



CHAPTER – 2

INTRODUCTION

The Law relating to this statute was contained in the Chapter VII of the Indian Contract Act, 1872. Subsequently, it was separated with the Indian Sale of Goods Bill, which received its assent on 15th, March 1930. It came into force on the 1st of July, 1930 as the Indian Sale of Goods Act, 1930. In due course, the word “Indian” was omitted by the Indian Sale of Goods (Amendment) Act, 1963 (33 of 1965) and it became “The Sale of Goods Act, 1930”.

This Act lays down special provisions governing the contract of sale of goods but it does not altogether render the general law of contract inapplicable. The provisions of the Contract Act, in so far as they are inconsistent with the express provisions of Sales of Goods Act, shall apply to contracts for the sale of goods, e.g., provisions regarding the capacity of parties, legality of contract, etc. The Sale of Goods Act, 1930 deals with the ‘sale’ but not with ‘mortgage’ or ‘pledge’, which comes within the purview of the Transfer of Property Act, 1882 and the Indian Contract Act, 1872 respectively. Secondly, the Act deals with ‘goods’ but not with all movable property, e.g., actionable claims and money. Provisions relating to sale of immovable property and the transfer of actionable claims are contained in the Transfer of Property Act, 1882.

In this chapter, we shall study the provisions of the Act in the following order:

Unit 1 - Formation of the Contract of Sale.

Unit 2 - Conditions and Warranties.

Unit 3 - Transfer of Ownership and Delivery of Goods.

Unit 4 - Unpaid Seller.



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THE SALE OF GOODS ACT, 1930

Unit 1

Formation of the Contract of Sale

Learning objectives

After reading this, the students shall be able to understand

- ◆ 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.
- ◆ Stipulation as to time.

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 seller. The Sale of Goods Act, 1930 leaves the parties to modify the provisions of the law by express stipulations. However, in some places this freedom is severely restricted or negatived.

2.1 DEFINITIONS:

Section 2 of 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 [Sub Section (1)] '*Seller*' means a person who sells or agrees to sell goods [Sub Section (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:**
 - (i) "*Goods*" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale; [Sub Section (7)]. This is a wider definition than contained in the English law, which does not consider 'stock' and 'shares' as goods, though it includes a ship. '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.
 - (ii) *Existing goods* are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller (Section 6).
 - (iii) *Future goods* means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)]. Thus, under the Act, a contract of sale of future goods, e.g., 1,000 quintals of potatoes to be grown on A's field, is not illegal, though the actual sale of future goods is not possible. This is an *example* of agreement to sell.



- (iv) *Specific goods* means goods identified and agreed upon at the time the contract of a sale has been made. Specific goods may be distinguished from 'generic' or 'unascertained' goods defined only by description and not identified and agreed upon. Ascertained goods have been held to mean goods identified in accordance with the agreement after the contract of sale has been made.
- (v) Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under contract, be bound to take delivery of them, e.g., when A contracts to sell timber and make bundles thereof, the goods will be in a deliverable state after A has put the goods in such a condition.

(c) **Delivery - its forms and derivatives:**

Delivery means voluntary transfer of possession by 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. Delivery may be of three kinds, which may be enumerated as follows:

- (i) *Actual delivery*: When the goods are physically delivered to the buyer.
 - (ii) *Constructive delivery*: When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.
 - (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 cause 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.
- (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 authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

Examples of such documents are 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.

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- (e) **Mercantile Agent** [Sub-section (9)]: It means an agent having in the customary course of business as such agent an 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. *Examples* of such kind of agents are auctioneers, factors, brokers, etc.
- (f) **Property** [Sub-section (11)]: 'Property' here means 'ownership'. 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 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.
- For *example*, If A who owns certain goods pledges them to B, he 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.
- (g) **Insolvent**: A person is said to be insolvent when he 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. [Sub-section (8)]

2.2 CONTRACT OF SALE

Contract of Sale of Goods is a contract between buyer and seller intending to exchange property in goods for a price. Section 4 (1) of the Sale of Goods Act, 1930 defines the term 'Contract of Sale' as – *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.*

The definition as above reveals important elements of transfer of ownership for a price. Here, there are two parties to a contract who are willing to exchange their goods or services to gain a mutual benefit called price.

2.3 ESSENTIALS OF CONTRACT OF SALE

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

- (i) There must be at least two parties, the seller and the buyer.
- (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.
- (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 must be absolute or conditional [Section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.



2.4 SALE AND AN AGREEMENT TO SELL

In the Sale of Goods, the property 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.”

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, which is as follows – “where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.”

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.

2.5 DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

The differences between the two are as follows:

Sale	Agreement to sell
1. The property in the goods passes to the buyer and along with the risk.	1. Since property in the goods does not pass to the buyer, the risk also does not pass to him.
2. It is an executed contract. i.e. contract for which consideration has been paid.	2. It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
3. The seller can sue the buyer for the price of the goods because of the passage of the property therein to the buyer.	3. The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
4. A subsequent loss or destruction of the goods is the liability of the buyer.	4. Such loss or destruction is the liability of the seller.
5. Breach on part of seller gives buyer double remedy; a suit for damages against the seller and a proprietary remedy of recovering the goods from third parties who bought them.	5. The seller, being still the owner of the goods, may dispose of them as he likes, and the buyer’s remedy would be to file a suit for damages only.

2.6 SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

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

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Sale	Hire-Purchase
1. Property in the goods is transferred to the buyer immediately at the time of contract.	1. The property in goods passes to the hirer upon payment of the last installment.
2. The position of the buyer is that of the owner of the goods.	2. The position of the hirer is that of a bailee till he pays the last installment.
3. The buyer cannot terminate the contract and is bound to pay the price of the goods.	3. The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4. The seller takes the risk of any loss resulting from the insolvency of the buyer.	4. The owner takes no such risk, for if the hirer fails to pay an installment the owner has right to take back the goods.
5. The buyer can pass a good title to a <i>bona fide</i> purchaser from him.	5. The hirer cannot pass any title even to a <i>bona fide</i> purchaser.
6. Tax is levied at the time of the contract.	6. Tax is not leviable until it eventually ripens into a sale.

