

Chapter 2

Sale of Goods Act, 1930

Introduction

- The Sale of Goods Act, 1930, governs transfer of ownership in goods. It does not include transfer of immovable property as it is governed by the Transfer of Property Act, 1882. } BCL A3
- Contract of sale of Goods is a special contract. Originally, it was part of Indian Contract Act itself in Chapter VII (Sections 76 to 123). Later these sections in Contract Act were deleted, and separate Sale of Goods Act was passed in 1930.
- The Sale of Goods Act, 1930, contains 66 sections in VII chapters. It came into force on 1st of July 1930 as, "The Indian Sale of Goods Act, 1930". Later from 23 September 1963, the word "Indian" was omitted and it became "The Sale of Goods Act, 1930".
- The Sale of Goods Act, extends to the whole of India.
- As per section 3 of the Sale of Goods Act, the principles of the Contract Act relating to formation of contract, performance of contract, law of damages etc are also applicable to the contract of sale of goods in so far as they are not inconsistent with the express provisions of the Sale of Goods Act.

Important terms (Section 2)

Buyer [Section 2(1)]: Buyer means a person who buys and agrees to buy goods.

Delivery [Section 2(2)]: Delivery means voluntary transfer of possession from one person to another.

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

Document of title of goods [Section 2(4)]: It is 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.

It symbolizes the goods and confers a right to the owner to take possession of the same or further transfer the right to some other person. A delivery order, railway receipt, bill of lading are some of the examples of document of title.

Fault [Section 2(5)]: Fault means wrongful act or default.

Future goods [Section 2(6)]: Future goods mean goods to be manufactured or produced or acquired by the seller after making of the contract of sale.

Seller [Section 2(13)]: Seller means a person who sells and agrees to sell goods.

Insolvent [Section 2(8)]: 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.

Barter: Barter means exchange of goods for goods.

BUSINESS REGULATIONS

Property: Property means the general right in goods, and not merely a special property. According to Section 2(11) "**Property**" 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.

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.

Ex: If Amith who owns goods pledges them for raising money to Benny, Amith has the general property in the goods, while Benny (pledgee, person with whom goods are pledged) has a special property or interest in them, e.g., pledgee has a right to retain the pledged goods until he is paid by Amith (pledgor) the entire amount of his loan with interest.

Actionable claims: Actionable claims means a right to a debt or to any beneficial interest in movable property not in the possession of the claimant, which can be recovered by a suit or legal action. Money means the legal tender or currency of the country. It includes Goodwill, Patents, Copyrights, Water, Gas, Electricity, Foreign currency, Rare coins, Old coins, Ship, Animals. (Debt and Indian currency are not goods).

Hire purchase agreement: Hire purchase agreement means the seller delivers the possession of the goods to the other person and he charges rent for the goods. After receiving the price of the goods, the ownership of the goods is passed on to the purchaser.

Bailment: Bailment means only the possession is transferred from bailor to the bailee. Such transactions may be for the purpose of keeping the goods in the safe custody or may be for furnishing security.

Goods [Section 2(7)]: 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.

Classification of goods

- **Existing goods:** As per Section 6(1) of the Sale of Goods Act, existing goods are those which are owned or possessed by the seller at the time of contract of sale. The existing goods may be of the following kinds
 - ✓ **Specific goods:** The goods which are identified and agreed upon at the time when the contract of sale is made, are called specific goods.
 - ✓ **Ascertained goods:** Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made. When out of large number or large quantity of unascertained goods, the number or quantity contracted for is identified and set aside for such contract, such number or quantity is said to be 'ascertained goods'.

BUSINESS REGULATIONS

Ex: Bhuvan whole seller of wheat has 100 bags of wheat in his godown. He agrees to sell 10 bags of wheat and these bags are identified and set aside. On selection the goods become ascertained.

In case of specific goods, they are identified at the time of making of the contract, while in case of ascertained goods, they are identified after making but before the performance of the contract, the process being conducted in conformity with the agreement.

- ✓ **Unascertained goods:** The goods which are not specifically identified and agreed upon at the time when the contract of sale is made, are called unascertained goods.

Ex: If Arya has 3 cars of the same kind and I offer to sell one particular car, the goods are unascertained till one particular car is appropriated towards the contract.

- **Future goods:** Those goods which are yet to be manufactured or produced or acquired by seller after the making of the contract of sale, are called future goods [Section 2(6)].

Ex: Arjith gives an advance of Rs 2,00,000 for booking a Maruti car which is to be delivered after 3 months. This is the contract for the sale of future goods. A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a man cannot transfer what is not in existence.

- **Contingent goods:** As per Section 6(2) of the Act, contingent goods are those goods the acquisition of which by the seller depends upon a contingency (uncertain event) which may or may not happen. It may be noted that although the contingent goods are a type of future goods but they are different from future goods in the sense that the procurement of contingent goods is dependent upon an uncertain event or uncertainty of occurrence, whereas the obtaining of future goods does not depend upon any uncertainty of occurrence.

Ex: Avinash car dealer agrees to sell a yellow colour car to a customer provided it is available with the manufacturer. This agreement is for sale of contingent goods and it will become void if the yellow car is not available with the manufacturer.

