

THE SALE OF GOODS ACT, 1930



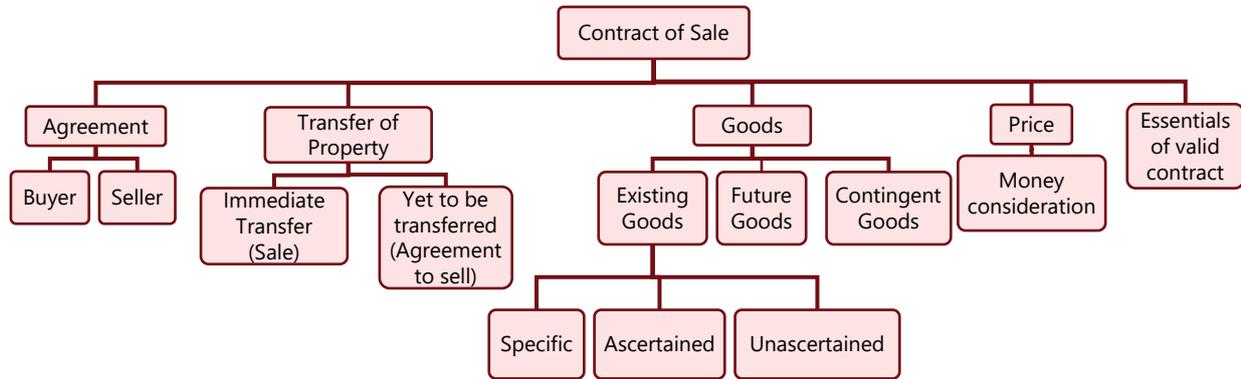
UNIT -1: FORMATION OF THE CONTRACT OF SALE

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ◆ Scope of the Act
- ◆ Definitions of certain terms.
- ◆ Meaning of contract of sale.
- ◆ Distinctions of sale from other similar contracts.
- ◆ Formalities of contract of sale.
- ◆ Subject matter of contract of sale.
- ◆ Ascertainment of price for the contract of sale.

UNIT OVERVIEW



Sale of Goods before Sale of Goods Act, 1930

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

INTRODUCTION

Sale of goods is one of the specific forms of contracts recognized and regulated by law in India. Sale is a typical bargain between the buyer and the seller. The Sale of Goods Act, 1930 allows the parties to modify the provisions of the law by express stipulations. However, in some cases, this freedom is severely restricted.

Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods.

1.1 SCOPE OF THE ACT

The provisions of the Act are applicable to the contracts related to the sale of goods which means movable properties. The Act is not applicable for the sale of immovable properties like land, fields, shop or house etc. For immovable property, Transfer of Property Act, 1882 is applicable. Sale of Goods Act, 1930 deals only with movable property.

The general provisions of the Indian Contract Act, 1872 apply to a Contract of Sale of Goods as far as they are not inconsistent with the express provisions of the Sale of Goods Act.

The expressions used but not defined in the Sales of Goods Act, 1930 and defined in the Indian Contract Act, 1872 have the meanings assigned to them in that Act.

The customs and usages will bind both the parties if these are reasonable and are known to the parties at the time of entering the contract of sale.

1.2 DEFINITIONS

The Sale of Goods Act, 1930 defines the terms which have been frequently used in the Act, which are as follows –

(A) Buyer and Seller: 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. **'Seller'** means a person who sells or agrees to sell goods [Section 2(13)]. The two terms, 'buyer' and 'seller' are complementary and represent the two parties to a contract of sale of goods. Both the terms are, however, used in a sense wider than their common meaning. Not only the person who buys but also the one who agrees to buy is a buyer. Similarly, a 'seller' means not only a person who sells but also a person who agrees to sell.

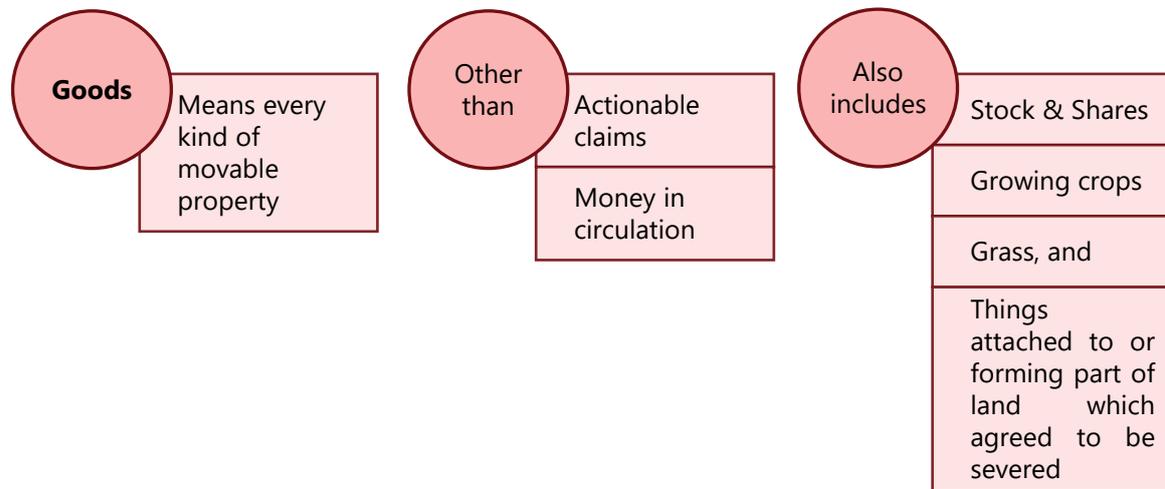


(B) Goods and other related terms:

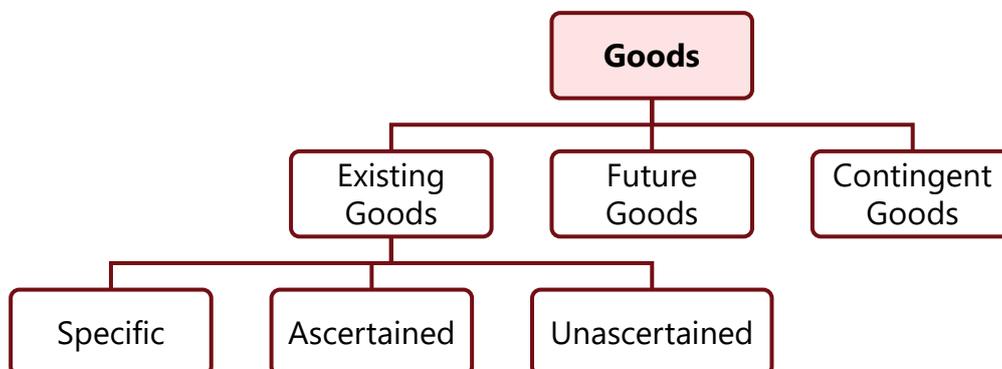
"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed/ separated from the land before sale or under the contract of sale. [Section 2(7)]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

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



Classification of Goods



- (i) **EXISTING GOODS** are such goods which are in existence at the time of the contract of sale, i.e., those owned or possessed or acquired by the seller at the time of contract of sale (Section 6).

The existing goods may be of following kinds:

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

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

Example 2: 'A' had five cars of different models. He agreed to sell his 'Santro' car to 'B' and 'B' agreed to purchase the same 'Santro' car. In this case, the sale is for specific goods as the car has been identified and agreed at the time of the contract of sale.

- (b) **Ascertained Goods** are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice, the term 'ascertained goods' is used in the same sense as 'specific goods.' When out of a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Example 3: A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract. It may be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods.

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

Example 4: If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.

Example 5: X has ten horses. He promises to sell one of them but does not specify which horse he will sell. It is a contract of sale of unascertained goods.

- (ii) **FUTURE GOODS means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2(6)].**

A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a person cannot transfer what is not in existence.

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

Example 7: P agrees to sell to Q all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.

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

- (iii) **CONTINGENT GOODS:** The acquisition of goods which depends upon an uncertain contingency (uncertain event) are called 'contingent goods' [Section 6(2)].

Contingent goods also operate as 'an agreement to sell' and not a 'sale' so far as the question of passing of property to the buyer is concerned. In other words, like the future goods, in the case of contingent goods also, the property does not pass to the buyer at the time of making the contract.

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

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

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

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

Delivery of Goods

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

- (i) **Actual delivery:** When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer. This is the most common method of delivery.
- (ii) **Constructive delivery:** When transfer of goods is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)

Example 11: Where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

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

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

Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

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

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

Example 13: Bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant, an order of delivery of goods.

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

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

- (E) **Mercantile Agent [Section 2(9)]:** It means an agent who in the customary course of business has, as such agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods. Mercantile agent can borrow money by pledging the goods.

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

- (F) **Property [Section 2(11)]:** 'Property' here means 'ownership' or general property. In every contract of sale, the ownership of goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. It means the general property (right of ownership-in-goods) and not merely a special property.

The property in the goods means the general property i.e., all ownership right of the goods. Note that the 'general property' in goods is to be distinguished from a 'special property'. It is quite possible that the general property in a thing may be in one person and a special property in the same thing may be in another e.g., when an article is pledged, the special property gets transferred and not the general property. The general property in a thing may be transferred, subject to the special property continuing to remain with another person i.e., the pledgee who has a right to retain the goods pledged till payment of the stipulated dues.

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

- (G) **Insolvent [Section 2(8)]:** A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.
- (H) **Price [Section 2(10)]:** Price means the money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.
- (I) **Quality of goods** includes their state or condition. **[Section 2(12)]**

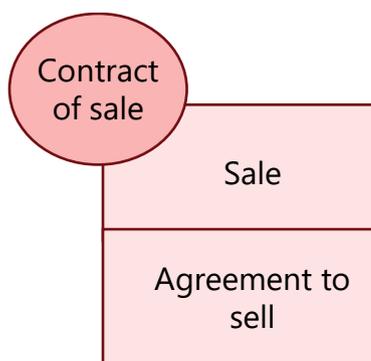
1.3 SALE AND AGREEMENT TO SELL (SECTION 4)

According to section 4(1), "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price". There may be a contract of sale between one part-owner and another.

A contract of sale may be absolute or conditional. **[Section 4(2)]**

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell. **[Section 4(3)]**

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. **[Section 4(4)]**



Sale: In Sale, the property in goods is transferred from seller to the buyer immediately. The term sale is defined in the Section 4(3) of the Sale of Goods Act, 1930 as – “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.”

Agreement to Sell: 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. 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.

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

When agreement to sell becomes sale: An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

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

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

1.4 DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

The differences between the two are as follows:

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

Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem means right against the whole world.	Creates Jus in personam means rights against a particular party to the contract
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
In case of insolvency of seller	The official assignee will not be able to take over the goods but will recover the price from the buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
In case of insolvency of buyer	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.