- (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 to the bailor or are to be disposed of according to the directions of the bailor.

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

Sale	Bailment
1. The property in goods is transferred from the seller to the buyer.	1. There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
2. The return of goods in contract of sale is not possible.	2. The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
3. The consideration is the price in terms of money.	3. 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, *e.g.*, where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture, even when he himself arranges for all colours etc.



2.7 FORMALITIES OF CONTRACT OF SALE

Except where specifically required by any law, no particular form is necessary to constitute a valid contract. The agreement may be express or may be implied from the conduct of the parties. Section 5 of the Sale of Goods Act, 1930 lays down the rule as to how a contract of sale may be made and has nothing to do with the transfer or passing of the property in the goods. A contract of sale may be made in any of the following modes:

- (i) There may be immediate delivery of the goods; or
- (ii) There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or
- (iii) There may be immediate delivery of the goods and an immediate payment of price; or
- (iv) It may be agreed that the delivery or payment or both are to be made in installments; or
- (v) It may be agreed that the delivery or payment or both are to be made at some future date.

2.8 SUBJECT MATTER OF CONTRACT OF SALE

The subject matter of contract of sale is always the goods. This is enshrined in the Sale of Goods Act, 1930 under Sections 6, 7 and 8. Thus every type of movable property falls within the definition of the "goods" given under Section 2(7) of the Sales of Goods Act, 1930. Goodwill, patents, trademark, copyrights etc. are considered as movable properties. Though actionable claims and money have been excluded. Money here means current money, but not the rare or old coins which may be treated as goods bought and sold as such.

- (a) The Section 6 of the Act lays down following provisions –
 - (1) The subject matter of contract must always be goods. The goods may be existing or future goods.
 - (2) Like an ordinary contract, a contract of sale of goods can also be made with regard to the goods, the acquisition of which by seller depends upon a contingency, which may or may not happen. Thus, 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) When the seller purports by his contract of sale to effect a sale of future goods, the contract will operate only as an agreement to sell the goods and not as sale.
- (b) Destruction of subject matter of a contract (Sections 7 & 8)
 - (i) *Goods not existing at the time of contract:* If at the time a contract of sale is entered into, the subject-matter of a contract being specific goods, which without the knowledge of the seller have been destroyed or so damaged as not to answer to the description in the contract, and then the contract is void ab initio. The Section is founded on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

- (ii) *Goods perishing after the contract is made:* Where there is an agreement to sell specific goods and the goods, subsequently without any fault of the seller or the buyer perish or suffer such damages as not to answer to the description in the agreement before the risk passes to the buyer, the agreement becomes void (Section 8). It may be noted that this would apply only if the risk had not passed to the buyer. Generally, risk passes with property i.e., when the property in the goods sold has passed to the buyer bears the risk of subsequent destruction of, or damage to the goods.

2.9 ASCERTAINMENT OF PRICE (SECTIONS 9 & 10)

'Price' means the monetary consideration for sale of goods [Section 2 (10)].

By virtue of Section 9, the price 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.

When it cannot be fixed in any of the above ways, the buyer is bound to pay to the seller a reasonable price. What is a reasonable price is a question of fact in each case (Section 9).

Section 10 provides for the determination of price by a third party. 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. 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. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

2.10 STIPULATION AS TO TIME (SECTION 11)

As regard 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. Stipulations as to time of delivery are usually the essence of the contract.

2.11 SUMMARY

In nutshell, contract of sale of goods is a contract where the seller transfers or agrees to transfer the property in the 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. Stipulations as to time of delivery are usually of the essence of the contract.



CHAPTER - 2

THE SALE OF GOODS ACT, 1930

Unit 2

Conditions & Warranties

Learning Objectives

- ◆ To understand and identify conditions and warranties
- ◆ To know the implied conditions and warranties
- ◆ To understand doctrine of 'caveat emptor'

2.12 CONDITIONS AND WARRANTIES

A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages. On the other hand, 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. [Section 12(3) of the Sale of Goods Act, 1930]

Differences:

The following are important differences between conditions and warranties.

Condition	Warranty
(1) A condition is essential to the main purpose of the contract.	(1) It is only collateral to the main purpose of the contract.
(2) The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	(2) The aggrieved party can claim only damages in case of breach of warranty.
(3) A breach of condition may be treated as a breach of warranty.	(3) A breach of warranty cannot be treated as a breach of condition.

2.13 WHEN CAN A CONDITION BE TREATED AS WARRANTY

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; or
- (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; or
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- (iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

2.14 EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

'Conditions' and 'Warranties' may be either expressed or implied. They are "expressed" when the terms of the contract expressly state them. They are implied when, not being expressly provided



for. Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract. The 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 at the time when the property is to pass. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

Example: 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.

- (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 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.

Example: 1. 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.

2. An agreement for the sale of English sainfoin seeds was exhibited by a sample. The bulk corresponded to the sample but, the seeds supplied were gaint sainfoin and not the English sainfoin. Held, there was a breach of condition as to description.

- (iii) *Sale by sample [Section 17]*: In a contract of sale by sample, there is an implied condition
- the bulk shall correspond with the sample in quality;
 - the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
 - 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. But if the defects are latent, then the buyer can avoid the contract.

Example: A company sold certain shoes made of special sole by sample for the French Army. The shoes were found 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 must

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: 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. B can reject the goods.

- (v) *Condition as to quality or fitness [Section 16]:* 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. Even this implied condition will not apply if the goods have been sold under a trademark or a patent name.

Example: A purchased a hot water bottle from a chemist. The bottle burst and injured his wife. Held, breach of condition as to fitness was committed and thus chemist was liable for refund of price and the damages.

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 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: 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.