Price [Section 2(10)]: Price is an essential condition of a contract of sale of goods. According to section 2(10), price is the money consideration for a sale of goods. Money means legal tender money in circulation. Old and rare coins are not included in the definition of money. *Sec A6*

How is the price of the goods ascertained?

- The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
- Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Stipulations regarding payment of price (Section 11): In a contract of sale, stipulations as to time may be of two kinds:

- **Stipulations as to time for payment of price:** Stipulations as to time for payment of price are not regarded as essence of contract, unless a different intention appears from terms of the contract. Thus if the payment is not made in time, the seller cannot avoid the contract but

BUSINESS REGULATIONS

can claim damages. However, time of payment can be made essence of the contract, if there is an express provision in the contract of sale. If there is no express provision in the contract of sale, with regard to the time of payment, then time of payment is not deemed to be the essence of contract.

Ex: Ankith sells a laptop to Vishwas with a stipulation that payment should be made within 3 days. Vishwas makes the payment after 7 days of the contract. Here Ankith cannot avoid the contract on the ground of stipulation as to time of payment.

- **Stipulation as to time of delivery of goods: Stipulation as to time of delivery of goods is the essence of contract**, will depend on the terms agreed upon. It means that time of delivery of goods etc., can also be made essence of the contract of sale if an express provision to this effect is made in it. If no such provision is made, then time of delivery of goods will not be an essence of contract. Suppose if time of delivery of goods is made the essence of the contract of sale by providing express terms, in this regard what will the remedy for the buyer, if the seller does not make the delivery within the stipulated time the buyer can avoid the contract. **It may be noted that in ordinary commercial contracts for sale of goods, time is the prima facie of the essence with respect to delivery.**

Contract of Sale

Sec 4 Section 4 of the Sale of Goods Act defines a contract of sale as – “a contract of sale is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.” A contract of sale of goods, like any other contract, results by an offer by one party and its acceptance by the other.]

Ex: Sharath makes a contract with Praveen for sale of his Nano Car for Rs 80,000. Praveen makes the payment and takes the delivery of car. This is the transaction of sale where the ownership has passed from Sharath to Praveen for a price.]

Formalities of contract of sale (Section 5)

- A contract of sale is formed by offer and acceptance. There is an offer to sell or buy goods for a price and the acceptance of such an offer.
- The contract shall provide for delivery of goods. Delivery may be immediate, simultaneous, by installments or in future.
- The contract shall provide for payment of price. Payment of price may be immediate, simultaneous, by installments or in future.

Contract of sale – How it is made?

- May be in writing
- May be by word of mouth
- May be implied from the conduct of parties

Essential characteristics of a contract of sale

- There must be two parties a buyer and seller.
- 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 the goods for a price by one party and the acceptance of such offer by other.
- Transfer of property must take place for some money consideration called price.
- The subject matter of the sale must be goods.

BUSINESS REGULATIONS

- It includes both a 'Sale' and 'Agreement to Sell'.
- A contract of sale may be absolute and conditional.
- It may be in writing, oral or implied.
- **Essential elements of a valid contract must be present.**

Sale: According to Section 4(3) of, "where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, the contract is called a sale". *Sec-A 5*

Agreement to sell: The term Agreement to sell is defined in Section 4(3) of the Sale of Goods Act, 1930 as – "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 conditions** thereafter to be fulfilled, the contract is called an agreement to sell". *Sec A(1)*

Ex: Raghava agrees to sell his Nano Car to Lawrence for Rs 80,000 after one month. Lawrence agrees to buy the car and make payment after one month. This is an agreement to sell and it will become a sale after one month when Lawrence make the payment and gets the ownership of car.

When an agreement to sell becomes a sale?

An agreement to sell becomes a sale when the prescribed time lapses or the conditions, subject to which the property in the goods is to be transferred, are fulfilled.

Difference between sale and agreement to sell *Sec-B-3*

Basis of difference	Sale	Agreement to sell
Transfer of property	The title of the goods passes to the buyer immediately.	The title of the goods passes to the buyer on a future date or on the fulfillment of some condition.
Nature of contract	It is an executed contract.	It is an executory contract.
Burden of risk	Risk of loss is that of the buyer since risk follows the ownership. If the goods are destroyed by accident the loss falls on the buyer, even though the goods are in the possession of the seller.	Risk of loss is that of the seller.
Liability	A subsequent loss or destruction of goods is the liability of buyer.	Liability remains with the seller where transaction only amounts to agreement to sell.
Nature of rights	It creates jus in rem that is the buyer as the owner gets the right to enjoy the goods against the whole world. If the seller refuses to deliver the goods to the buyer, buyer may sue for recovery of goods by specific performance.	It creates jus in personam that is the buyer has only a personal remedy against the seller. He can sue only for the damages for breach and not for recovery of goods.
Remedies for breach	If the buyer fails to pay for the goods, the seller may sue for the price and also has other remedies available to an unpaid seller.	If the buyer fails to accept and pay for the goods, the seller can only sue for damages.