1.5 SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

- (i) **Sale and Hire Purchase:** Contract of sale resembles with contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire purchase agreements are governed by the Hire-purchase Act, 1972. Term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

- (a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and
- (b) The property in the goods is to pass to such person on the payment of the last of such instalments, and
- (c) Such person has a right to terminate the agreement at any time before the property so passes;

Nonetheless, a sale has to be distinguished from a hire purchase as their legal incidents are quite different.

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.

- (ii) **Sale and Bailment:** A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished to the bailor or are to be disposed of according to the

directions of the bailor. Provisions related to bailment are regulated by the Indian Contract Act, 1872.

The difference between bailment and sale may be clearly understood by studying the following:

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

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

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

1.6 CONTRACT OF SALE HOW MADE (SECTION 5)

According to Section 5(1), A contract of sale may be made in any of the following modes:

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

- (iv) There may be immediate delivery of the goods and an immediate payment of price; or
- (v) It may be agreed that the delivery or payment or both are to be made in instalments; or
- (vi) It may be agreed that the delivery or payment or both are to be made at some future date.

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

1.7 SUBJECT MATTER OF CONTRACT OF SALE

Existing or future goods (section 6):

- (1) The goods which form the subject matter of a contract of sale may be either existing goods that are acquired, owned or possessed by the seller, or future goods.
- (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

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

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

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

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

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

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

Example 21: A agrees to sell B 100 tons of tomatoes grown on his land next year. But the crop failed due to some disease in plants and A could only deliver 80 tons of tomatoes to B. It was held A was not liable as the performance of contract became impossible due to supervening impossibility.

1.8 ASCERTAINMENT OF PRICE (SECTION 9 & 10)

Ascertainment of price (Section 9):

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

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

Agreement to sell at valuation (Section 10):

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

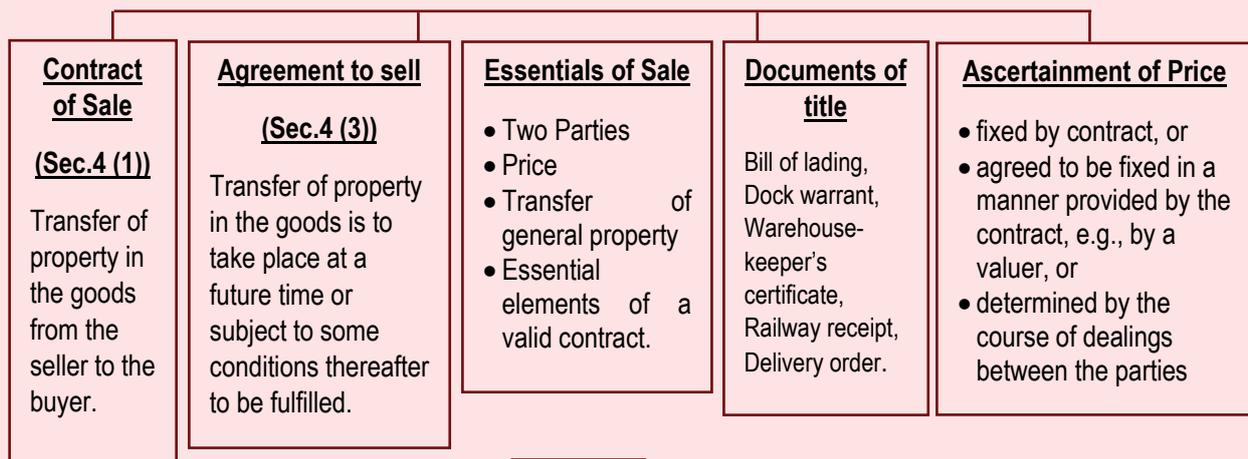
1. Where there is an agreement to sell goods on the terms that price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will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

Example 22: P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided as the third party Q refuses to fix the price

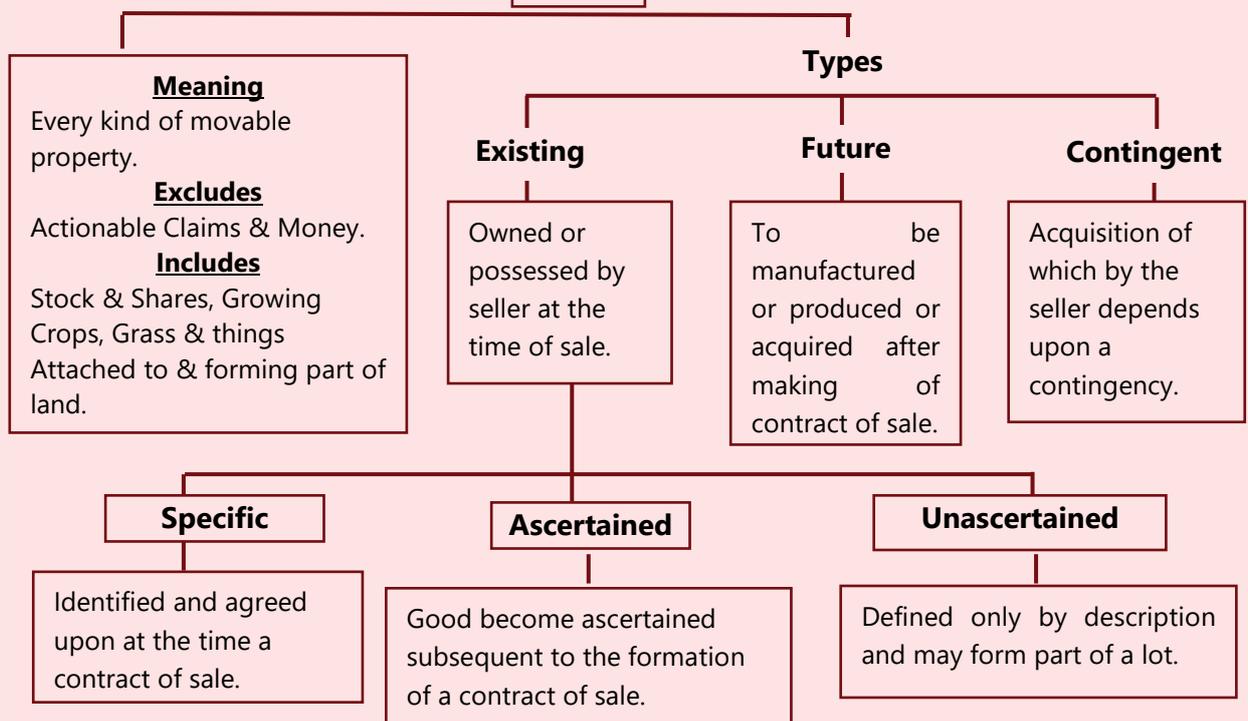
SUMMARY

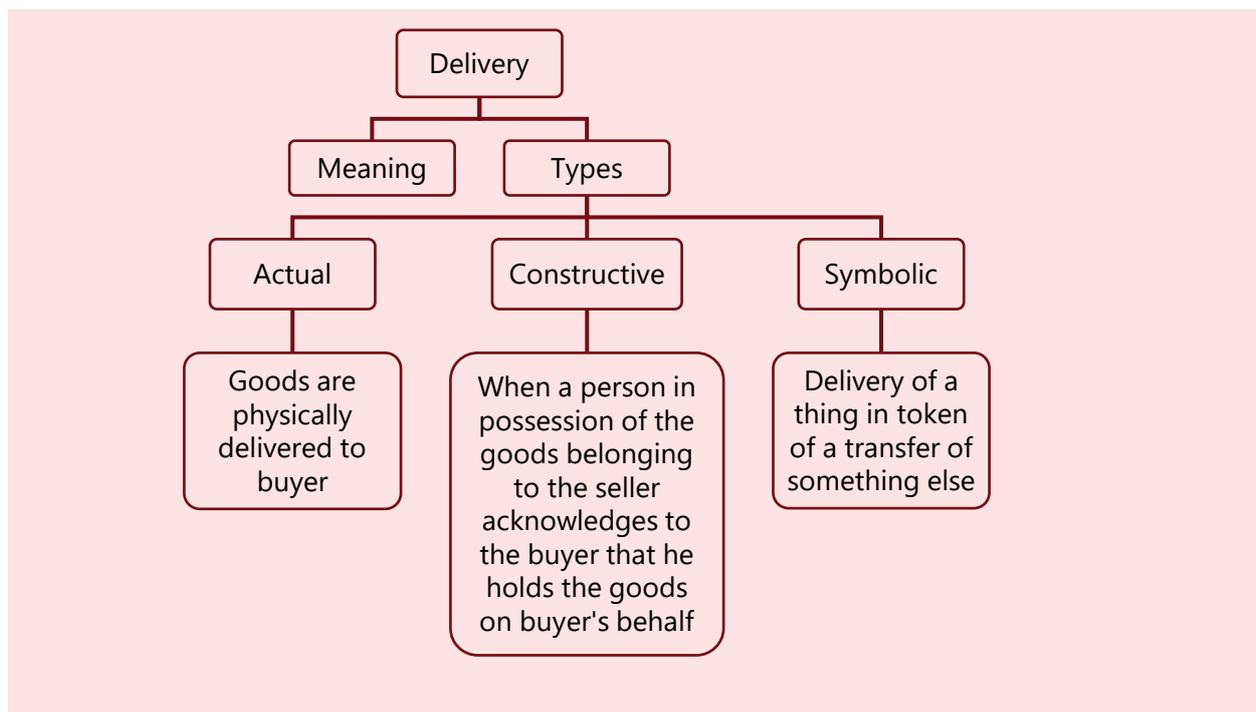
In nutshell, contract of sale of goods is a contract where the seller transfers or agrees to transfer the property in goods to the buyer for a price. Where, however, the transfer of property in goods is to take place at a future date or subject to some conditions to be fulfilled, the contract is called 'agreement to sell'. The subject matter of such contract must always be goods. Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner.

FORMATION OF THE CONTRACT OF SALE



Goods





TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. A contract for the sale of goods where property would pass to the buyer on payment of total price would be;
 - (a) sale
 - (b) agreement to sell
 - (c) hire-purchase contract.
 - (d) sale on approval.
2. The term "goods" under Sale of Goods Act, 1930 does not include
 - (a) goodwill.
 - (b) actionable claims.
 - (c) stocks and shares.
 - (d) harvested crops.
3. A contract for the sale of "future goods" is
 - (a) sale
 - (b) agreement to sell.