2.15 IMPLIED WARRANTIES:

A condition may reach to the level of a warranty in cases where buyer is content with his right of damages or cannot reject the goods. 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:* An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. *Warranty as to non-existence of encumbrances:* 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: A pledges his car with C for a loan of ₹ 15,000 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. *Disclosure of dangerous nature of goods:* There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is breach of this warranty, the seller will be liable in damages.
4. *Warranty as to quality or fitness by usage of trade [Section 16(4)]:* An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

Example: A drugs was sold by an auction and according to the usage of trade it was to disclose in advance of any vast damage caused in the quality of the drugs. This will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.

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.

2.16 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".

Example: 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".

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

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

Example: 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.

2. 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)].

Example: In the sale of a refrigerator, the name of the article itself implies that the seller warrants that the machine is fit for the particular purpose.

3. Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15].
4. Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].

Example: 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.

5. 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. 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. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.
8. 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.

2.17 SUMMARY

While entering into a contract of sale, certain stipulations are put by both the parties i.e. the buyer and the seller, such as time for payment of price, time for delivery, quality of goods, transfer of title, etc. 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' and that of a 'warranty' have different consequences. 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.



CHAPTER - 2

THE SALE OF GOODS ACT, 1930

Unit 3

Transfer of Ownership & Delivery of Goods

Learning objectives

- ◆ 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.
- ◆ Be clear about what is appropriation of goods and how it affects the passing of property in goods.
- ◆ Distinguish between passing of property and passing of title.
- ◆ Understand the rule of '*nemo dat quod non habet*' (no one can give what he has not got) and exceptions thereof.
- ◆ Be familiar with the rules relating to delivery of goods and acceptance of goods.

Introduction: A contract of sale of goods involves transfer of ownership from seller to the buyer in three stages (i) the transfer of property in the goods, (ii) the transfer of possession of the goods (by giving delivery); and (iii) the passing of risk.

2.18 PASSING OF PROPERTY (SECTIONS 18 – 24)

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 primary rules relating to the passing of property in the sale of goods are:

A. Passing of Specific or Ascertained Goods

In a sale of specific or ascertained goods the property passes to the buyer at the time when the parties intend it to pass. The intention must be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case (Section 19)

Unless a different intention appears the following rules are applicable for ascertaining the intention of the parties as to the time at which the property in the goods passes to the buyer:

1. *Goods in a deliverable state:* In an unconditional contract for the sale of a specific goods in a deliverable state, the property in goods passes to the buyer as soon as contract is made. Passing of property is not affected by the postponement of the time of delivery or the time of payment of price.

Example: 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. *Goods to be put into a deliverable state:* Where there is sale of specific goods and the seller is bound to weigh, measure or to do something to the goods for ascertaining the price for the purpose of putting them into a deliverable state, the property in goods does not pass unless something is done and the buyer has notice of it.

Example: A stock of wheat was sold at an agreed price per quintal. The wheat was to be weighed by the seller for ascertainment of the price. A part of the wheat was weighed and



carried by the buyer but the remaining was swept away by the flood. Held, the loss of the remainder should be borne by the seller since the property in the remainder has not passed because the required weighing was not done.

3. *Specific goods not in a deliverable state:* In a contract for the sale of a specific goods which are not in a deliverable state or the seller has to do something to the goods to put them in a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Example: 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. Passing of Unascertained Goods

In case of a contract for the sale of unascertained or future goods, ownership will not pass to the buyer, unless and until the goods are ascertained.

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

1. *Goods by description:* In a contract for the sale of unascertained or future goods by description and goods of the description are in deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, The property in goods passes to the buyer.

Example: A agrees to purchase 1000 quintals of cotton from warehouseman, out of which he took delivery of 500 quintals and remaining to take later on. The warehouseman weighed the cotton and kept the remaining separately and informed A to take them and agreed to do so. Before he takes delivery of the remaining goods the warehouse caught fire and destroyed the cotton. A, is liable for the price to the warehouseman since he has appropriated the goods, and the ownership is transferred to him.

2. *Delivery to the carrier:* Where the seller does not reserve the right of disposal of the property in the goods will pass to the buyer as soon as the goods are delivered to the common carrier or any other sort of bailee, for the purpose of transmission to the buyer.

Example: 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.

Appropriation of goods: 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) The goods should conform to the description and quality stated in the contract.
- (b) The goods must be in a deliverable state.
- (c) 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.

- (d) 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.
- (e) The assents may be express or implied.
- (f) The assent may be given either before or after appropriation.

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

“When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer, (i) when he signifies his approval or acceptance to the seller, (ii) when he does any other act adopting the transaction, and (iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time” (Section 24).

Example: (1) 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.

(2) A, sends to B a water motor on approval or return in March 2012. B to return it after trial in August, 2012. 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.

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, e.g., 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.

D. Transfer of property in case of reservation of right to disposal (Section 25)

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.

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.

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



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

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

2.19 PASSING OF RISK (SECTION 26)

The general rule is, “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” (Section 26).

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 passes with property: 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: 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: 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.

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.

2.20 TRANSFER OF TITLE (SECTIONS 27 – 30)

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

For *example* (1) 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.

(2) 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).

Example: A motor car agent for sale sold the car at a price below the authorized price fixed by the owner and misappropriated the proceeds. Held, the innocent purchaser obtained a good title.

- (2) *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).

Example: 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 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 TV.

- (3) *Sale by a person in possession under a 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: 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: During ICL 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: A sold to B some antiques and delivered to him a bill of lading for the antiques, with a bill of exchange for the price of the antiques. The buyer having obtained the bill of lading endorsed it to another who took it without notice of any objection to the buyer's title. Held, on the buyer subsequently becoming insolvent without payment of price, that transfer by the buyer of the bill of lading to the sub-purchaser was effective against the true owner and the latter, therefore, could not stop the goods in transit.

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: A took a car from B on this condition that A would pay a monthly installment of ₹500 as hire charges with an option to purchase it by payment of ₹ 10,000 in 24 installments. After the payment of few installments. 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.
- (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.
- (iii) A sale by pawnee can convey a good title to the buyer.

2.21 DELIVERY OF GOODS (SECTIONS 31- 44)

Delivery means voluntary transfer of possession from one person to another. 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.