BUSINESS REGULATIONS

Insolvency of buyer	If the buyer becomes insolvent before paying the price, the seller shall have to deliver the goods to the Official Receiver on his demand because the ownership of goods has passed to the buyer.	Since the seller continues to be the owner, he can refuse to deliver the goods to the Official Receiver unless he is paid the price because the seller continues to be owner of the goods.
Insolvency of seller	If the seller becomes insolvent while the goods are still in his possession, the buyer shall have a right to claim the goods from the Official Receiver because the ownership of goods has passed to the buyer.	If the seller becomes insolvent, the buyer cannot claim the goods. If the buyer has paid the price he can claim ratable dividend from the estate of the insolvent seller.

Difference between sale and hire purchase

Sale	Hire purchase
In a contract of sale, the seller transfers or agrees to transfer the property in goods to the buyer for a price.	In hire purchase there is an agreement for the hire of an asset conferring an option to purchase.
Property in goods is transferred to the buyer immediately at the time of contract.	The ownership passes to the hirer upon the payment of last installment.
The position of the buyer is that of the owner of the goods.	The position of the buyer is that of the bailee till he pays the last installment.
The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
The seller takes the risk of any loss resulting from insolvency of the buyer. (Cannot recover the goods but can claim the price for the goods)	The owner takes no such risk, if the hirer fails to pay an installment the owner has the right to take back the goods.
The buyer can pass a good title to a bonafide purchaser from him.	The hirer cannot pass any title even to a bonafide purchaser.

Difference between sale and bailment

Sale	Bailment
In a contract of sale, the seller transfers or agrees to transfer the property in goods to the buyer for a price.	In case of bailment possession of goods is transferred from bailor to bailee for some purpose.
The buyer can deal with the goods the way he likes.	The bailee can use the goods only for the intended purpose of bailment.
The buyer gets the ownership of the goods.	The bailee only acquires the possession.
Generally, the goods are not returnable in a contract of sale.	The goods are returnable after a specified period or when the purpose for which they

BUSINESS REGULATIONS

	were delivered is achieved.
The consideration for a sale is the price in terms of money.	The consideration for bailment may be gratuitous or non-gratuitous.

Conditions and Warranties

Section 12 of the Sale of Goods Act states that a stipulation (or term) in a contract of sale with reference to the goods may be a condition or a warranty.

* **Condition [Section 12(2)]:** A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to treat the contract as repudiated. } Sec - A2

Ex: Arun wants to buy a car which can give a mileage of 20 kms/litre. Vennilla, the car dealer, points out at a particular car and says "this car will suit you". Arun buys the car. But later on he finds that the car is giving a mileage of only 10 kms/litre. **THERE IS A BREACH OF CONDITION**, because the stipulation made by Vennilla forms the very basis of the contract. } Sec A 4

* **Warranty [Section 12(3)]:** A warranty is stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not a right to reject the goods and treat the contract as repudiated. } Sec A 2

Ex: Durga goes to Goutham, a car dealer, and says, "I want a good car". The car dealer shows her a car and says, "it can give you a mileage of 20 kms/litre". Durga buys the car. Later on, Durga finds that the car is giving a mileage of 10 kms/litre only. **THERE IS A BREACH OF WARRANTY**, because the stipulation made by the seller was only collateral one. } Sec A 2

When a condition can be treated as a warranty

- **Voluntary waiver of a condition [Section 13(1)]:** Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may –
 - ✓ Waive the condition, for example a buyer may accept defective goods or accept goods beyond stipulated time.
 - ✓ Elect to treat a breach of condition as a breach of warranty, i.e., instead of repudiating the contract he may accept performance and sue for damages, if he has suffered any.

Once a buyer decides to waive, he cannot afterwards insist on its fulfillment.

- **Compulsory waiver of a condition [Section 13(2)]:** Where a contract of sale is not severable (i.e., indivisible) and the buyer has accepted the goods or a part thereof, he cannot repudiate the contract but can only sue for damages.

Ex: Watson bought laptops from Manish and resold it to Catherin **without examining** the laptops. The laptops were defective. It was held that Watson must be deemed to have accepted the goods and therefore **he could not repudiate the contract but could claim only damages.**

Note: However there may be an agreement between the parties which may be contrary to section 13(2). In that case **the parties may agree between themselves that the provisions of section 13(2) will not apply in their case and the buyer shall have a right to reject the goods even though he has accepted the indivisible goods. If the contract of sale is divisible and the buyer has accepted a part of the goods, he can still exercise the right to reject the remaining goods.**

BUSINESS REGULATIONS

- **Impossibility [Section 13(3)]:** Under section 13(3) the seller has the right to rely upon the impossibility as an excuse in appropriate cases, if sued by the buyer.

Difference between condition and warranty *Sec B-4*

Basis of Difference	Condition	Warranty
Meaning	Condition is a stipulation essential to the main purpose of the contract.	Warranty is a stipulation collateral to the main purpose of the contract.
Value	If a stipulation in a contract is essential to the main purpose of the contract, it is condition.	If the stipulation is only a collateral to the main purpose of the contract, it is only a warranty.
Breach	Breach of a condition gives the aggrieved party a right to repudiate the contract and also claim damages.	Breach of warranty entitles the aggrieved party to claim damages only.
Treatment	A breach of condition may under certain circumstances be treated as breach of warranty.	Warranty cannot become a condition.