- (c) *void.*
 - (d) *hire-purchase contract.*
4. *The sale of Goods Act, 1930 deals with the*
- (a) *movable goods only.*
 - (b) *immovable goods only.*
 - (c) *both movable and immovable goods.*
 - (d) *all goods except ornaments.*
5. *Under Sale of Goods Act, 1930 the terms "Goods" means every kind of movable property and it includes*
- (a) *stock and share.*
 - (b) *growing crops, grass*
 - (c) *both (a) and (b).*
 - (d) *none of the above*
6. *The Sale of Goods Act, 1930 deals with*
- (a) *sale*
 - (b) *mortgage.*
 - (c) *pledge.*
 - (d) *all of the above.*
7. *Which one of the following is true?*
- (a) *the provisions of Sale of Goods were originally with the Indian Contract Act, 1872.*
 - (b) *the Sale of Goods Act, 1930 deals with mortgage.*
 - (c) *the Sale of Goods Act restricts the parties to modify the provisions of law.*
 - (d) *none of the above.*
8. *Goods which are in existence at the time of the Contract of Sale is known as*
- (a) *present Goods.*
 - (b) *existing Goods.*
 - (c) *specific Goods.*
 - (d) *none of the above.*

9. Which of the following is not a form of delivery?
- (a) constructive delivery.
 - (b) structured delivery.
 - (c) actual delivery.
 - (d) symbolic delivery.
10. Which one of the following is/are document of title to goods?
- (a) railway receipt.
 - (b) wharfinger's certificate.
 - (c) warehouse keeper's certificate.
 - (d) all of the above
11. Which one of the following is not true?
- (a) document showing title is different from document of title.
 - (b) bill of lading is a document of title to goods.
 - (c) specific goods can be identified and agreed upon at the time of the Contract of Sale.
 - (d) none of the above.
12. Mercantile Agent is having an authority to
- (a) sell or consign goods.
 - (b) raise money on the security of goods.
 - (c) sell or buy goods.
 - (d) any of the above.
13. Contract of Sale is
- (a) executory Contract.
 - (b) executed Contract.
 - (c) both of the above.
 - (d) none of the above.

14. *In which form of the contract, the property in the goods passes to the buyer immediately:*
- (a) *agreement to sell.*
 - (b) *hire purchase.*
 - (c) *sale*
 - (d) *instalment to sell.*
15. *In case of hire purchase the hirer can pass title to a bona fide purchaser.*
- (a) *true.*
 - (b) *false.*
16. *In a contract of sale, the agreement may be expressed or implied from the conduct of the parties.*
- (a) *true.*
 - (b) *false.*
17. *In a contract of sale, subject matter of contract must always be money.*
- (a) *true.*
 - (b) *false.*
18. *If a seller handed over the keys of a warehouse containing the goods to the buyer results in*
- (a) *constructive delivery*
 - (b) *actual delivery*
 - (c) *symbolic delivery*
 - (d) *none of the above*
19. *If A agrees to deliver 100 kg of sugar to B in exchange of 15 mts of cloth, then it is*
- (a) *Contract of sale.*
 - (b) *Agreement to sell.*
 - (c) *Sale on Approval.*
 - (d) *Barter.*

20. *In a hire-purchase agreement, the hirer*
- (a) *has an option to buy the goods.*
 - (b) *must buy the goods.*
 - (c) *must return the goods.*
 - (d) *is not given the possession of goods.*
21. *A agrees to deliver his old car valued at ₹1, 80,000 to B, a car dealer, in exchange for a new car, and agrees to pay the difference in cash it is*
- (a) *Contract of sale.*
 - (b) *Agreement to sell.*
 - (c) *Exchange.*
 - (d) *Barter.*
22. *Legally, a contract of sale includes*
- (a) *sale.*
 - (b) *agreement to Sell.*
 - (c) *barter.*
 - (d) *both (a) and (b)*
23. *The Sale of Goods Act, 1930 came into force on*
- (a) *15th March, 1930.*
 - (b) *1st July, 1930.*
 - (c) *30th July, 1930.*
 - (d) *30th June, 1930.*
24. *The person who buys or agrees to buy goods is known as*
- (a) *consumer.*
 - (b) *buyer.*
 - (c) *both (a) and (b)*
 - (d) *none of the above.*

25. *Voluntary transfer of possession by one person to another is popularly known as*
- (a) *transfer.*
 - (b) *possession.*
 - (c) *delivery.*
 - (d) *none of the above.*
26. *If X commissioned Y, an artist, to paint a portrait of A for 200 dollars & Y uses his own canvas & paint then it is*
- (a) *Contract of sale.*
 - (b) *Contract of work & materials.*
 - (c) *Sale on approval.*
 - (d) *Hire-Purchase agreement.*
27. *The property in the goods means the*
- (a) *possession of goods.*
 - (b) *custody of goods.*
 - (c) *ownership of goods.*
 - (d) *both (a) and (b)*
28. *The goods are at the risk of a party who has the*
- (a) *Ownership of goods.*
 - (b) *Possession of goods.*
 - (c) *Custody of goods.*
 - (d) *both (b) and (c)*
29. *In case of sale of standing trees, the property passes to the buyer when trees are*
- (a) *felled and ascertained.*
 - (b) *not felled but earmarked.*
 - (c) *counted and ascertained.*
 - (d) *both (b) and (c)*

30. *In case the delivery of goods is delayed due to the fault of party, the goods shall be at the risk of defaulting party even though the ownership is with the other party.*
- (a) *True, if there is a provision to this effect.*
- (b) *False, as it is against the general rule.*
31. *Which of the following modes of delivery of goods is considered effective for a valid contract of sale?*
- (a) *Actual delivery.*
- (b) *symbolic delivery.*
- (c) *Constructive delivery.*
- (d) *all of these.*

Descriptive questions

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.*
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?*
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?*
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.*

ANSWERS/HINTS

Answers to MCQs

1.	(b)	2.	(b)	3.	(b)	4.	(a)	5.	(c)	6.	(a)
7.	(a)	8.	(b)	9.	(b)	10.	(d)	11.	(d)	12.	(d)
13.	(b)	14.	(c)	15.	(b)	16.	(a)	17.	(b)	18.	(c)
19.	(d)	20.	(a)	21.	(a)	22.	(d)	23.	(b)	24.	(b)
25.	(c)	26.	(b)	27.	(c)	28.	(a)	29.	(a)	30.	(a)
31.	(d)										

Answers to Descriptive Questions

- 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.

- 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:

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

- 3.** 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.**
- (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.'

UNIT – 2: CONDITIONS & WARRANTIES

LEARNING OUTCOMES

After studying this unit, you would be able to understand:

- ◆ About Stipulation as to time
- ◆ Conditions and warranties in a contract of Sale
- ◆ About the implied conditions and warranties.
- ◆ The doctrine of 'caveat emptor'.

UNIT OVERVIEW

Stipulation with Reference to Goods

Condition

Essential to main purpose of the contract

Breach-repudiation

Warranty

Collateral to main purpose of the contract

Breach-claim for damages

2.1 STIPULATION AS TO TIME (SECTION 11)

As regard to time for the payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of a contract of sale. But delivery of goods must be made without delay. Whether or not such a stipulation is of the essence of a contract depends on the terms agreed upon.

Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner. Stipulation as to time of delivery are usually the essence of the contract.

2.2 INTRODUCTION - CONDITIONS AND WARRANTIES

At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods, and about their fitness for buyer's purpose.

When these statements or representations do not form a part of the contract of sale, they are not relevant and have no legal effects on the contract. But when these form part of the contract of sale and the buyer relies upon them, they are relevant and have legal effects on the contract of sale.

A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. However, every stipulation is not of equal importance. Some of these may be very vital while others may be of somewhat lesser significance. The more significant stipulations contained in a contract of sale of goods have been called as "Conditions", while the less significant stipulation have been given the name "Warranties".

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)]

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

"A **warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated". [Sub-section (3)].

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

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

Let us assume, Ram buys a new Maruti car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and in the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired. After six months, Ram finds that the horn of the car is not working, here in this case he cannot terminate the contract. The manufacturer can either get it repaired or replaced it with a new horn. Ram gets a right to claim for damages, if any, suffered by him but not the right of repudiation.

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

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

2.3 WHEN CONDITION IS TO BE TREATED AS WARRANTY (SECTION 13)

Section 13 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:

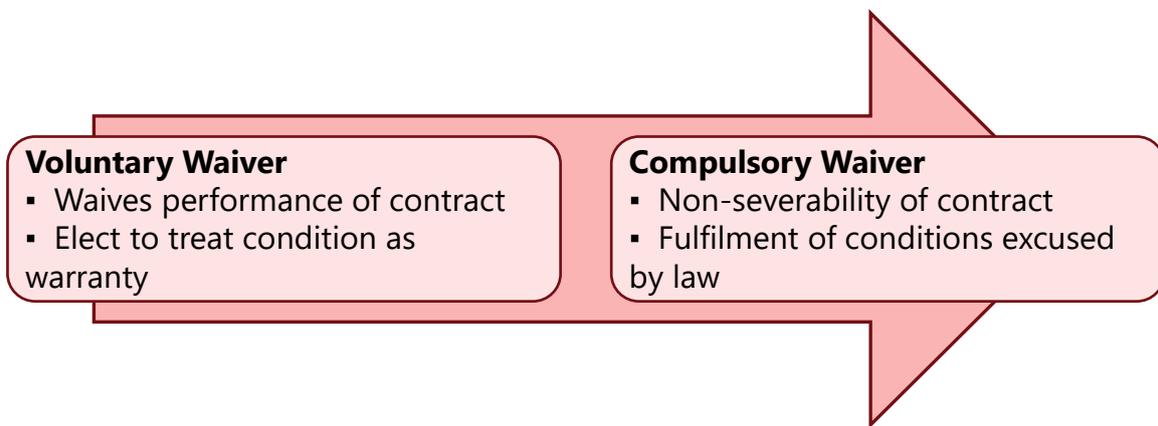
- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages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

Example 3: A agrees to supply B 10 bags of first quality sugar @ ₹ 625 per bag but supplies only second quality sugar, the price of which is ₹ 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he

may treat it as a breach of warranty, hence he may accept the second quality sugar and claim damages @ ₹ 25 per bag.

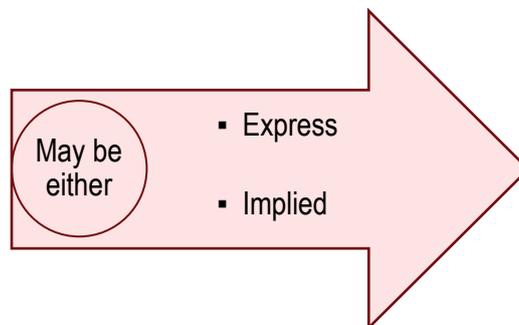
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. For Eg. If basmati rice and lower quality rice mixed together, the contract becomes non severable.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Waiver of conditions



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

Condition and Warranty

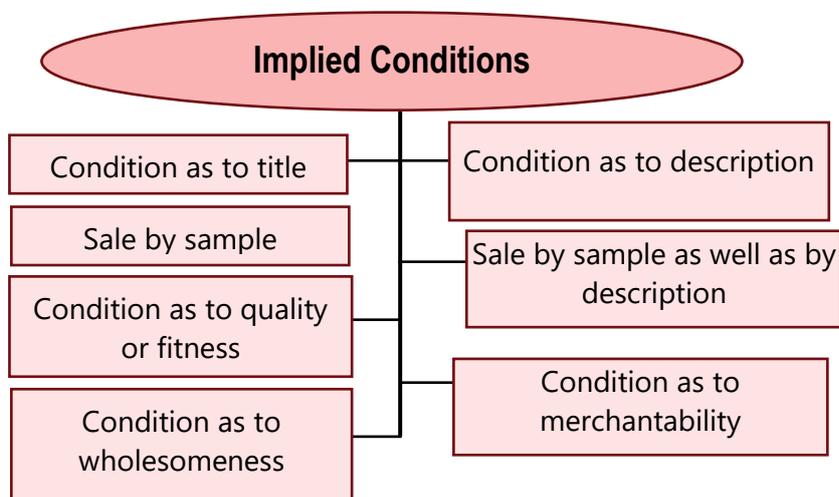


‘Conditions’ and ‘Warranties’ may be either **express or implied**. They are “express” when the terms of the contract expressly state them. They are implied when, not being expressly provided for. Implied conditions are incorporated by law in the contract of sale.

Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

Implied conditions, on the other hand, are those, which are presumed by law to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

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



- (i) **Condition as to title [Section 14(a)].** In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that
- (a) in case of a sale, he has a right to sell the goods, and
 - (b) in the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.

In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

Example 4: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

Example 5: If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this is proved to be an infringement of N Company's trade mark, it will be a breach of implied condition that A had the right to sell. B in such a case will be entitled to reject the goods or take off the labels, and claim damages for the reduced value. If the seller has no title and the buyer has to make over the goods to the true owner, he will be entitled to refund of the price.

- (ii) **Sale by description [Section 15]:** Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans." The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

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.

It is a condition which goes to the root of the contract and the breach of it entitles the buyer to reject the goods whether the buyer is able to inspect them or not.

Example 6: A at Kolkata sells to B twelve bags of "waste silk" on its way from Murshidabad to Kolkata. There is an implied condition that the silk shall be such as is known in the market as "Waste Silk". If it not, B is entitled to reject the goods.

Example 7: A ship was contracted to be sold as "copper-fastened vessel" but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

The Act, however, does not define 'description'.

- (i) where the class or kind to which the goods belong has been specified, e.g., 'Egyptian cotton', "java sugar", etc., defining the category of good
- (ii) where the goods have been described by certain characteristics essential to their identification, e.g., jute bales of specified shipment, steel of specific dimension, etc.

It may be noted that the description in these cases assumes that form of a statement or representation as regards the identity of particular goods by reference to the place of origin or mode of packing, etc. Whether or not such a statement or representation is essential to the identity of the goods is a question of fact depending, in each case, on the construction of the contract.

- (iii) **Sale by sample [Section 17]:** In a contract of sale by sample, there is an implied condition that

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

Example 8: In a case of sale by sample of two parcels of wheat, the seller allowed the buyer an inspection of the smaller parcel but not of the larger parcel. In this case, it was held that the buyer was entitled to refuse to take the parcels of wheat.

- (c) the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is 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.

Example 9: A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.

- (iv) **Sale by sample as well as by description [Section 15]:** Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.

Example 10: A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil along with sunflower oil. Hence, B can reject the goods because the goods were as per sample but do not correspond to the description.

- (v) **Condition as to quality or fitness [Section 16(1)]:** Ordinarily, there is no implied condition as to the quality or fitness of the goods sold for any particular purpose.

However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods. This implied condition will not apply if the goods have been sold under a trademark or a patent name.

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

- (a) The buyer should have made known to the seller the particular purpose for which goods are required.

- (b) The buyer should rely on the skill and judgement of the seller.
- (c) The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be used for only one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

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

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

As a general rule, it is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them. This is known as rule of caveat emptor which means "Let the buyer beware".

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

There are two requirements for this condition to apply:

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

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

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

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

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

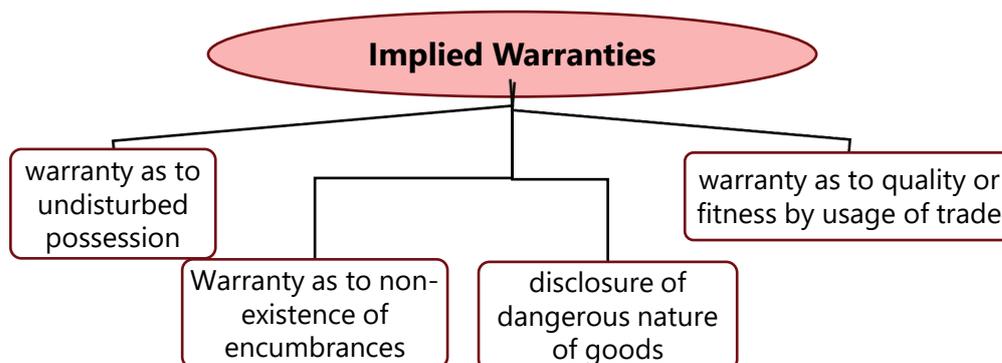
- (vii) **Condition as to wholesomeness:** In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

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

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



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



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

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

Example 16: X buys a laptop from Y. After the purchase, X spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from X and delivered to its rightful owner. Y shall be held responsible for a breach and X is entitled to damages of not only the price but also the cost of repairs.

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

Example 17: A pledges his car with C for a loan of ₹15,0000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, without knowing the fact. B, may either ask A to clear the loan or himself may pay the money and then, file a suit against A for recovery of the money with interest.

3. **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

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.

2.5 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.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Following are the conditions to be satisfied:

- if the buyer had made known to the seller the purpose of his purchase, and
- the buyer relied on the seller's skill and judgement, and
- seller's business to supply goods of that description (Section 16).

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

Example 19: A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

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

1. **Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1)].

Example 20: An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.

In ***Priest vs. Last, P***, a draper, purchased a hot water bottle from a retail chemist, P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured his wife. It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle.

Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.

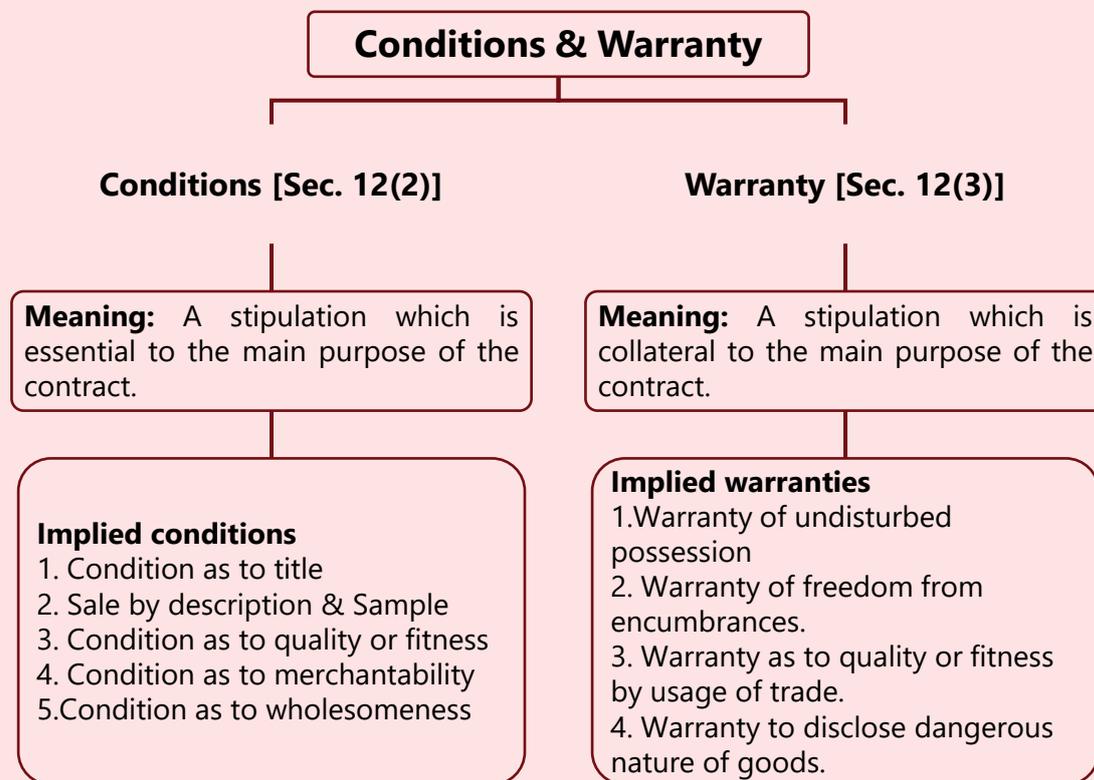
In ***Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad***, timber was purchased for the express purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.

2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)]. Here, the buyer is relying on the particular brand name.
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable for latent defects. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].
Example 21: In readymade garment business, there is an implied condition by usage of trade that the garments shall be reasonably fit on the buyer.
8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

SUMMARY

While entering into a contract of sale, certain stipulations are put by both the parties i.e. the buyer and the seller. These stipulations with reference to goods may be 'conditions' or 'warranties' depending upon the construction of the contract. A stipulation essential to the main purpose of the contract is a 'condition' whereas collateral stipulations are called warranties. Breach of a 'condition' gives right to repudiate the contract and to claim damages whereas Breach of a 'Warranty' gives right to claim damages only. Every contract of sales have certain conditions and warranties implied by law. Besides, the parties may provide for 'conditions' and 'warranties' by an express agreement.

Regarding implied condition or warranty as to the quality of 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.

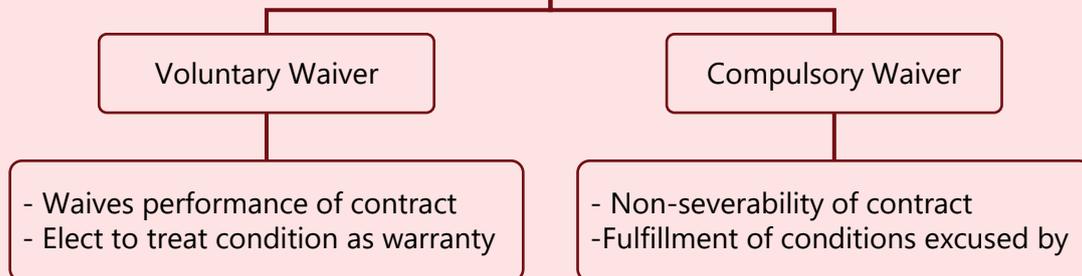


Note: 1. If there is a breach of a condition, the aggrieved party can repudiate the contract of sale; in case of a breach of a warranty, the aggrieved party can claim damages only.

2. A breach of a condition may be treated as a breach of a warranty (by voluntary waiver or by accepting the goods by buyer) but a breach of a warranty, however, cannot be treated as a breach of a condition.