RULES REGARDING DELIVERY OF GOODS (SECTIONS 33 – 39)

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

- (i) **Effect of part delivery:** A delivery of part of goods, taking place in the course of the delivery of the whole, has the same effect for the purpose of passing the property in such goods as delivery of the whole. But such part delivery, with the intention of severing it from the whole will not operate as a delivery of the remainder, it will be construed as part delivery only (Section 34).

Example: 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.

- (ii) **Buyer to apply for delivery:** The seller of the goods is not obliged to deliver them until the buyer has applied for delivery, unless otherwise agreed. (Section 35).
- (iii) **Place of delivery:** If there is no contract to the contrary, goods must be delivered at the place where they were at the time of sale, and the goods agreed to be sold are required to be delivered at the spot at which they were lying at the time the agreement to sale entered into or if not then in existence, at the place where they would be manufactured or produced. [Section 36(1)].
- (iv) **Time of delivery:** When the time of sending the goods has not been fixed by the parties, the seller must send them within a reasonable time. [Section 36(2)].
- (v) **Goods in possession of a third party:** Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. The issue or transfer of any document of title to goods operates as delivery, symbolic in character, even if the goods are in the custody of a third person without such attornment. [Section 36(3)].
- (vi) **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)].
- (vii) **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be born by the seller, in the absence of a contract to the contrary. [Section 36(5)].



(viii) **Delivery of wrong quantity:** In case of tender of lesser quantity of goods, the buyer may either accept the same and pay for it at the contract rate or reject it. [Section 37(1)]. In case of excess delivery the buyer may accept or reject the delivery, if he accepts the whole of the goods, he shall pay for them at the contract rate. [Section 37(2)]. In case the seller makes a delivery of the goods contracted mixed with goods of a different description, the buyer may accept the relevant goods and reject the rest or reject the whole [Section 37(3)]. Mixing of goods with inferior quality does not amount to a mixing of goods of different description.

Example: 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.

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

Example: A agrees to deliver to B, 100 quintals of sugar in May. But A delivers only 90 quintals in May and the remaining 10 quintals in the first week of June. B is entitled to reject the whole 100 quintals.

(x) **Delivery of 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)].

(xi) **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).

(xii) **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).

ACCEPTANCE OF DELIVERY OF GOODS

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 (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods (Sections 43 and 44).

2.22 SUMMARY

The students must note that property in the goods or beneficial right in the goods passes to the buyer at a point of time depending up 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.



CHAPTER - 2

THE SALE OF GOODS ACT, 1930

Unit 4

Unpaid Seller

Learning objectives

In this unit, the students would be able to

- ◆ Understand the concept of Unpaid Seller
- ◆ Know the rights of Unpaid Seller
- ◆ Analyze the effect of sub-sale or pledge by the buyer
- ◆ Distinguish the right of lien and right of stoppage in transit
- ◆ Know the rights of parties in case of breach of contract
- ◆ Understand the concept of sale by auction.

2.23 UNPAID SELLER

According to Section 45(a) 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) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

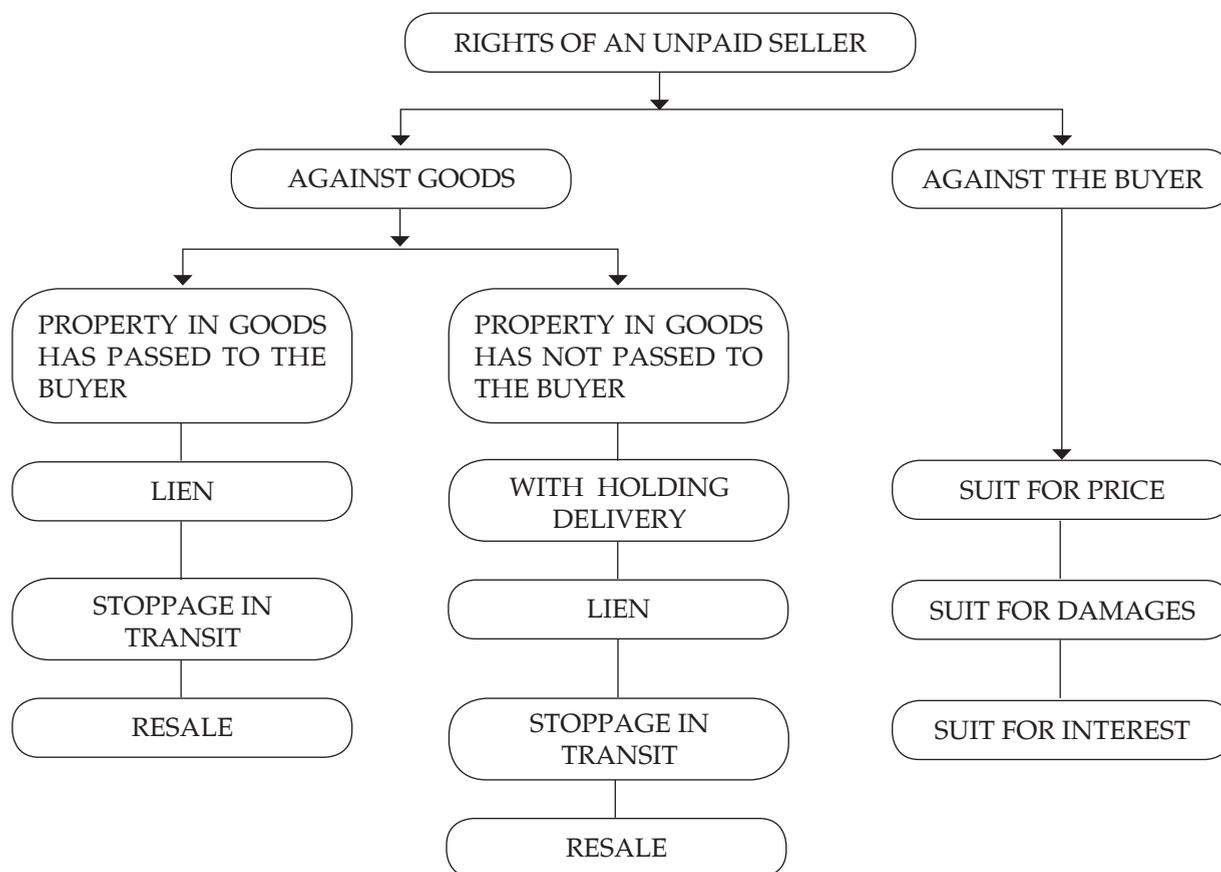
Any person who is in a position of a seller, is also a seller, and may exercise the rights conferred upon an 'unpaid seller' in above said circumstances. For instance, an agent of the seller, to whom bill of lading has been endorsed, is in the position of seller and may exercise rights of 'unpaid seller'.