Implied conditions and warranties

A stipulation (or term) in a contract of sale of goods may be express or implied. Express terms are those which have been expressly agreed upon by the parties. Implied terms are those which have been enacted in the Sale of Goods Act. Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention

Implied conditions

1. **Implied condition as to title (Section 14):** There is an implied condition on the part of the seller that, in the case of a sale he has the right to sell the goods, and in case of an agreement to sell, he will have 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 is entitled to reject the goods and return the goods to the true owner and claim refund of the price plus damages from the seller.

Ex 1: Anirudh purchased a tractor from Shivakarthekeyan who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from Anirudh. Held that Anirudh was bound to hand the tractor to its true owner and that Anirudh could sue from Shivakarthekeyan, the seller without title, for the recovery of the purchase price.

Ex 2: Kangana bought a motor car from Ramyakrishnan. He used it for 3 months and thereafter the car was detected to have been stolen. Kangana was compelled to return it to the true owner. Could Kangana recover the sale price from Ramyakrishnan? **(Ans: Yes Kangana can recover the sale price from Ramyakrishnan)**

Ex 3: Angel sells Sunitha tins of condensed milk labeled "Nissly Brand" and this is proved to be an infringement of Nestle Company's trade mark. Is it a breach of implied condition as to title. **(Ans: When a person sell the goods by infringing a copyrights or trademark of the others, he is considered as not having right to sell such goods)**

BUSINESS REGULATIONS

2. **Implied condition in a sale by description (Section 15):** When 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. The description may be given-

- By mentioning qualities or characteristics of the goods e.g., Basmati rice.
- By mentioning the trademark or brand name e.g., Videocon TV
- By the type of packing e.g., 1 kg packing of tea in plastic jar

Ex 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.

Ex 2: Vidhya purchased second hand machinery from Selvi based on Selvi's description. Selvi described it as a new one, purchased last year and used to cut only 50 acres of crop. Vidhya found that it was too old to use and found certain mends (repairs). So she returned it to Selvi. Selvi sued Vidhya. It was held that Vidhya can reject it and can claim for return of the price as the machine was not in accordance with the description.

3. **Implied condition in a sale by sample as well as 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 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.

Ex: Sunitha agreed with Roopesh to sell certain oil described as "Foreign refined sunflower oil" and gave sample of oil to Roopesh. Roopesh agreed to purchase and asked Sunitha to supply. Sunitha supplied the oil which were equivalent to sample, but it was not foreign refined sunflower oil as described i.e., it contained a mixture of hemp oil. Roopesh rejected the oil. Sunitha sued Roopesh. It was held that Roopesh would refuse to accept the oil as it was not in accordance with the description.

4. **Implied condition in a 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
- The goods shall be free from 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 be discovered by an ordinary examination of the goods. But if the defects are latent (hidden), then the buyer can avoid the contract. If the defect is easily discoverable on inspection and the buyer takes the delivery after inspection, he has no remedy.

Ex: 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 the ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.

BUSINESS REGULATIONS

5. **Implied condition as to wholesomeness:** In the case of eatables and food stuff in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Ex: Ravi supplied Ram with milk. The milk contained typhoid germs. Ram's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and it was held that Ravi is liable not only to pay price of the milk but also damages because the milk was not fit for human consumption.

6. **Implied condition as to merchantability:** Where the goods are brought by description from a seller who deals in goods of that description, there is an implied condition that goods shall be of merchantable quality. Merchantable means that the goods are commercially saleable and that they are fit for the purpose for which they are generally used. Where the buyer examines the goods prior to sale, there is no implied condition as to merchantability as regards defects which such examination ought to have revealed. However, inspite of examination, if the goods have certain latent defects which no examination could reveal, the implied condition remains.

Ex 1: Karthik bought a colour TV from Concord Electronics. The TV was defective right from the beginning and it did not work inspite of repairs by expert technicians. There is a breach of implied condition as to merchantability and the dealer will have to take back the defective TV and refund the amount.

Ex 2: Jennifer orders motor horns from a manufacturer. The horns supplied are defective. Jennifer is entitled to reject them as un-merchantable.

Ex 3: Preksha purchased a bottle of stone ginger wine from Kiran, a restaurant owner. Preksha took it and tried to open the cork. The bottle broke out and injured her. It was held the bottle was not a merchantable quality and Preksha was entitled to recover the price and damages.

7. **Implied condition as to fitness or quality [Section 16(1)]:** The general rule is, there is no implied condition as to quality or fitness for the purpose of the buyer. This is based on the doctrine of "Caveat Emptor" that is "Let the buyer beware". It means that while buying the goods, it is the responsibility of the buyer to check that the goods he is buying would suit his purpose or not. However, in the following situation, the responsibility as to fitness of goods falls upon the seller

- Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required,
- The goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose and
- So as to show that the buyer relies on the seller's skill, or judgement.

Ex 1: Pooja 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 the chemist was liable for refund of price and the damages.

BUSINESS REGULATIONS

Sale under patent or trade name: Provision to section 16(1) lays down that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. It is so because in such a case the buyer is not relying on the skill and judgement of the seller but relies on the patent name.