When Condition treated as Warranty

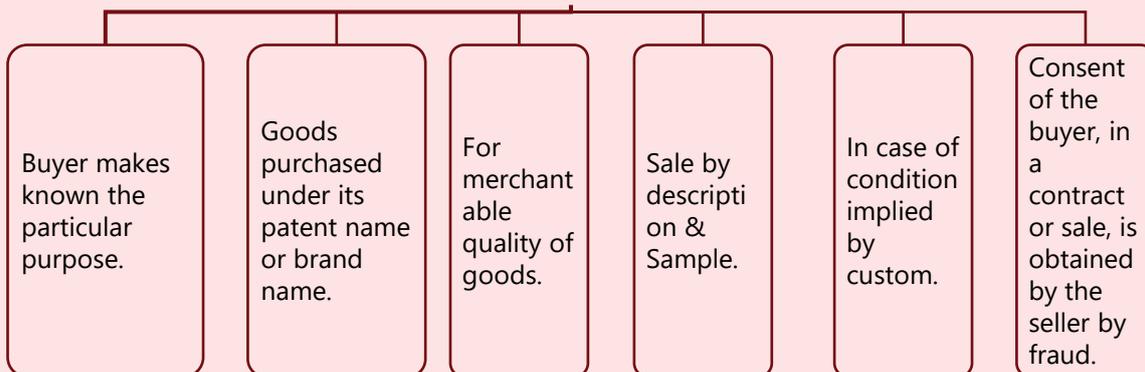
As a result of which the buyer loses his right to rescind the contract and can claim damages only



Caveat Emptor

This means "**let the buyer beware**", i.e. its buyer's duty to examine thoroughly when he buys the goods

Exceptions



TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. A stipulation which is essential to the main purpose of the contract is called-
 - (a) Warranty
 - (b) Guarantee
 - (c) Condition
 - (d) Indemnity

2. *Breach of condition gives the aggrieved party-*
 - (a) *Right to sue for damages*
 - (b) *Right to repudiate the contract*
 - (c) *Both (a) and (b)*
 - (d) *None of these*
3. *Condition may be treated as a warranty when there is –*
 - (a) *Waiver of condition by the buyer*
 - (b) *Buyer elects to treat breach of condition as a breach of warranty*
 - (c) *Acceptance of goods by the buyer in case of non-severable of contract of sale*
 - (d) *All of the above*
4. *The doctrine of Caveat Emptor does not apply, when*
 - (a) *the goods are bought by sample.*
 - (b) *the goods are bought by sample as well as description.*
 - (c) *The exact purpose is known to the seller and is a regular dealer*
 - (d) *All of the above*
5. *Which of the following is not an implied condition in a contract of sale?*
 - (a) *condition as to title.*
 - (b) *condition as to description*
 - (c) *condition as to free from encumbrance.*
 - (d) *condition as to sample.*
6. *The conditions and warranties may be in the form of*
 - (a) *express.*
 - (b) *implied.*
 - (c) *either (a) or (b).*
 - (d) *none of the above.*
7. *Which one of the following is not an implied warranty*
 - (a) *warranty as to undisturbed possession.*
 - (b) *warranty as to existence of encumbrance.*

- (c) *disclosure of dangerous nature of goods.*
- (d) *warranty as to quality or fitness by usage of trade.*
8. *In case of goods sold by sample, the goods should correspond with the sample other wise*
- (a) *buyer can reject the goods.*
- (b) *buyer cannot reject the goods.*
- (c) *contract is automatically terminated.*
- (d) *seller is liable to punishment.*
9. *M, a shopkeeper, sold a Television set to N, who purchased it in good faith. The set had some manufacturing defect and it did not work after a few days in spite of repairs. In this case, the television was not merchantable as it was not fit for ordinary purpose.*
- (a) *the buyer has no right to reject the television.*
- (b) *the buyer has the right to reject the television and to have refund of the price.*
- (c) *both of the above.*
- (d) *none of the above [(a) & (b)]*
10. *Where the buyer is deprived to goods by their true owner, then the buyer*
- (a) *may recover the price for breach of the condition as to title.*
- (b) *can not recover the price for breach of the condition as to title.*
- (c) *either (a) or (b)*
- (d) *none of the above.*
11. *Where goods are bought by description from a seller who deals in goods of that description, what is the implied condition?*
- (a) *That goods shall be of merchantable equality*
- (b) *That the buyer shall have reasonable opportunity of comparing the bulk with the sample*
- (c) *The goods shall be of excellent quality*
- (d) *The goods shall be free from defects*
12. *A warranty is stipulation*
- (a) *Essential to the main purpose of the contract*
- (b) *Collateral to the main purpose of the contract*

- (c) *Very important to the seller*
 - (d) *Very important to the buyer*
13. *In a sale by sample and description, there is an implied condition*
- (a) *That bulk of the goods correspond with the sample*
 - (b) *That bulk of goods must correspond to the description as well as the sample thereof*
 - (c) *The bulk of goods must correspond either to the description or to the sample*
 - (d) *The bulk of goods must correspond to the description only*

Descriptive Questions

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?*
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?

- 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?*
- 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?*
- 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.*
- 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?*
- 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?*

ANSWERS/HINTS

Answers to MCQs

1.	(c)	2.	(c)	3.	(d)	4.	(d)	5.	(c)	6.	(c)
7.	(b)	8.	(a)	9.	(b)	10.	(a)	11.	(a)	12.	(b)
13.	(b)										

Answer to Descriptive Questions

1. (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. 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. 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. 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. 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. 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. 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.

UNIT – 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ◆ How and at what point of time the ownership in goods which are the subject matter of a contract of sale passes to the buyer from the seller.
- ◆ About what appropriation of goods is and how it affects the passing of property in goods.
- ◆ Distinction between passing of property and passing of title.
- ◆ The rule of '*nemo dat quod non habet*' (no one can give what he has not got) and exceptions thereof.
- ◆ The rules relating to delivery of goods and acceptance of goods.

UNIT OVERVIEW

A contract of sale of goods involves transfer of ownership in three stages:



INTRODUCTION

Sale of goods involves transfer of ownership of property from seller to buyer. It is essential to determine the time at which the ownership passes from the seller to the buyer.

Importance of the time of transfer

The general rule is that risk prima facie passes with the property. In case where goods are lost or damaged, the burden of loss will be borne by the person who is the owner at the time when the goods are lost or damaged. Where the goods are damaged by the act of the third party, it is the owner who can take action. Suit for price by the seller can be filed only when the property has passed to the buyer.

3.1 PASSING OF PROPERTY (SECTIONS 18 – 26)

Passing or transfer of property constitutes the most important element and factor to decide legal rights and liabilities of sellers and buyers. Passing of property implies passing of ownership. If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller, though the goods may still be in the seller's possession.

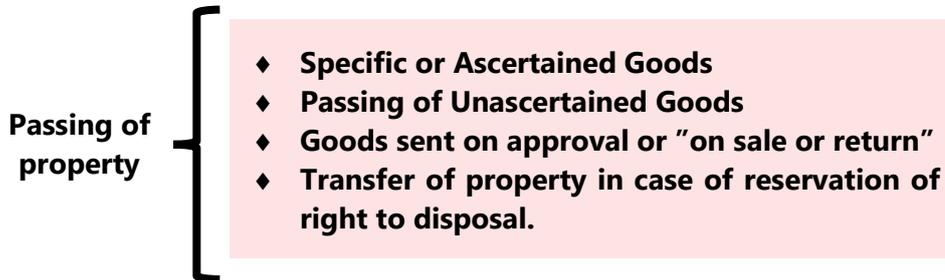
The rules regarding transfer of property in goods from the seller to the buyer depend on two basic factors:

- (a) **Identification of Goods:** Section 18 provides that where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.
- (b) **Intentions of parties:** The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred. [section 19(1)]

Section 19(2) further provides that for the purpose of ascertaining the intention of the parties regard shall be:

- (i) To the terms of the contract
- (ii) To the conduct of the parties and
- (iii) To the circumstances of the case

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



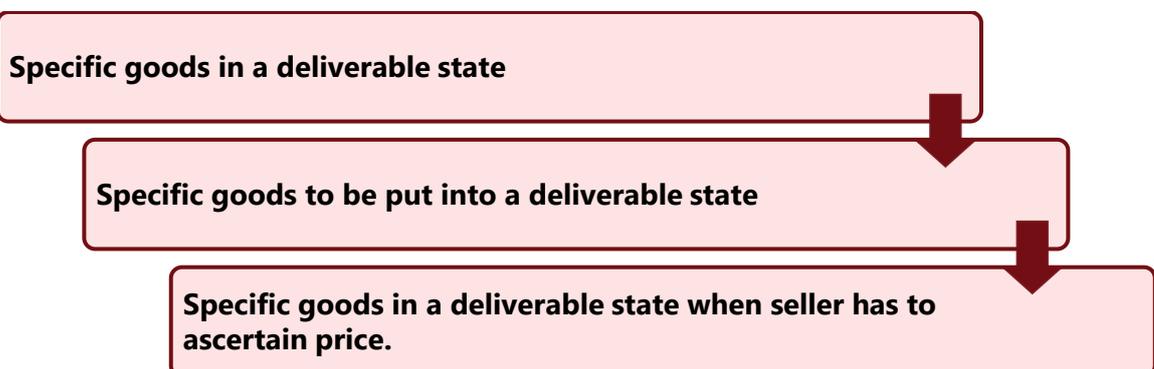
A. Property (Specific or ascertained goods) passes when intended to pass (Section 19):

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. **[sub-section (1)]**

For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. **[sub-section (2)]**

Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. **[sub-section (3)]**

Stages of goods while passing of property



1. **Specific goods in a deliverable state (Section 20):** Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. Here, the condition is goods must be ready for delivery.

Example 1: X goes into a shop and buys a television and asks the shopkeeper for its home delivery. The shopkeeper agrees to do it. The television immediately becomes the property of X.

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

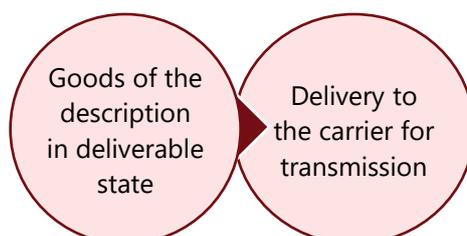
Example 2: Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery and intimated the buyer about it.

3. **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22):** Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Example 3: A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company.

B. Unascertained goods

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. **[Section 18]**



The rules in respect of passing of property of unascertained goods are as follows:

- 1. Sale of unascertained goods by description and Appropriation [Section 23(1)]:** Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essentials are:

- (a) There is a contract for the sale of unascertained or future goods.
 - (b) The goods should conform to the description and quality stated in the contract.
 - (c) The goods must be in a deliverable state.
 - (d) The goods must be unconditionally (as distinguished from an intention to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
 - (e) The appropriation must be made by:
 - (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.
- 2. Delivery of the goods to the carrier [Section 23(2)]:** Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

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

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

C. Goods sent on approval or “on sale or return” (Section 24)

When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Example 6: P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument. The ownership is transferred when he has decided to purchase the instrument as his own.