Examples: (1) X solds certain goods to Y for ₹ 5,000. Y paid ₹ 4,000 but fails to pay the balance. X is an unpaid seller.

(2) P sold some goods to R for ₹ 6,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

2.24 RIGHTS OF AN UNPAID SELLER

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



(a) **A rights of an unpaid seller against the goods:** The unpaid seller has the following rights against the goods whether the property in the goods has passed to the buyer or not.

(1) **Rights of lien (Section 47):** He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. The right of lien can be exercised by him in the following cases only:

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

Example: A sold certain goods to B for a price ₹ 500 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.

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

- (i) When he delivers the goods to a carrier or other bailee for the purpose 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.

Example: 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:** 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.

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.

Example: B at Delhi, orders goods of A, at Mumbai. A consigns and forwards the goods to B. On arrival at Delhi, they are taken to B's warehouse and left there. B refuses to take these goods and stop payment. The goods are in transit and the unpaid seller can take them back.

- (3) **Right of re-sale:** The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) **Where the goods are of a perishable nature:** In such a case the buyer need not be informed of the intention of resale.
- (ii) **Where he gives notice to the buyer of his intention to re-sell:** the goods and the buyer does not within a reasonable time pay or tender the price.

- (b) **Rights of unpaid seller against the buyer (Section 55-61):** An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. This rights of unpaid seller against the buyer is 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 in personam are as follows:

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

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



2. **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
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 contract'.
4. **Suit for interest [Section 61(2)(d)]:** 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 [Section 61(2)(a)].

2.25 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.

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).

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

Example: A sold certain goods to B of Mumbai and the goods are handed over to railways for transmission to B. 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.

Exceptions: (a) When the seller has assented to the sale. Mortgage or other disposition of the goods made by the buyer.

(b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought a goods in good faith and for value.

2.26 REMEDIES OF BUYER AGAINST THE SELLER

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

1. **Damages for non-delivery:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
2. **Suit for specific performance:** Where the seller commits a 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:
 - (i) the goods are ascertained or specific;
 - (ii) the damages are insufficient; or
 - (iii) the goods are unique and costly.
3. **Suit for breach of warranty:** 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. **Suit for damages for repudiation of contract by the seller before the due date:** The buyer may treat the contract as subsisting and wait for the date of delivery or he may treat the contract as repudiated and sue for damages for breach.
5. **Suit for interest:** The buyer is entitled to recover interest or special damages to recover the money paid where in consideration for the payment of it has failed.

Examples: (1) 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.

(2) In case of absence of transfer of title or registration the purchaser cannot claim damages for breach of conditions and warranties relating to sale.

2.27 AUCTION SALE

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.

Under Section 64 of the Sale of Goods Act, 1930 in the case of an auction:

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



- (c) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, 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 the right of the seller to bid, 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 person representing him. 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: 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 mean while 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.

2.28 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.

2.29 QUESTIONS FOR PRACTICE

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. A stipulation in a contract of sale of goods whose violation by seller gives a right of rescission to buyer, is called:
(a) guarantee. (b) warranty.
(c) condition. (d) term.
5. 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.
6. 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.
7. 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
8. A stipulation which is collateral to the main purpose of the contract, and if proves false, gives the buyer only a right to claim damages, is known as
(a) conditions. (b) guarantee.
(c) warranty. (d) none of these.
9. 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.



10. The Sale of Goods Act, 1930 deals with
- (a) sale (b) mortgage.
(c) pledge. (d) all of the above.
11. 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.
12. The conditions and warranties may be in the form of
- (a) express. (b) implied.
(c) either (a) or (b). (d) none of the above.
13. 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.
14. Which of the following is not a form of delivery?
- (a) constructive delivery. (b) structured delivery.
(c) actual delivery. (d) symbolic delivery.
15. 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
16. 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.
17. 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.
18. Contract of Sale is
- (a) executory Contract. (b) executed Contract.
(c) both of the above. (d) none of the above.

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19. 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) installment to sell.
20. In case of hire purchase the hirer can pass title to a bona fide purchaser.
- (a) true.
(b) false.
21. In a contract of sale, the agreement may be expressed or implied from the conduct of the parties.
- (a) true.
(b) false.
22. In a contract of sale, subject matter of contract must always be money.
- (a) true.
(b) false.
23. 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.
24. Doctrine of Caveat Emptor means
- (a) let the seller beware. (b) let the buyer beware.
(c) let the creditor beware. (d) none of the above.
25. Under the doctrine of Caveat Emptor the seller is
- (a) responsible for the bad selection of goods by the buyer.
(b) not responsible for the bad selection of goods by the buyer.
(c) both (a) and (b).
(d) none of the above.
26. 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 goods are purchased under its brand name.
(d) all of the above.



27. Where there is an unconditional contract for the sale of specific goods in a deliverable state-
- (a) property in the goods passes to the buyer when the contract is made.
 - (b) property in the goods does not pass to the buyer when the contract is made.
 - (c) property in the goods remains with the seller when the contract is made.
 - (d) none of the above.
28. 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.
29. Acceptance of delivery of goods is deemed to take place when the buyer
- (a) intimates to the seller that he had accepted the goods.
 - (b) does any act to the goods, which is inconsistent with the ownership of the seller.
 - (c) rejects and retains the goods after the lapse of a reasonable time, without intimating the seller.
 - (d) any of the above.
30. An unpaid seller is having rights against
- (a) goods only.
 - (b) the buyer only.
 - (c) both goods and buyer.
 - (d) none of the above.
31. 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.
32. 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.
33. 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.