Ex: A hotelier orders 'Sujeet' juicer and mixer for his business. The juicer and the mixer supplied was found to be unsuitable for commercial use. The buyer has no cause of action against the seller, since he purchased the juicer by its patent name.

Implied warranties

1. **The buyer must get quiet possession [Section 14(b)]:** The buyer shall have and enjoy quiet possession of the goods.
Ex: Anitha has given her car on hire for a period of one month to Balakrishnan. Thereafter, Anitha sold it to Regina without disclosing to her that Balakrishnan was entitled to use the car on account of the hire agreement. Regina claims the car from Balakrishnan. Balakrishnan's possession is disturbed. He can claim damages from Anitha.
2. **The goods must be free from encumbrance [Section 14(c)]:** There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of third party not declared or known to the buyer before or at the time when the contract is made. The effect of this clause is that if the buyer pays off the charge of encumbrance, he will be entitled to recover the money from the seller.
Ex: Drishya pledges her scooter with Anish for a loan of Rs 5,000 and promises him to give its possession the next day. Soon after he sells her scooter to Vedha, an innocent buyer who doesn't know about the pledge. Vedha may ask Drishya to clear the loan or may himself pay the money to get the possession of the scooter or may file suit against Drishya for damages.
3. **Warranty for quality or fitness by usage of trade [Section 16(3)]:** A warranty as to fitness for a particular purpose may be annexed to a contract of sale by a custom or usage of trade.
4. **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of this warranty, the seller may be liable for damages.

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 judgement, 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 any other law for the time being in force, there is no implied warranty and

BUSINESS REGULATIONS

condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”.

Ex: Tintu sold pigs to Bantu. 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

- 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 the judgement 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)].

Ex: 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 broken down. There is a breach of condition as to fitness.

- 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)].

Ex: 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.

- Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15].

- 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 ought to have not been revealed by ordinary examination [Section 16(2)].

Ex: Akilandeshwari bought a black velvet cloth from Saraswathi and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

- 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].

- 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].

- 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.

- 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 defects in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat

BUSINESS REGULATIONS

Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

Transfer of Ownership and Delivery of Goods

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:

I. 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 intension must be gathered from the terms of the contract, the contract of the parties and the circumstances of the case (Section 19).

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

- **Goods in deliverable state:** In an unconditional contract for the sale of 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.
Ex: Arun 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 Arun.
- **Goods to be put in 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.
Ex: A stock of wheat was sold at an agreed price per quintal. The wheat was to be weighted by the seller for ascertainment of the price. A part of the wheat was weighted 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.
- **Specific goods not in a deliverable state:** In a contract for the sale of specific goods which are not in 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.
Ex: Ambani sold carpets to the company which was 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 laid, which was part of the contract and hence, the property had not passed to the buyer company.

II. 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.

BUSINESS REGULATIONS

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

- **Goods by description:** In a contract for the sale of unascertained or future goods by description and the 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.

Ex: Arjun agrees to purchase 1,000 quintals of cotton from warehouseman, out of which he took delivery of 500 quintals and remaining to take the later on. The warehouseman weighted the cotton and kept the remaining separately and informed Arjun to take them and agreed to do so. Before he takes delivery of the remaining goods the warehouse caught fire and destroyed the cotton. Arjun is liable for the price to the warehouseman since he has appropriated the goods, and the ownership is transferred to him.

- **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.

Ex: 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 theft, the seller will not be liable.

Appropriation of goods: Appropriation of goods involves selection of goods with the intension of using them in performance of the contract and with the mutual consent of the seller and the buyer.

The essential are

- The goods should conform to the description and quality stated in the contract.
- The goods must be in a deliverable state.
- The goods must be unconditionally (as distinguished from an intension to appropriate) appropriated to the contract either by delivery to the buyer or his agent or the carrier.
- The appropriation must be made by
 - The seller with the assent of the buyer; or
 - The buyer with the assent of the seller
- The assent may be express or implied.
- The assent may be given either before or after appropriation.

III. 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

- When he signifies his approval or acceptance to the seller
- When he does any other act adopting the transaction and
- If he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time”.

Ex 1: Preksha 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.

BUSINESS REGULATIONS

Ex 2: Pallavi, sends to Greeshma a water motor on approval or return in March 2012. Greeshma to return it after trail in August, 2012. The water motor has not been returned within a reasonable time, and therefore, Pallavi is not bound to accept it and Greeshma must pay the price.

IV. Transfer of property in case of reservation of rights 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.

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.

Ex: Anuj 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

- 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.
- 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.

Ex: Ankitha contracted to sell 100 bales of cotton to Vidhi to be delivered in Feb. Vidhi took the delivery of the part of the cotton but made a default in accepting the remaining bales. Consequently the cotton becomes unfit for the 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 the bailee of goods for the other, even when the risk has passed.

As noted above, the risk 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.

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 in 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.

BUSINESS REGULATIONS

Transfer of title (Sections 27 to 30)

In general the seller sells only such goods of which he is the absolute owner. But sometime a person may sell the 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.

Ex 1: Aadhi sells some stolen goods to Parvathi, who buys them in good faith, Parvathi will get no title to that and the true owner has a right to get back the goods from Parvathi.