A buyer under a contract on the basis of ‘sale or return’ is deemed to have exercised his option when he does any act exercising domination over the goods showing an unequivocal intention to buy, example, if he pledges the goods with a third party. Failure or inability to return the goods to the seller does not necessarily imply selection to buy.

Example 7: ‘A’ delivered some jewellery to ‘B’ on sale or return basis. ‘B’ pledged the jewellery with ‘C’. It was held that the ownership of the jewellery had been transferred to ‘B’ as he had adopted the transaction by pledging the jewellery with ‘C’. In this case, ‘A’ has no right against ‘C’. He can only recover the price of the jewellery from ‘B’.

Example 8: A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

Sale for cash only or Return

It may be noted that where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.

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

D. **Reservation of right of disposal (Section 25)**

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

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. (sub-section 1)

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

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

- (1) 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. (sub section 2)
- (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. (sub section 3)

It should be noted that Section 25 deals with "conditional appropriation" as distinguished from 'unconditional appropriation' dealt with under Section 23 (2).

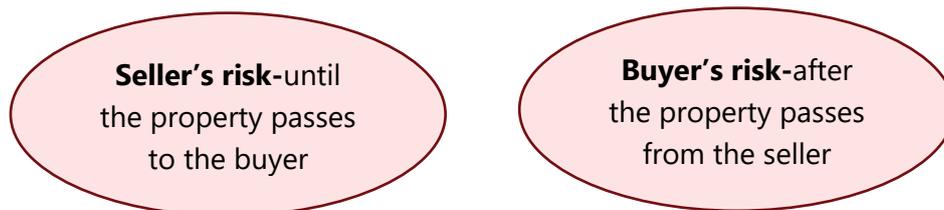
3.2 RISK PRIMA FACIE PASSES WITH PROPERTY (SECTION 26)

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.

Thus, in ordinary circumstances, risk is borne by the buyer only when the property in the goods passes over to him. However, the parties may by special agreement stipulate that ‘risk’ will pass sometime after or before the ‘property’ has passed.

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



Example 11: A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

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

- (i) If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.
- (ii) The duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

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

As noted above, the risk (i.e., the liability to bear the loss in case property is destroyed, damaged or deteriorated) passes with ownership. The parties may, however, agree to the contrary. For instance, the parties may agree that risk will pass sometime after or before the property has passed from the seller to the buyer.

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

Sale by person not the owner (Section 27): In general, the seller can sell only such goods of which he is the absolute owner. But sometimes a person may sell goods of which he is not the owner, then the question arises as to what is the position of the buyer who has bought the goods by paying price. The general rule regarding the transfer of title is that the seller cannot transfer a better title to the buyer for goods than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller. This rule is expressed in the Latin maxim "*Nemo dat quod non habet*" which means that no one can give what he has not got.

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

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

If this rule is enforced rigidly then the innocent buyers may be put to loss in many cases. Therefore, to protect the interests of innocent buyers, a number of exceptions have been provided to this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

Example 19: A took a car from B on this condition that A would pay a monthly instalment of ₹ 5,000 as hire charges with an option to purchase it by payment of ₹ 1,00,000 in 24 instalments.

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

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

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

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

(8) Sale under the provisions of other Acts:

- (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]

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

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

Definition of Delivery [Section 2(2)]: Delivery means voluntary transfer of possession from one person to another. For delivery, physical possession is not important. The buyer should be placed in a position so that he can exercise his right over the goods.

Thus, if the possession is taken through unfair means, there is no delivery of the goods. Delivery of goods sold may be made by doing anything which the parties agree, shall be treated as delivery or putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Delivery of goods is of three types:

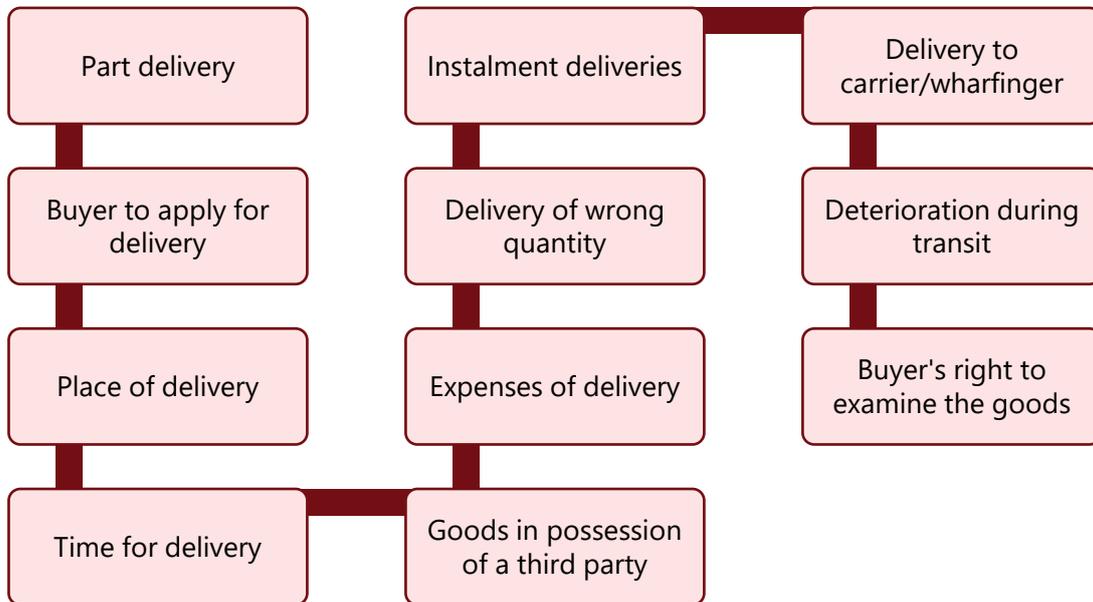
- (a) Actual Delivery
- (b) Symbolic delivery
- (c) Constructive Delivery

Duties of seller and buyer (Section 31): It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions (Section 32): Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rules Regarding Delivery of goods (Section 33-41)

The Sale of good Act, 1930 prescribes the following rules of delivery of goods:



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

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

Example 21: Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer, thereafter, accepted them and took away part. Held, there was delivery of the whole.

(iii) **Buyer to apply for delivery:** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. **(Section 35)**

(iv) **Place of delivery:** 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. **[Section 36(1)]**
- (v) **Time of delivery:** Where under the contract of sale, the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time. **[Section 36(2)]**
- (vi) **Goods in possession of a third party:** Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods. **[Section 36(3)]**
- (vii) **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is reasonable hour is a question of fact. **[Section 36(4)].**
- (viii) **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary. **[Section 36(5)].**
- (ix) **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)]

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

- (x) **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. The rights and liabilities in cases of delivery by instalments and payments thereon may be determined by the parties of contract. **(Section 38)**

Example 23: There was sale of 100 tons of paper to be shipped in November. The seller shipped 80 tons in November and 20 tons in December. The buyer was entitled to reject the whole 100 tons.

- (xi) **Delivery to carrier:** Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is *prima facie* deemed to be delivery to the buyer. **[Section 39(1)]**

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

Example 24: P sold to Q a certain quantity of iron rods which were to be sent by proper vessel. It was rusted before it reached the buyer. The rust of the rod was so minimal and was not effecting the merchantable quality and the deterioration was not necessarily incidental to its transmission. It was held that Q was bound to accept the goods.

- (xiii) **Buyer's right to examine the goods:** Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods. **(Section 41)**

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

Acceptance is deemed to take place when the buyer-

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

Buyer not bound to return rejected goods (Section 43): Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods (Section 44): When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and

the buyer does not 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.

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

SUMMARY

The property in the goods or beneficial right in the goods passes to the buyer at a point of time depending upon ascertainment, appropriation and delivery of 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 therein is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not. An important rule regarding passing of title in goods is that the purchaser does acquire no better title to the goods than what the seller had.

This rule again is not applicable under certain circumstances.

Delivery of goods denotes the voluntary transfer of possession, which may be actual or even in some constructive form and which is again subject to various rules which help in deciding when the delivery becomes effective.

Transfer of Ownership & Delivery of Goods

Passing of Property

1. No property in the goods is transferred to the buyer unless and until the goods are ascertained.
2. Where there is a contract for the sale of specific or ascertained goods, the property in them passes to the buyer at the time when the parties intend it to pass.
3. Goods should be in a deliverable state.

Passing of Risk

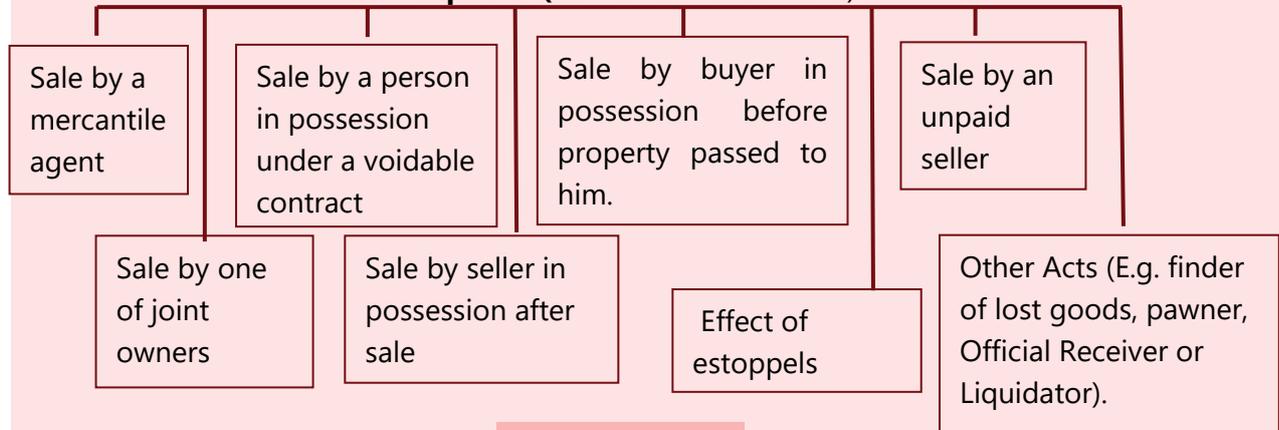
Unless otherwise agreed, risk follows ownership whether delivery has been made or not and whether price has been paid or not.

Thus, the risk of loss as a rule lies on the owner.

Sale by Non-Owner

"Nemo dat quad non habet i.e. "no one can give that which one has not got"

Exceptions (i.e. Non owner can sale)



Delivery of Goods

"Voluntary transfer of possession of goods from one person to another."