34. 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.
35. Which of the following is a buyer 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.
36. An auction sale is complete on the
- (a) delivery of goods (b) payment of price
(c) fall of hammer (d) none of the above.
37. 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
38. 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.
39. 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.
40. A agrees to deliver his old car valued at ₹ 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.
41. If the buyer rejects the whole quantity of goods due to short delivery or excess delivery, the contract is treated as
- (a) subsisting. (b) cancelled.
(c) void. (d) invalid.
42. Seller has right of resale where
- (a) goods are perishable. (b) seller has reserved such right.
(c) seller gives notice. (d) all of these.



43. Legally, a contract of sale includes
- (a) sale. (b) agreement to Sell.
(c) barter. (d) both (a) and (b)
44. 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.
45. A contract for the sale of goods which provide that the property would pass to the buyer on full payment of price and execution of sale deed, is known as
- (a) sale. (b) agreement to Sell.
(c) hire-purchase Agreement. (d) sale of approval.
46. 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)]
47. 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.
48. 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.
49. Voluntary transfer of possession by one person to another is popularly known as
- (a) transfer. (b) possession.
(c) delivery. (d) none of the above.
50. The aggrieved party can claim only damages in case of breach of warranty.
- (a) true.
(b) false.
51. In a contract of Sale of Goods by description, the implied condition is that, the goods need not correspond with the description.
- (a) true.
(b) false.

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52. 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.
53. 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)
54. 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.
55. 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.
56. 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.
57. 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.
58. 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.



59. 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.
60. The implied condition that goods shall be fit to buyer's specific purpose, is applicable only where the buyer tells his purpose to the seller and relies upon seller's skill and judgement.
- (a) True, as it is the requirement of law.
(b) False, as it is buyer's duty to select goods which serve his purpose.
61. In case, a condition is changed to the status of a warranty, then the buyer
- (a) loses the right to reject goods. (b) retains right to claim damages only.
(c) both (a) and (b) are true (d) both (a) and (b) are false.
62. The property in the goods means the
- (a) possession of goods. (b) custody of goods.
(c) ownership of goods. (d) both (a) and (b)
63. 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)
64. In case of unconditional contract of sale, the property passes to the buyer at the time of making the contract. For this rule to apply, the goods must be
- (a) specific. (b) in a deliverable state.
(c) physically transferred to buyer. (d) both (a) and (b)
65. 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)
66. In case of sale of unascertained goods, the ownership is transferred to the buyer when the goods are
- (a) ascertained. (b) appropriated to the contract.
(c) weighed and measured. (d) both (a) and (b)
67. 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 goods. (d) in all the above cases.

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68. 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, as there is a provision to this effect.
(b) False, as it is against the general rule.
69. 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.
70. Where the goods are delivered to a carrier or wharfinger for the purpose of transmission to the buyer, the delivery is
- (a) invalid and ineffective. (b) valid and effective.
(c) conditional. (d) none of these.
71. 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.
72. 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.
73. Where in an auction sale, the seller appoints more than one bidder, the sale is
- (a) void. (b) illegal.
(c) conditional. (d) voidable.
74. 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)

Read the following paragraph carefully & then answer the questions-

A stipulation in a contract of sale with reference to goods, which are the subject thereof, may be a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives right to repudiate the contract and to claim damages. On the other hand 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 (Section 12(3) of the Sale of Goods Act, 1930). A breach of condition may be treated as a breach of warranty.



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75. A warranty is a stipulation essential to the main purpose of the contract
- (a) True.
 - (b) False.
76. Right to repudiate the contract exists both in conditions & warranties
- (a) True.
 - (b) False.
77. A breach of warranty may be treated as breach of condition
- (a) False.
 - (b) True.
78. Right to claim for damages exists both in conditions & warranties
- (a) True.
 - (b) False.
79. A stipulation which is collateral to the main purpose of the contract is
- (a) Condition.
 - (b) Warranty.

Read the following paragraph carefully & then answer the questions-

Where there is an unconditional contract for the sale of specific goods in a deliverable state, property in the goods passes to the buyer when the contract is made. If the goods are not in a deliverable state, property does not pass until such a thing is done to put the goods in a deliverable state. This 'something' may mean packing the goods, testing, polishing, filling in casks etc. It should be noted that the property shall not pass when the goods are made in deliverable state but shall pass only when the buyer has notice of it.

80. If there is a contract for the sale of unascertained goods, property in the goods passes to the buyer when the contract is made.
- (a) True.
 - (b) False.
81. If there is a conditional contract for the sale of specific goods, property in the goods passes to the buyer when the contract is made
- (a) True.
 - (b) False.
82. The property in the goods shall pass when the goods are made in deliverable state and
- (a) The buyer has notice of it.
 - (b) There is no need of giving the notice to buyer.
 - (c) Any of the above.

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83. What are the things done to put the goods in deliverable state?
- (a) Packing.
 - (b) Testing.
 - (c) Polishing.
 - (d) Any or all of these.

Match the following stipulations whether they are implied condition or warranty in a contract of sale of goods:

84. Right of seller to sell the goods when the property is to pass.
85. Buyer shall have and enjoy quiet possession.
86. Goods shall be free from any charge etc.
87. In the case of eatables, the goods shall be wholesome.
88. The goods shall correspond both with the sample and the description in case the goods are sold by sample as well as by description.
89. Disclosure of dangerous nature of goods.
Write (a) in case of condition & (b) in case of warranty.