Ex 2: Sujatha, the hirer of vehicle under a hire purchase agreement, sells them to Janaki. Janaki, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most she 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 buyer, 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

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

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

- **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 23)

Ex: Rakesh, Rakshana and Ramachandran are 3 brothers and joint owners of a TV and Computer and with the consent of Rakshana and Ramachandran, the computer was kept in possession of Rakesh. Rakesh sells the TV and Computer to Bindhu who buys it in good faith and without the notice that Rakesh had no authority to sell. Bindhu gets a good title to Computer and TV.

- **Sale by 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)

BUSINESS REGULATIONS

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

- **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold the 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)]

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

- **Sale by buyer obtaining possession before the property in goods has vested in him:** Where a buyer with the consent of the seller obtains the possession of the goods before the property in them passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains the 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)]

Ex 1: Ajish sold to Diya some antiques and delivered to him a 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-purchaser' agreement which gives him only an option to buy is not covered within the section unless it amounts to a sale.

Ex 2: Aathmika took a car from Karunakar on this condition that Aathmika would pay a monthly installment of 500 as hire charges with an option to purchase it by payment of Rs 10,000 in 24 installments. After the payment of few installments, Aathmika sold the car to Vaalmiki. Karunakar can recover the car from Vaalmiki since Aathmika had neither bought the car, nor had agreed to buy the car. He had held only an option to buy the car.

- **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 authorised to sell the goods.

BUSINESS REGULATIONS

- **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)]
- **Sale under the provisions of other Acts:**
 - Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - Purchase of goods from a finder of goods will get a valid title under circumstances.
 - A sale by pawnee can convey a good title to the buyer.

Delivery of goods (Sections 31 to 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.

Rule regarding delivery of goods (Sections 33 to 39)

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

- **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 intension of severing it from the whole will not operate as a delivery of the remainder, it will be constructed as part delivery only. (Section 34)
Ex: 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.
- **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)
- **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 sale the goods agreed to be sold are required to be delivered at the spot at which they are 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)]
- **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)]
- **Goods in possession of a third party:** Where the goods at a 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)]
- **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. [Section 36(4)]

BUSINESS REGULATIONS

- **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller, in the absence of a contract to the contrary. [Section 36(5)]
- **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.

Ex: Yuktha agrees to sell 100 quintals of wheat to Tejaswini at Rs 1,000 per quintal. Yuktha delivers 1,100 quintals. Tejaswini 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.

- **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)
Ex: Ramki agrees to deliver to Simran, 100 quintals of sugar in May. But Ramki delivers only 90 quintals in May and the remaining 10 quintals in the first week of June. Simran is entitled to reject the whole 100 quintals.
- **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)]
- **Deterioration during transit:** Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course to transit will fall on the buyer, though the seller agrees to deliver at his own risk. (Section 40)
- **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-

- Intimates to the seller that he had accepted the goods; or
- Does any act to the goods, which is inconsistent with the ownership of the seller; or
- Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (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 the delivery, and the buyer does not take delivery within a reasonable time, he is liable to

BUSINESS REGULATIONS

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. (Section 43 and 44)

Rights of Buyer and Rights of Unpaid Seller

General rights of a buyer

- Sec B-2* [
- **Right to have delivery as per contracts (Section 31 and 32):** Buyer has the right to claim delivery of goods on the payment of price and insist the delivery of goods with the stipulated time.
 - **Right to reject the goods if they are delivered in wrong quantities (Section 37):** The buyer may have the right to reject the goods when the seller delivers lesser quantity of good or larger quantity of good or goods mixed with non-contracted goods.
 - **Right to refuse delivery of goods by installments (Section 38):** The buyer may not accept installment delivery when there has been no such condition.
 - Right to notice of shipment in case the goods are sent by sea so that he may get the goods insured (Section 39).
 - **Right to examine goods for the purpose of ascertaining whether they are in conformity with the contract (Section 41):** When the seller tenders the delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

A seller may breach the contract in any of the following ways

- ✓ He fails to deliver the goods at the time or in manner called for in the contract
- ✓ He repudiate the contract
- ✓ He delivers non-confirming goods and the buyer rightfully rejects the goods or properly revokes the acceptance

Buyer's rights against the seller for breach of contract

- **Suit for non-delivery (Section 57):** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
- **Claim for specific performance (Section 58):** Where a property has passed to the buyer, he can exercise another right, viz, a right to sue for specific performance. In such cases the court may in its discretion grant a decree ordering the seller to deliver those specific or ascertained goods which formed the subject matter of the contract. It should be noted that the remedy is discretionary and will not only be granted if the damages are not an adequate remedy or the goods are unique e.g., rare book, a picture or a rare piece of jewellery.
- **Suit for breach of warranty (Section 59):** Where there is a breach of warranty by the seller (i.e., defects in the goods delivered) or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer has the following remedies
 - ✓ He may claim a deduction from the price

BUSINESS REGULATIONS

- ✓ He may refuse to pay the price altogether, if the loss equals the price
 - ✓ If the loss exceeds the price, he may not only refuse to pay the price, but also claim the excess
 - ✓ He may sue the seller for the damages for the breach of warranty in addition to the right to claim diminution or extinction of the price.
- **Suit for damages for repudiation of contract by the seller before the due date (Anticipatory breach) (Section 60):** The buyer has the right to sue the seller for damages for anticipatory breach of contract. Section 60 lays down that where the seller repudiates the contracts before the date of delivery, the buyer may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.
 - **Suit for interest and recovery of the price (Section 61):** If the buyer has already paid the price and the seller fails to deliver the goods, the buyer is entitled to file a suit for the refund of the price. In such a suit, the buyer may also claim interest or special damages from the defaulting seller. In the absence of any other contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of price from the date on which the payment was made.