Types

1. Actual delivery.
2. Symbolic delivery.
3. Constructive delivery or delivery by attornment.

Acceptance of Delivery

Acceptance is deemed to take place when buyer:

- intimates that he has accepted the goods.
- uses the goods in a manner proper only for the owner, makes some alternation in the goods.
- Retains the goods after the lapse of a reasonable time.

Rules as to delivery of goods

1. Delivery and payment must be according to the terms of the contract.
2. Effect of part delivery - same effect for the purpose of passing the property in such goods.
3. Buyer to apply for delivery.
4. Place of delivery - if no contract, place where they were at the time of sale.
5. Time of delivery - if no contract, within a reasonable time.
6. Goods in possession of a third party - no delivery until such third party acknowledges to the buyer that he holds them on his behalf.
7. Time for tender of delivery – at a reasonable hour.
8. Cost of delivery - borne by the seller (unless otherwise agreed).
9. Delivery of wrong quantity – Buyer may accept or reject the goods.
10. Installment deliveries - buyer is not bound to accept the goods.
11. Delivery to a carrier - deemed to be a delivery to the buyer.
12. Deterioration during transit – liability will fall on buyer.
13. Buyer's right to examine the goods.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *The property in the goods means-*
 - (a) *Possession of the goods*
 - (b) *Ownership of the goods*
 - (c) *Custody of the goods*
 - (d) *Both (a) and (c)*

2. *In case of sale on approval, the ownership is transferred to the buyer when he-*
 - (a) *Accepts the goods*
 - (b) *Adopts the transaction*
 - (c) *Fails to return the goods*
 - (d) *In all the above cases*

3. *If a seller hands over the keys of a ware house containing goods to the buyer, it results in-*
 - (a) *Constructive delivery*
 - (b) *Actual delivery*
 - (c) *Symbolic delivery*
 - (d) *None of these*

4. *A sell to B 100 bags of wheat lying in C's warehouse. A orders to C to deliver the wheat to B. C agrees to hold the 100 bags on behalf of B and makes the necessary entry in his books. This is a –*
 - (a) *Actual delivery*
 - (b) *Constructive delivery*
 - (c) *Symbolic delivery*
 - (d) *None of the above*

5. *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 is known as-*
- (a) *distribution*
 - (b) *appropriation*
 - (c) *amortization*
 - (d) *storage*
6. *In contract of sale of goods, if the seller is not the owner of goods, then the title of the buyer shall-*
- (a) *Not be same as that of the seller*
 - (b) *Be same as that of the seller*
 - (c) *Be better than that of the seller*
 - (d) *None of the above*
7. *Nemo dat quad non habet means-*
- (a) *One cannot give what one does not have*
 - (b) *Let the buyer be beware*
 - (c) *Whatever is paid, is paid according to the intention or manner of the party paying*
 - (d) *None of these*
8. *The goods are at the risk of the party who has the-*
- (a) *Ownership of the goods*
 - (b) *Possession of the goods*
 - (c) *Custody of the goods*
 - (d) *Both (b) and (c)*
9. *If the seller delivers to the buyer a quantity less than he contracted to sell, the buyer may*
- (a) *Reject the goods,*
 - (b) *Accept the goods*
 - (c) *Either 'a' or 'b'*
 - (d) *Neither 'a' or 'b'*

10. *Appropriation of goods means*
- (a) *Separating the goods sold from other goods*
 - (b) *Putting the quantity of goods sold in suitable receptacles*
 - (c) *Delivering the goods to the carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal*
 - (d) *All of the above*
11. *Which of the following is true as regards delivery of goods in instalments as provided under Sale of Goods Act:*
- (a) *The buyer is bound to accept the instalment deliveries only in case of perishable goods*
 - (b) *The buyer is bound to accept the instalment deliveries only in case of sale of goods by description*
 - (c) *The buyer is bound to accept the instalment deliveries only if agreed between the parties*
 - (d) *Delivery of goods can't be made in instalments*

Descriptive questions

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.*
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.*
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?*
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.*

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?*
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?*
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?*
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?*

ANSWER/HINTS

Answer to MCQs

1.	(b)	2.	(d)	3.	(c)	4.	(b)	5.	(b)	6.	(b)
7.	(a)	8.	(a)	9.	(c)	10.	(d)	11.	(c)		

Answers to Descriptive questions

1. **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:
 - (i) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely;
 - (a) if he was in possession of the goods or documents with the consent of the owner;

- (b) if the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
- (c) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (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)]

- (ii) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)
- (iii) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
- (iv) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]
- (v) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].

- (vi) **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)].
- (vii) **Sale under the provisions of other Acts:**
- (i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 - (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.
2. 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. 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. 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. 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. 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. 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 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.

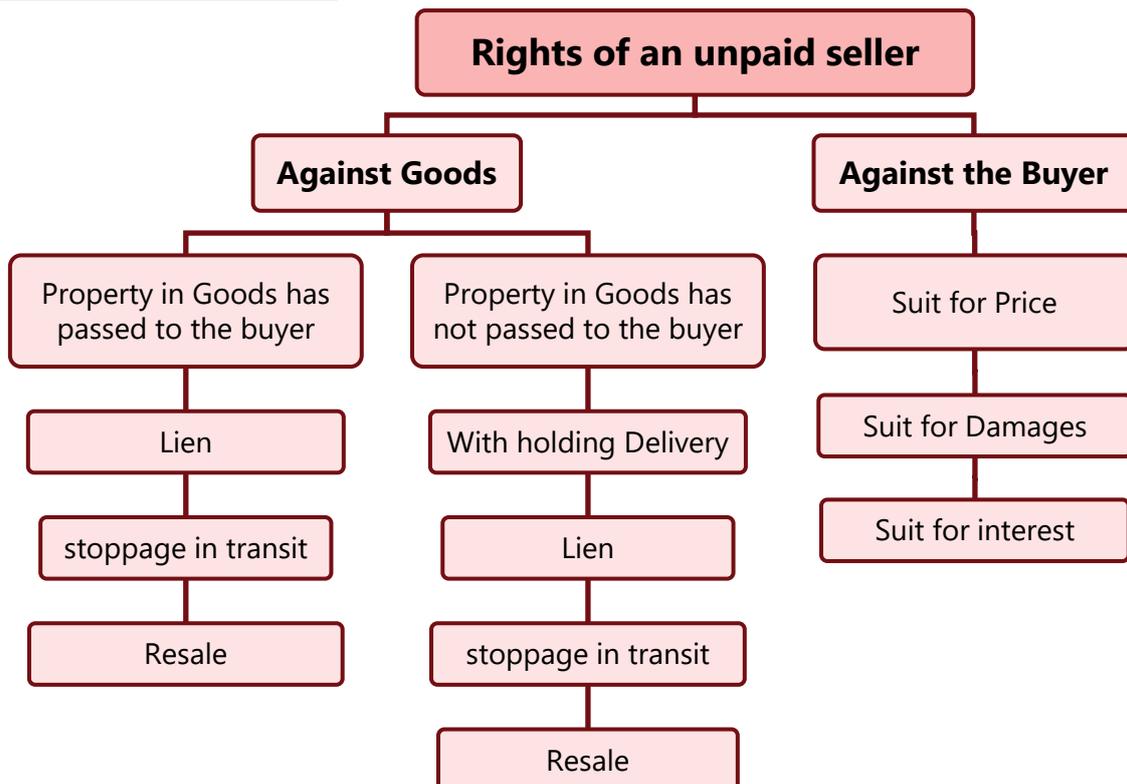
UNIT – 4: UNPAID SELLER

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ◆ The concept of Unpaid Seller
- ◆ The rights of Unpaid Seller
- ◆ Effect of sub-sale or pledge by the buyer
- ◆ Distinction between the right of lien and right of stoppage in transit
- ◆ Rights of parties in case of breach of contract
- ◆ Concept of sale by auction.

UNIT OVERVIEW



4.1 UNPAID SELLER

A contract comprises of reciprocal promises. In a contract of sale, if seller is under an obligation to deliver goods, buyer has to pay for it. In case buyer fails or refuses to pay, the seller, as an unpaid seller, shall have certain rights.

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 and the seller had an immediate right of action for the price.
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price [Section 45(2)].

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

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

4.2 RIGHTS OF AN UNPAID SELLER

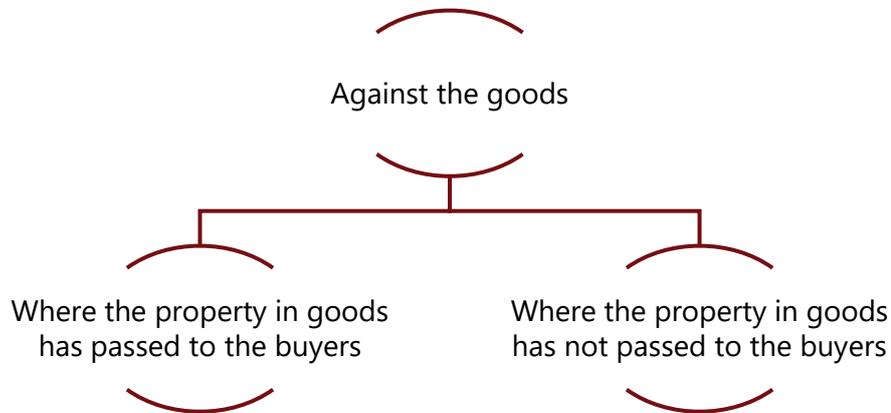
Unpaid seller's right (Section 46): Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act. [Sub-section (1)]

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]

An unpaid seller has been expressly given the rights against the goods as well as the buyer personally which are discussed as under:

- (a) **Rights of an unpaid seller against the goods:** The right of unpaid seller against goods can be categorized under two headings.



4.3 RIGHT OF UNPAID SELLER AGAINST THE GOODS

The unpaid seller has the following rights against the goods:

(1) **Seller's lien (Section 47)**

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

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

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

- (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.

Example 3: A sold certain goods to B for a price ₹ 50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

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

The term insolvent refers to "a person is said to be insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not".

Part delivery (Section 48): Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): The unpaid seller loses his right of lien under the following circumstances:

- (i) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (ii) Where the buyer or his agent lawfully obtains possession of the goods.
- (iii) Where seller has waived the right of lien.
- (iv) By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

Exception: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods. (This means even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.)

Example 4: A, sold a car to B for ₹ 1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

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

Meaning of right of stoppage in transit (Section 50): The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid.

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

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

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

- (a) The seller must be unpaid.

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

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

Duration of transit (Section 51): The goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent on that behalf takes delivery of them from such carrier or other bailee.

When does the transit come to an end?

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

- ◆ When the buyer or other bailee obtains delivery.
- ◆ Buyer obtains delivery before the arrival of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.
- ◆ Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
- ◆ If the carrier wrongfully refuses to deliver the goods to the buyer.
- ◆ Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
- ◆ Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.
- ◆ Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end. [section 51]

How stoppage in transit is effected (Section 52):

- (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or

other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

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

Stoppage in transit

By taking actual possession of goods
By giving notice to the carrier not to deliver the goods.