STATE YES OR NO

90. State whether the following is a 'Sale' or an 'agreement to sell' :
- (a) X agrees to buy from Y a hay - stack on Y's land, with the liberty to come to Y's land to take it away.
 - (b) X agrees to buy 1,000 litres of coconut oil from Y's cistern. Y has many cisterns with more than 1,000 litres in them.
91. A agrees to sell a horse to B on a condition that B will keep it for 6 days on trial basis and have the option to return on the expiry of 6 days, if he does not find it suitable. Three days after the making over of the horse to B, it dies without the fault either of A or B. Can the agreement be avoided ?
92. P agrees to sell apples to Q at price to be fixed by R. Subsequently, R refuses to value the goods and fix the price. Could the agreement be avoided ?
93. If in the case contemplated in Q. 92 R was willing to value the apples but was prevented from evaluating by the wrongful act of P. Could Q file a suit for damages against P ?
94. A bought a motor car from B. He used it for 3 months and thereafter the car was detected to have been stolen. A was compelled to return it to the true owner. Could A recover the sale price from B ?
95. M at Calcutta sold to N 20 bags of waste 'silk' then on their way from Murshidabad to Calcutta. But when the bags reached N, he found that they contained waste silk no doubt but not of the quality he had in view. Would N be entitled to reject the goods ?



96. X sold to Y certain quantities of 'foreign refined rape oil warranted only equal to samples'. The samples consisted of rape oil mixed with hemp oil. The oil tendered corresponded with the samples, but it was not such as is known in the market as "foreign refined rape oil". Could Y reject the goods ?
97. A contracts to sell Java Sugar according to the sample produced by him on the delivery of the sample to B, the buyer. It transpires that the sugar agrees with sample but is not Java Sugar. Will B be entitled to any remedies?
98. X enters into a druggist's shop and asked for a hot water bottle. He is shown a bottle which the proprietor of the shop say will not stand boiling waster, but it is meant for hot water. X buys the bottle, and one day while using it, it bursts and injures X. It is proved that the bottle was not fit for use as a hot water bottle. Is the seller liable to damages for breach of warranty?
99. There was a sale by sample on the 5th May, of two parcels of rice containing 500 and 100 bushels respectively. When, on the 12th May, the buyer went to examine the bulk, the parcel containing 500 bushels was shown to him but the seller refused to show him the other parcel which was not then in the godown. On this account the buyer rescinded the whole contract. Could he do so ?
100. X offers Y his buffalo for ₹ 1,200, the buffalo to be delivered to Y on a stipulated day and price to be paid on another stated day. Y accepts the offer. Does the property in the buffalo pass to Y?
101. There was a sale of the whole contents in a cistern of oil, the oil is to be put into casks by the seller and then taken away by the buyer. Some of the casks were filled in the presence of the buyer, but before they were removed or the remaining ones were filled, fire destroyed the whole of the oil. Who would bear the loss of the oil?
102. X contracts to sell a stack of hay to Y, to weigh and deliver it at ₹ 100 per tonne. A part of it was weighed and taken away but before anything more could be done a flood carried away the remainder. On whom will the loss as regards the reminder fall ?
103. In the pursuance of a contract to fill 20 bags of sugar out of a large quantity, the seller filled four bags which the buyer takes away. Subsequently, the seller filled 16 more bags, informed the buyer of this and requested him to take them away. The buyer promised to do so. Did the property in the 16 bags of sugar pass to the buyer ?
104. Goods delivered on sale or return basis were pledged by the delivery. Could the original owner recovers the goods from the pledgee ?
105. A agrees to purchase bales of paper from B at Madras. The goods are sent by railway, delivery to be against payment by A through bank. A paid the amount and obtained a delivery order. But the goods had been destroyed by fire before he had paid the amount. Has the property in the goods passed to A?
106. The defendant purchased 975 bales of rice being the whole contents of a "Gola", paid earnest money and took part delivery of rice. The rest was afterwards destroyed by fire. Would the defendant be liable to pay the balance of the price in respect of the goods destroyed?

107. The plaintiff entrusted a motorcar to a mercantile agent for sale. Stipulating that the car should not be sold below certain price. To this the agent professed to agree, but intended, from the outset, to sell the car at such price as he could obtain and misappropriate the proceeds. He sold it to A who bought in good faith for less than the stipulated price and absconded. Subsequently, A sold the car to the defendant. Could the plaintiff recover the car from the defendant?
108. A manufacturing jeweller delivers certain articles of jewellery to B (whose business is to travel about the country selling jewellery) upon the term that they should remain the property of A until sold or paid for. B fraudulently pledges the jewellery with a pawn-broker and money lender. Is the pledge valid ?
109. A, B, and C own certain cattle in common. A is left by B and C in possession of a cow which he sells to D. D purchases it bona fide. Is the property in the cow transferred to D ?
110. A sells to B certain specific goods which are locked up in godown. A gives B the key of the godown. Does the action A constitute delivery of the goods to B ?
111. A sells 50 quintals of wheat to B. The wheat remains in A's warehouse after the sale. B sells to C 10 quintals of wheat, and A at B's desire sends those 10 quintals of wheat to C. In the circumstances can it be regarded as the delivery of the whole quantity of the wheat ?
112. P agrees to sell and deliver to Y 300 quintals of rice, but only 200 quintals are delivered. Y has the rice weighed and accepts the quintals sent. Y afterwards objects that the whole of the 300 quintals was not delivered and he refuses to pay for 200 quintals. Can Y be compelled to pay the price for 200 quintals ?
113. There was a sale of 25 tonnes of cloves for October/November shipment. The seller shipped 20 tonnes in November and 5 tonnes in December. Would the buyer be entitled to reject the whole 25 tonnes ?
114. There was a sale of 100 tonnes of paper to be shipped as early as possible by named ship or other vessels. The named ship was not available and the seller shipped 50 tonnes on other ship, informing the buyer that he has done so and that he had drawn on him for the price and proposing to ship the remainder of the paper later. The buyer kept silent on this communication. The ship was lost. The seller brought an action against the buyer for the price of 50 tonnes. Would he succeed ?
115. B (a London merchant) places an order with A (a Bombay merchant) for 100 bales of cotton. B sends his ship to Bombay for cotton. A delivers the cotton on board the ship, and takes bill of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrived at London, but before coming into B's possession, B becomes insolvent. The cotton has not been paid for. Can A stop the cotton ?
116. P, a manufacturer of watches delivers certain watches to Q upon the condition that the watches will remain P's property until sold or paid for. Q is a famous dealer dealing in watches all over India. Q frequently pledges the watches with a money lender and obtains ₹ 50,000. P on coming to know of the deal between Q and the money-lender, challenges the 'pledge' and wants the watches back, on the ground that Q had no authority to pledge the watches. Decide.