Duties

- To accept the delivery of goods, when the seller is willing to make the delivery as per the contract.
- To pay the price in exchange for possession of the goods.
- To apply for delivery of goods.
- To demand delivery of the goods at a reasonable hour.
- To accept the delivery of the goods in installments and pay for them, in accordance with the contract.
- To bear the risk of deterioration in the course of transit, when the goods are to be delivered at a place other than where they are sold.
- To inform the seller in case the buyer refuses to accept or rejects the goods.
- To take the delivery of the goods within a reasonable time after the seller tenders the delivery.
- To pay the price, where the property in the goods are passed to the buyer, in accordance with the terms of the contract.
- To pay damages for non-acceptance of goods. *12.00*

Who is an 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-

- ✓ The whole of the price has not been paid or tendered
- ✓ A bill of exchange or other negotiable instrument was given payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment. *Sec A 3*

BUSINESS REGULATIONS

Sec 2 ✗
Rights of Unpaid seller

I. Right of Unpaid seller against goods

- **Right of lien (Section 47):** A lien is a right to retain possession of goods until payment of the price. The 'unpaid seller' has a lien on the goods for the price while he is in possession, until the payment or tender of the price i.e., unpaid seller can exercise the right of lien or retain the goods until the ownership is transferred to the buyer. He is entitled to lien in the following three cases, namely
 - ✓ **Where goods have been sold without any stipulation as to credit; i.e., cash sales:** When the goods are sold without any stipulation as to credit, the seller can retain the goods, until the payment is made.
 - ✓ **Where goods have been sold on credit but the term of credit has expired:** If the goods are sold on credit, the right of lien cannot be exercised during the period of credit. But on the expiry of the period of credit, if the price is still not paid and the goods are in the possession of the seller, the right of lien can be exercised.
 - ✓ Where the buyer becomes insolvent

Ex: Rakesh sold 10 kgs of rice to Rakshana for a price for Rs 500 and allowed him to pay the price within one month. Rakshana becomes insolvent during the period of credit. Rakesh, the unpaid seller, can exercise the right of lien.

Termination of lien (Section 49): If the possession of goods is lost, lien is lost. The unpaid seller of goods loses his lien thereon in the following cases

- When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods
- When the buyer or his agent lawfully obtains the possession of the goods
- Where the seller has waived the right of lien
- The unpaid seller does not lose his lien by reason only that he has obtained a decree for the price of goods: The unpaid seller's right of lien will not be affected even if the seller has obtained a decree for the price of goods. The unpaid seller's right of lien arises only when the property in goods has passed to the buyer.

Sale not rescinded by lien (Section 54): A contract of sale is not rescinded by the mere exercise of the right of lien. The contract still remains live and the buyer can claim delivery of the goods by tendering the price. However, if the buyer defaults, the seller remedy is to resell the goods and claim damages.

- **Right of Stoppage in Transit (Section 50 to 52):** When the buyer becomes insolvent, the goods are in the course of transit to the buyer, the seller can resume the possession of the goods from the carrier. This is known as the right of stoppage in transit. The right of stoppage means the right to stop further transit of the goods to resume the possession and to retain the same till the price is paid. The right is exercisable by the seller only if the following conditions are fulfilled

BUSINESS REGULATIONS

- The seller must be unpaid
- He must have parted with the possession of goods
- The goods must be in transit
- The buyer must have become insolvent
- The right is subject to the provisions of the Act

Note: The term insolvent is used here to denote a person who is financially embarrassed. It is not necessary that the buyer should be declared insolvent by a court of law before the right of stoppage in transit can be exercised. According to section 2(8) the buyer is said to be insolvent when he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due whether he has committed an act of insolvency or not.

How stoppage in transit is effected (Section 52): There are two modes of stoppage in transit. They are

- By taking actual possession of goods, or
- By giving notice to the carrier not to deliver the goods to the buyer or his agent
- When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller.

Effect of stoppage: Contract of sale is not rescinded when the seller exercises his right is not affected by any sale or pledge of the goods made by the buyer.

Effect of sub-sale or pledge by the buyer (Section 53): The unpaid seller's right of lien or stoppage in transit is not affected by any sale or pledge of the goods made by the buyer.