Distinction between Right of Lien and Right of Stoppage in Transit

- (i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- (ii) Seller should be in possession of goods under lien while in stoppage in transit (i) seller should have parted with the possession (ii) possession should be with a carrier & (iii) buyer has not acquired the possession.
- (iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
- (iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage in transit.
- (v) Right of lien comes to an end as soon as the goods go out of the possession of the seller but the right of stopping in transit comes to an end as soon as the goods are delivered to the buyer.

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

Effects of sub-sale or pledge by buyer (Section 53): The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it. This is based on the principle that a second buyer cannot stand in a better position than his seller. (The first buyer).

Example 6: A sold certain goods to B of Mumbai and the goods are handed over to railways for transmission to B. In the mean time, B sold these goods to C for consideration. B becomes insolvent. A can still exercise his right of stoppage in transit. Here we assume that seller did not give his assent for sub sale, therefore he can still exercise his right of stoppage in transit.

The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub-buyer in good faith and for consideration.

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

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

Example 7: A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result, A's right to lien is defeated (**Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd.**).

- (b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for price, then, the proviso of sub-section (1) stipulates as follows:
- (i) If the last-mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or
- (ii) If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the pledgee.

However, the pledgee may be required by the unpaid seller to use in the first instance, other goods or securities of the pledger available to him to satisfy his claims. [Sub-section (2)].

Effect of stoppage: The contract of sale is not rescinded when the seller exercises his right of stoppage in transit. The contract still remains in force and the buyer can ask for delivery of goods on payment of price.

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

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

- (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.

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

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

The right against the buyer are as follows:

1. **Suit for price (Section 55)**

- (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1)] (*This is the case of contract of sale*)
- (b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2)]. (*This is the case of agreement to sell*)

2. **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies in this case.

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

4. **Suit for interest [Section 61]:** Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment

becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

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



4.5 REMEDIES OF BUYER AGAINST THE SELLER

Breach of contract by seller

Breach of contract by seller, where he-

- Fails to deliver the goods at the time or in manner prescribed
- Repudiates the contract
- Deliver non-conforming goods and buyer rejects and revokes acceptance

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

Rights of buyer

Damages for non-delivery

Suit for specific performance

Suit for breach of warranty

Suit for anticipatory breach

Suit for interest

1. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Example 8: A' a shoe manufacturer, agreed to sell 100 pairs of shoes to 'B' at the rate of ₹ 10,500 per pair. 'A' knew that 'B' wanted the shoes for the purpose of further reselling them to 'C' at the rate of ₹ 11,000/- per pair. On the due date of delivery, 'A' failed to deliver the shoes to 'B'. In consequence, 'B' could not perform his contract with 'C' for the supply of 100 pairs of shoes. In this case, 'B' can recover damages from 'A' at the rate of ₹ 500/- per pair (the difference between the contract price and resale price).

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

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

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

Example 9: 'A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

3. **Suit for breach of warranty (Section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may –
 - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
 - (ii) sue the seller for damages for breach of warranty.

4. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
5. **Suit for interest:**
- (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
 - (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 filed by him for the refund of the price (in a case of a breach of the contract on the part of the seller) from the date on which the payment was made.

Example 10: In case of a sale of cigarettes which turned out to be mildewed and unfit for consumption, damages were awarded on the basis of the difference between the contract price and the price released.

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



4.6 AUCTION SALE (SECTION 64)

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

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

- (a) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.
- (b) **Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. Until such announcement is made, any bidder may retract from his bid.

- (c) **Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- (d) **Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- (f) **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Example 12: P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

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

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

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

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

SUMMARY

A seller is called an 'unpaid seller' when either he has not been paid the whole price or the buyer has failed to meet at maturity the bill of exchange or any other negotiable instrument which was accepted by the seller as conditional payment. In such a circumstance the buyer may exercise lien on goods if he is in possession of them. If goods are in transit to the buyer, he may stop the goods in transit and obtain the possession of the goods.

When the unpaid seller has exercised right of lien or stoppage in transit, he may sell the goods after giving a notice to the buyer of his intent to resell. The new buyer shall have a good title on goods as against the original buyer even if the notice of resale has not been given by the seller to the original buyer.

If the seller neglects to deliver the goods the buyer may sue him for damages, or he may sue the seller for specific performance if the property in goods had not been transferred to the buyer. Where the buyer neglects to pay the price, the seller may sue him for the price as well as exercise lien on goods. Where the buyer wrongfully neglects to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Unpaid Seller

Meaning

A seller of goods is deemed to be an unpaid seller when-

- Whole of the price has not been paid or tendered;
- A BOE or other negotiable instrument has been received as a conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Buyer's Rights for Breach of Contract of Sale

- a. Suit for damages for non-delivery of goods.
- b. Suit for specific performance.
- c. Suit for breach of warranty.
- d. Suit for anticipatory warranty.

Rights of an unpaid seller

1. Against the goods:

- Right of lien.
- Right of stoppage in transit
- Right of re-sale

2. Against the buyer:

- Suit for price
- Suit for damages for non-acceptance
- Repudiation of contract before due date
- Suit for interest on the price

Effect of Sub-Sale or Pledge by Buyer (Sec. 53)

The unpaid seller's right of lien or stoppage in transit is to not affected by any sale or pledge of the goods which the buyer may have made, **unless**

- Seller has assented to it.

Or

- A document of title to goods has been transferred to buyer, and the buyer transfers the document to a person who bought it in good faith and for consideration.



TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. The unpaid seller has right of stoppage of goods in transit only where the buyer
 - (a) become insolvent.
 - (b) refuses to pay price.
 - (c) acts fraudulently.
 - (d) all of these.
2. An unpaid seller is having rights against
 - (a) goods only.
 - (b) the buyer only.
 - (c) both goods and buyer.
 - (d) none of the above.
3. Under which of the circumstances unpaid seller loses his right of lien
 - (a) by estoppel.
 - (b) where seller waived the right of lien.
 - (c) where the buyer or his agent lawfully obtains possession of the goods.
 - (d) any of the above.

4. *When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise*
 - (a) *right of lien.*
 - (b) *right of stoppage in transit.*
 - (c) *right of resale.*
 - (d) *none of the above.*
5. *The essence of a right of lien is to*
 - (a) *deliver the goods.*
 - (b) *retain the possession.*
 - (c) *regain the possession.*
 - (d) *none of the above*
6. *Which of the following right can be exercised by an unpaid seller against the buyer, who is not insolvent*
 - (a) *right of lien.*
 - (b) *right of stoppage in transit.*
 - (c) *both (a) and (b).*
 - (d) *none of the above.*
7. *Which of the following is a buyer's right against the seller in case of breach of contract?*
 - (a) *suit for non-delivery.*
 - (b) *suit for specific performance.*
 - (c) *suit for damages for breach of warranty.*
 - (d) *all of the above.*
8. *An auction sale is complete on the*
 - (a) *delivery of goods*
 - (b) *payment of price*
 - (c) *fall of hammer*
 - (d) *none of the above.*

9. *Seller has right of resale where*
- (a) *goods are perishable.*
 - (b) *seller has reserved such right.*
 - (c) *seller gives notice.*
 - (d) *all of these.*
10. *The aggrieved party can claim only damages in case of breach of warranty.*
- (a) *true.*
 - (b) *false.*
11. *Under which circumstances, the right of stoppage can be exercised by an unpaid seller*
- (a) *the buyer has become insolvent.*
 - (b) *the goods are in transit.*
 - (c) *the seller must be unpaid.*
 - (d) *all of the above.*
12. *Under which circumstances the unpaid seller can exercise right of re-sale*
- (a) *when the goods are of perishable nature.*
 - (b) *when he gives notice to the buyer.*
 - (c) *when he gives notice to the buyer of his intention to re-sale and the buyer does not within a reasonable time pay the price.*
 - (d) *both (a) and (c)*
13. *Where the seller wrongfully neglects to deliver the goods to the buyer, then the buyer*
- (a) *cannot sue the seller for damages for non-delivery.*
 - (b) *may sue the seller for damages for non-delivery.*
 - (c) *either (a) or (b)*
 - (d) *none of the above.*
14. *Where the buyer is deprived to goods by their true owner, then the buyer*
- (a) *may recover the price for breach of the condition as to title.*
 - (b) *cannot recover the price for breach of the condition as to title.*
 - (c) *either (a) or (b)*
 - (d) *none of the above.*

15. *Where the buyer wrongfully neglects or refuses to accept and pay for the goods,*
- (a) *the seller may sue buyer for damages for non-acceptance.*
 - (b) *the seller cannot sue buyer for damages for non-acceptance.*
 - (c) *the seller can sue buyers' banker for damages.*
 - (d) *none of the above.*
16. *In an auction sale, the property shall be sold to the*
- (a) *Lowest bidder.*
 - (b) *Highest bidder.*
 - (c) *All bidders*
 - (d) *None of the above.*
17. *In an auction sale, if the seller makes use of pretended bidding to raise the price, then the sale is*
- (a) *valid.*
 - (b) *void.*
 - (c) *voidable.*
 - (d) *illegal.*
18. *In which of the following cases, the unpaid seller loses his right of lien?*
- (a) *delivery of goods to buyer.*
 - (b) *delivery of goods to carrier.*
 - (c) *tender of price by buyer.*
 - (d) *all of these.*
19. *The bidder at an auction sale can withdraw his bid*
- (a) *any time during auction.*
 - (b) *before fall of hammer.*
 - (c) *before payment of price.*
 - (d) *none of these.*
20. *Where in an auction sale, the seller appoints more than one bidder, the sale is*
- (a) *void.*

- (b) *illegal.*
 - (c) *conditional.*
 - (d) *voidable.*
21. *Where in an auction sale notified with reserve price, the auctioneer mistakenly knocks down the goods for less than the reserve price, then the auctioneer is*
- (a) *bound by auction.*
 - (b) *not bound by auction.*
 - (c) *liable for damages.*
 - (d) *both (a) and (c)*

Descriptive questions

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?*
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.*
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?*
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.*
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?*
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?

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?
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?

ANSWERS/HINTS

Answers to MCQ'S

1	(a)	2.	(c)	3.	(d)	4.	(b)	5.	(b)	6.	(a)
7.	(d)	8.	(c)	9.	(d)	10.	(a)	11.	(d)	12.	(d)
13.	(b)	14.	(a)	15.	(a)	16.	(b)	17.	(c)	18.	(d)
19.	(b)	20.	(d)	21.	(b)						

Answer to Descriptive Questions

1. A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-
 - (i) the goods have been sold without any stipulation as to credit;
 - (ii) the goods have been sold on credit, but the term of credit has expired;
 - (iii) the buyer becomes insolvent.

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

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

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

(ii) When the buyer or his agent lawfully obtains possession of the goods;

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

2. **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. **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. 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. 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. 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.** 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.** 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.