act, 1930 regulates the legal requirements for the sale by auction.

In terms of the provisions of the above Section, following are some of the requirements, which inter alia are required to be complied with for conduct of a valid auction sale-

(i) Where the goods are sold in lots: Where the goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

(ii) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(iii) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(iv) Reserved price: The sale may be notified to be subject to a reserve or upset price; In the first Auction sale, the rejection of Mr. Dev's bidding was not justified since the information as to the right to bid was not expressly given. Therefore, this auction sale was unlawful.

In auction sale of lot 2, since right to bid was not notified, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale. Therefore, auction made in favour of Mr. Dheer will be considered lawful.

12. Can an unpaid seller who has possession of goods exercise the Right of lien? If yes, mention such circumstances. When does he lose his right of line as per the provisions of the Sale of Goods Act, 1930? (6 Marks PYQ Dec 23)

Ans: -

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

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

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

As per the provisions of Section 48, where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

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

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

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. [Sub-section (2)]

13. An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. (2 Marks PYQ June 23) (MTP Sept 24 Series 2)

Ans: -

According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner.

In the given question, the auction sale is complete on 7th March, 2023.

14. What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? (6 Marks PYQ Nov22)

Ans: -

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

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

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

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

- (a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
- (b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called “quasi-lien”.

15. Ravi sold 500 bags of wheat to Tushar. Each bag contains 50 Kilograms of wheat. Ravi sent 450 bags by road transport and Tushar himself took remaining 50 bags. Before Tushar receives delivery of 450 bags sent by road transport, he becomes bankrupt. Ravi being still unpaid, stops the bags in transit. The official receiver, on Tushar's insolvency claims the bags. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (RTP Jan 25) (MTP June 24 Series 1)

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, Tushar, the buyer becomes insolvent, and 450 bags are in transit. Ravi, the seller, can stop the goods in transit by giving a notice of it to Tushar. The official receiver, on Tushar's insolvency cannot claim the bags.

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

(i) State, whether Mr. Shankar was right in his decision?

(ii) What would be your answer if Mr. Ganesh became insolvent within five days of contract? (RTP June 24) (MTP May 25 Series 1)

Ans: -

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

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

Further, Section 47 provides about an unpaid seller's right of lien. Accordingly, an unpaid seller can retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered. This right can be exercised by him in the following cases only:

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

In the instant case, Mr. Ganesh purchased 1000 Kg wheat from Mr. Shankar on 3 month's credit which was to be delivered after 10 days of contract. But, after 5 days of contract, one friend of Mr. Shankar secretly informed him that Mr. Ganesh may default in payment. On the belief of friend, Mr. Shankar applied the right to lien and withheld the delivery.

- (i) On the basis of above provisions and facts, it can be said that even Mr. Ganesh was an unpaid seller until the term of credit i.e. has expired, Mr. Shankar had to perform his promise of supplying 1000 Kg of wheat.
- (ii) In case Mr. Ganesh became insolvent before the delivery of wheat, Mr. Shankar had the right to apply the lien and he could withhold the delivery.

17. Describe in brief the rights of the buyer against the seller in case of breach of contract of Sale under the Sale of Goods Act, 1930. (MTP Sept 24 Series 1)

Ans: -

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

Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Suit for specific performance (Section 58): Where the seller commits breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific and where damages would not be an adequate remedy.

Suit for breach of warranty (Section 59): Where there is breach of warranty on the part of the seller, or where the buyer elects to or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –

- (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.

Repudiation of contract before due date (Section 60): Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as:

- subsisting and wait till the date of delivery, or
- he may treat the contract as rescinded and sue for damages for the breach.

Suit for interest:

- (1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.
- (2) 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.

18. What are the rights of a buyer, when seller commits a breach of contract under the provisions of the Sale of Goods Act, 1930? (7 Marks) (PYQ Jan 25)

Ans: -

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

Damages for non-delivery [Section 57 of the Sale of Goods Act, 1930]: Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Suit for specific performance (Section 58): Where the seller commits breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific and where damages would not be an adequate remedy.

Suit for breach of warranty (Section 59): Where there is breach of warranty on the part of the seller, or where the buyer elects to or is forced to treat breach of condition as breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods on the basis of such breach of warranty; but the buyer may –

- (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.

Repudiation of contract before due date (Section 60): Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as:

- subsisting and wait till the date of delivery, or
- he may treat the contract as rescinded and sue for damages for the breach.

Suit for interest:

- (1) The buyer is entitled to recover interest or special damages, or to recover the money paid where the consideration for the payment of it has failed.
- (2) 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.

19. Explain the concept of the "Right of Re-sale" under the Sale of Goods Act, 1930. Under what circumstances can an unpaid seller exercise this right? (MTP May 25 Series 2)

Ans: -

Right of re-sale [Section 54 of the Sale of Goods Act, 1930]: The right of resale is a very valuable right given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

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

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

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:

(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.

(b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien". This is the additional right used in case of agreement to sell.

20. (i) P sold certain antique items to Q for ` 3,00,000/- on 13.12.2024. As per the terms of agreement 75% of the amount was to be paid within a week and the balance 25% was to be paid till 31.12.2024. Q appointed his agent R to take delivery of the goods after payment of first installment. Q transferred a sum of ` 2,80,000/- in the account of P through NEFT on 18.12.2024 which was credited in P's account on the same date. R failed to take delivery of antique items due to medical emergency. By the meantime, Q failed to make payment of the second installment till 31.12.2024. On 10.01.2025, Q's agent came to take the delivery of goods. But, P refused to deliver the goods and exercised his right of lien over the goods.

According to provisions of the Sale of Goods Act, 1930, give your opinion whether P was justified in exercising right of lien as only ` 20,000/- was left to be paid? (4 Marks)

(ii) An auction takes place in Delhi for antique items. It is notified to the bidders that the sale will be completed, only when the hammer of the auctioneer hits the table and he announces "you are the highest bidder". During the auction, L bids for an antique sculpture, worth ` 8 lakhs. The hammer falls, but announcement cannot be made as the auction suddenly stops before the auctioneer can utter any words. It is notified to everyone that there has been an unexpected rise in the market price for that particular sculpture, and therefore, it will not be sold on that particular day. L contends that the auctioneer is bound to sell the sculpture to him at the price he bid because once he bid at the highest price in the auction and the hammer fell, the auction sale was completed and therefore, the auctioneer is under a contractual obligation to sell the sculpture. The auctioneer disagrees. Discuss the validity of L's claim in reference to the provisions of the Sale of Goods Act, 1930. (3 Marks) **(PYQ May 25)**

Ans: -

(i) Rights of lien (Section 47 of the Sale of Goods Act, 1930)

An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. It is the right to retain the possession of the goods and refusal to deliver them to the buyer until the price due in respect of them is paid or tendered.

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

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

In the instant case, P is still in possession of the goods and the full price was not paid by Q within the stipulated time i.e. till 31st December 2024. Therefore, P is an unpaid seller and can rightfully exercise lien under Section 47.

Even though the unpaid amount is only ` 20,000, P's refusal to deliver the goods is valid. Thus, P is legally justified in exercising right of lien.

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



Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

In the instant case, the sale of sculpture to L is not complete as only hammer falls but the auctioneer did not announce “you are the highest bidder”.

Therefore, L’s claim contending that the auctioneer is bound to sell the sculpture to him at the price he bid is not valid as the auction sale was not complete.