Exceptions: In the following two cases the unpaid seller's right of lien or stoppage in transit is affected by any sale or pledge of the goods made by the buyer (i.e., Unpaid seller cannot exercise right of lien or stoppage in transit)

- When the seller assents to such sale or pledge
- When the seller has transferred a document of title to the goods, who transfers it by the way of a sale, pledge or other disposition for value, to a person who takes in good faith and for consideration

Right of resale (Section 54): The unpaid seller who has retained possession of goods in exercise of his right of lien or who has resumed possession from the carrier upon insolvency of the buyer, can resell the goods:

- If the goods are of a perishable nature, without any notice to the buyer, and
- In other cases after notice to the buyer, calling upon him to pay or tender price within reasonable time, and upon the failure of the buyer to do so
- If the money realised upon such resale is not sufficient to compensate the seller, he can sue the buyer for the balance. But if he receives more than what is due to him, he can retain the excess. A resale does not absolve the buyer from his liabilities to compensate the seller for damages he may have suffered.

BUSINESS REGULATIONS

II. Right of Unpaid seller against the buyer personally

• Suit for price (Section 55)

- ✓ Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- ✓ Where the property in goods has not passed to the buyer, the seller as a rule cannot file a suit for the price and his remedy is to claim damages.
- ✓ According to Section 55(2), where under a contract of sale the price is payable on a certain day irrespective of the delivery and the buyer wrongfully neglects or refuses to pay for the goods, 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.

- Suit for damages for non-acceptance (Section 56): Sometimes, the seller is ready and willing to deliver the goods to the buyer but the buyer refuses to accept them. In such cases, if the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The amount of damages is to be determined in accordance with the provisions laid down in Section 73 of the Indian Contract Act.

- Suit for damages for repudiation of the contract (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.

- Claim for interest and damages (Section 61 (2) (d)): When under a contract of sale, the seller tenders the goods to the buyer and the buyer wrongfully neglects or refuses to accept and pay the price, the seller has a right to claim interest and damages. He may also recover the money paid where the consideration for the payment of it has failed.

Auction Sale

Meaning: A sale by auction is a public sale where various intending buyers offer bids for the goods and try to outbid each other. The goods are sold to the highest bidder. *Sec-A2*

A bid by the buyer is an offer and it is said to be accepted when the auctioneer announces its completion by the fall of hammer or in any other customary manner. The words 'any other customary manner', takes into account all the manners which may be prevalent to denote acceptance in an auction sale. It may be shouting one, two, three or shouting going, going, gone etc. A person may himself sell his own goods by auction, or he may appoint an agent, known as auctioneer, to conduct the sale on his behalf.

Rules of auction

- Sale of goods in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.
- Completion of sale: An auction sale is complete when the auctioneer announces its completion by the fall of hammer or in other customary manner and until then the bidder has

BUSINESS REGULATIONS

the right to revoke or retract his bid. If before the fall of hammer the bidder withdraws, his security amount cannot be forfeited. But if he does so after the fall of hammer, it amounts to breach of the contract and his security amount will be liable to be forfeited.

- **Seller's right to bid:** Unless the auction is notified to be subject to a right to bid on behalf of the seller, it is not lawful-
 - For the seller to bid himself or to employ any person to bid at such sale on his behalf and
 - For the auctioneer to, knowingly take any bid from the seller or any such person. Any contravention of this rule renders the sale as fraudulent.
- If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. However, the seller may expressly reserve the right to bid at the auction and in such case, the seller or any one person on his behalf may bid at the auction. But there should be only one person on behalf of the seller, if there are more than one person, the intention is to raise the price and is fraudulent.
- **Reserve price:** The seller may notify that the auction will be subject to a reserve or upset price, that is, the price below which the auctioneer will not sell. In such a case the auctioneer is not bound to accept the highest bid unless it reaches the reserve price. Further the property in the goods, even if they are specific, will not pass if the highest bid falls short of the reserve price.
- Knock-out agreement is a form of combination of buyers to prevent competition among themselves at an auction sale. They agree that they will not raise the bid against each other and only one of them will bid at the auction. When the goods have been purchased they will share the profits. Prima facie, a knock-out agreement is not illegal. However, if the intention of the parties to the agreement is to defraud third party, the third party can claim damages.

The seller may protect his interests against such agreements by reserving his right to bid at the auction, or by fixing a reserved price.

Important terms

1. **Upset price:** upset price is the Scottish equivalent of reserved price.
2. **Damping:** It is an unlawful act by which an intending purchaser is prevented from bidding or raising the price at an auction sale. The damping is usually done in the following ways
 - By pointing out defects in the goods put up in an auction sale
 - By taking the intending buyers away from the place of auction by some other deviceDamping is illegal and the auctioneer can withdraw the goods from the auction sale in case he observes that the damping is being resorted to.
3. **Puffer:** A person who is appointed by the seller to raise the price by fictitious bids.

BUSINESS REGULATIONS

Assignment Questions

Section A

1. Define contract of sale of goods. Pg-4.
2. What is warranty? Pg-7
3. Define Sale of Goods Act. Pg-1
4. Give the meaning of the term "condition". Pg-7
5. Define "Sale" under Sale of Goods Act. Pg-5
6. What is price as per Sale of Goods Act? Pg-3

Section B

1. Distinguish between conditions and warranties. Pg-8
2. Explain the right of buyer. Pg-20
3. What is contract of sale? Write the difference between sale and agreement to sell. Pg-4, 5

Section C

1. Explain the rights and duties of the buyer under Sale of Goods Act 1930.
2. Who is an unpaid seller? Explain the rights of unpaid seller.
3. Explain various implied conditions and warranties.