117. Mr. S. K. agreed to purchase 50 bales of cotton from Mr. R. K. from his large stock and sent his man to take the delivery. They could pack only 30 bales. Then there was accidental fire and the entire stock was destroyed including 30 packed bales. Who will bear the loss and to what extent ? Explain.
118. P sells and consigns certain goods to Q for cash and sends the Railway Receipt to him. Q becomes insolvent and while the goods are in transit, he assigns the Railway Receipt to R, who does not know that Q is insolvent. P being an unpaid seller wants to exercise his right to stoppage of goods in transit. Advise :
- (a) Whether P can do so.
- (b) Would your answer be different if R was aware of P's insolvency before the assignment of the Railway Receipt in favour of R ?
119. X purchased a VCR at a public auction. Neither the auctioneer nor X knew at that time that the VCR was a stolen property.
- (a) Has the true owner any claim against (i) X or (ii) the auctioneer ?
120. A made a bid for an old and rare stamp at an auction sale but withdrew it before the fall of hammer. One of the conditions of the sale was "bid once made shall not be withdrawn", which A knew. Discuss the rights of auctioneer and A.

2.30 ANSWERS

1.	(b)	2.	(b)	3.	(b)	4.	(c)	5.	(a)
6.	(a)	7.	(c)	8.	(c)	9.	(c)	10.	(a)
11.	(a)	12.	(c)	13.	(b)	14.	(b)	15.	(d)
16.	(d)	17.	(d)	18.	(c)	19.	(c)	20.	(b)
21.	(a)	22.	(b)	23.	(b)	24.	(b)	25.	(b)
26.	(d)	27.	(a)	28.	(b)	29.	(d)	30.	(c)
31.	(d)	32.	(b)	33.	(b)	34.	(a)	35.	(d)
36.	(c)	37.	(c)	38.	(d)	39.	(a)	40.	(a)
41.	(a)	42.	(d)	43.	(d)	44.	(a)	45.	(b)
46.	(b)	47.	(b)	48.	(b)	49.	(c)	50.	(a)
51.	(b)	52.	(d)	53.	(d)	54.	(b)	55.	(a)
56.	(a)	57.	(b)	58.	(c)	59.	(b)	60.	(a)
61.	(c)	62.	(c)	63.	(a)	64.	(d)	65.	(a)
66.	(d)	67.	(d)	68.	(a)	69.	(d)	70.	(b)
71.	(d)	72.	(b)	73.	(d)	74.	(b)	75.	(b)
76.	(b)	77.	(a)	78.	(a)	79.	(b)	80.	(b)
81.	(b)	82.	(a)	83.	(d)	84.	(a)	85.	(b)
86.	(b)	87.	(a)	88.	(a)	89.	(b)		

90. (a) Sale, because the property in the goods passed when the contract was made.
(b) Agreement to sell, because no property passes to the buyer until the goods are ascertained.
91. Yes, because the property in the goods has not passed to B.
92. Yes, as the condition as to of price is not fulfilled.
93. Yes, Q can treat the breach of condition as a breach of warranty and sue A for the breach of warranty.
94. Yes, A can sue B for recovery of price as the consideration for which price was not paid, has failed. Also it is a breach of the condition that the seller had a right to sell the goods. [Refer to Sections 59 and 14 (a)].
95. No, because goods correspond to the description and in the sale by description there is no implied condition as to the quality of goods except that those should be merchantable quality. [Refer to Sections 15 and 16].
96. Yes, as it was a sale by sample as well as description, and goods does not correspond to the description, there is a breach of condition entitling the buyer to repudiate the Contract.
97. Yes, B can repudiate the contract as the goods do not correspond with the description.
98. Yes.
99. Yes, as the buyer has been refused a reasonable opportunity to examine the goods it amount to a breach of condition [Refer to Section 17 (2) (d)].
100. Yes, [Refer to Section 20].
101. The buyer in respect of the oil put into the Cask and the seller that of the remainder [Section 21].
102. No. X [Refer to Section 21].
103. Yes, [Refer to Section 21].
104. No, he can ask the original buyer for the price, as resale by the original buyer amounts to the acceptance of goods. [Refer to Section 24 (9)].
105. No, [Refer to Section 25 (2)].
106. Yes, [Refer to Section 20 and Section 34].
107. No, [Refer to proviso to Section (27)].
108. Yes, [Refer to proviso to Section (27)].
109. Yes, [Refer to Section 28].
110. Yes, [Refer to Section 33 of the Sales of Goods Act].
111. No, [Refer to Section 34].
112. Yes, [Refer to Section 37 (1)].
113. Yes, [Refer to Section 38 (i)]



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114. Yes, [Refer to Sections 39 (1) and 37 (1)].
115. Yes, [Refer to Section 4].
116. The pledge will be valid and P's contention would not be tenable. (Refer to proviso to Section 27 of Sale of Goods Act)
117. The Buyer would have to bear the loss of goods the property in which had passed to him, i.e., loss of 30 bales duly selected and packed. (Refer to Sections 26, 18 and 23).
118. (a) P cannot exercise the right of stoppage of goods in transits. Goods being taken by R in good faith and for consideration.
- (b) Yes, P in this case can exercise his right of stoppage of goods in Transit, as R has not acted in good faith. (Refer to Section 53 (i)).
119. (a) The true owner can recover the VCR from X. The auctioneer is free from the liability so far as the true owner is concerned.
120. A is entitled to windrow the bid before the fall of the hammer. (Refer to Section 63 (2)).

