UNIT: 5 THE SALE OF GOODS ACT, 1930

UNIT STRUCTURE

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5.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the essentials of a contract of sale
- explain the meaning of conditions and warranties
- explain the passing of property in goods and transfer of title by non-owners
- describe about the performance of contract of sale and rights of unpaid seller
- explain the breach of contract of sale and auction sale

5.2 INTRODUCTION

In the previous unit the Indian Contract Act 1872, we have discussed

the essential aspects of the Contract Act. In the present unit, we will discuss various important matters of Sale of Goods Act, 1930. Contract for the sale of goods are subject to the general legal principles of the Contract Act, which are offer, acceptance, capacity of the parties, free consent, consideration etc. Of course, the application of the principle of contract Act in the sale of goods is not inconsistent with the express provisions of the Sale of Goods Act (Section 4). The contract of sale includes both a sale and an agreement to sell.

5.3 ESSENTIALS OF CONTRACT OF SALE

In this section we will discuss the essentials of a contract of sale. The following are the essentials of contract of sale-

1) **Movable Goods –**The sale of Goods act only relates to movable goods. Under section 2 (7) of the Act, “goods” is defined as every kind of movable property except actionable claims and money. Things attached to the earth are not movable. But growing crops and grass which can easily be separated from the earth before sale are included in the definition of Goods.
2) **Two Parties: -** A sale of goods is a bilateral contract. To execute a sale, there must be buyer and seller. A person never can buy his own goods. Of course, a part owner may sell to another part owner. Likewise, a partner may sell goods to his firm or a firm may sell to a party.
3) **Consideration:** In order to make a valid contract of sale of goods, the consideration must be in terms of money. An exchange of goods for goods cannot be defined as sale. But if the exchange is made partly for goods and partly for money then it can be regarded as sale. Mere non existence of consideration will be treated as gift.
4) **Valid Contract:** To be a contract of sale, it must satisfy all the essentials of a valid contract such as valid offer, a valid acceptance, free consent of the parties, a valid and lawful consideration etc.

5) **Agreement to transfer the ownership:** By the contract of sale, the seller must agree to transfer his goods to buyer with or without physical possession of the goods.

6) **Method of formation of contract:** To make a contract of sale under section 5 (2) it must be in writing or by word of mouth or implied from the acts of the parties.

7) **Terms of Contract:** On the basis of time, place and mode of delivery of goods, the parties will agree upon any term. The terms include both essential and non-essential terms. The essential term implies the conditions and a non-essential term implies warranties. So in case of all contracts of sale, certain conditions and warranties are to be implied.



CHECK YOUR PROGRESS

Q. 1: Mention two essentials of contract of sale.

i.)

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ii.)

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5.4 DIFFERENCE BETWEEN SALE AND AGREEMENT TO SELL

Now let us discuss the distinction between sale and an agreement to sale as under:

1. **Nature:** A sale is an executed contract. But, an agreement to sell is an executory contract. A sale is called an executed contract be-

cause of the fact that in sale, considerations and delivery of goods takes place simultaneously. On the other hand, an agreement to sale is called an executory contract because the consideration is given at a future date and goods are delivered to the buyer at a future date.

2. **Transfer of ownership:** In case of sale, the ownership of the goods is transferred to the buyer immediately. So, the buyer in case of sale becomes the owner of the goods. But, an agreement to sell becomes a sale only when the ownership of the goods is transferred to the buyer. The ownership of the goods is transferred to the buyer at some future date.
3. **Transfer of risk:** In case of sale, the buyer will have to bear the loss, even though the goods are in possession of the seller. Because, in case of sale the risk is associated with ownerships. But in case of an agreement to sell, the seller is to bear the risk of loss, even though the goods are in the possession of the buyer.
4. **Consequence of the breach:** In case of breach of an agreement to sell by the seller, the buyer can recover the damages from the seller. If the buyer fails to pay the consideration the seller can sue and recover for damages from the buyer. But incase of breach of the contract by the seller, the buyer can sue for the delivery of goods and sue for damages.
5. **Insolvency of the buyer:** In case of sale, if the buyer becomes an insolvent before paying the price, the seller shall have to deliver the goods to the Official Assignee or Receiver except where he has a lien over the goods. But in case of agreement to sell, the seller can refuse to deliver the goods to the Official Assignee or Receiver until he is paid the full price of the goods.
6. **Insolvency of the seller:** In case of sale, if the seller becomes insolvent, the buyer can recover the goods from the official receiver or assignee as the property of goods is with the buyer. But in case of agreement to sell, if the buyer can claim only a ratable dividend and not the goods, if the seller becomes insolvent and goods are

taken from him by the receiver or Official Assignee, the buyers cannot recovers the goods from the Receiver or Official Assignee as he is not the owner of the goods.

7. **General and particular property:** By the contract of sale, a right is created against the whole world. This means that the buyer has the right to use the parties to use the goods against others. But, by the agreement to sell, the buyer gets the rights over the goods only against the seller.
8. **Right of Re-Sale:** The seller cannot re-sell the goods in case of sale though the possession of goods sold remains with the seller. But, the hire purchaser cannot re-sell till the time he pays all the installment of hire.

5.5 CONDITION AND WARRANTY

At the time of selling of goods, the seller makes certain statements or representations with a view to induce the buyer to purchase the goods. These statements may form a part of contract of sale and the buyers rely upon them. These representations are called 'stipulation'. When these stipulations have become most important for the formation of a contract of sale is known as 'condition'. Again if these are lesser important for the formation of a contract of sale is, known as 'warranty'.

According to section 12 (2) of the Sale of Goods Act, a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. There are mainly three essentials of a condition, such as

I) Condition is essential to the main purpose of the contract.

II) The cause of non-fulfillment of condition is irreparable damage to the aggrieved party.

III) As a result of breach of a condition the aggrieved party will get the right to rescind the contract and recover the damages for breach of condition.

According to section 12 (3) , a warranty has 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 repudiated.

Like condition, the warranty is to fulfill three essentials, such as-

I) Warranty is collateral to the main purpose of the contract.

II) The breach of warranty does not breach the main purpose of the contract and it causes damages to the aggrieved party.

III) The aggrieved party can only claim damages for breach of warranty.

Example:

P went to Q and asked him to show a horse which could run at a speed of 35 m. p. h. Q pointed out at a particular horse and said that it will suit his purpose. P bought and discovered that the horse run at a speed of 20 m. p. h. Now, P may reject the horse as the representation made by Q which is the condition of sale is not fulfilled.

Distinguish between a condition and a warranty:-

i) Essential of Contract: - Under section 12 (2) of the Sale of Goods Act 1930, a condition is defined as a stipulation which is essential to the main purpose of the contract.

On the other hand, warranty is defined under section 12 (3) as a stipulation that is collateral to the main purpose of the contract.

ii) Effect on breach: The breach of condition give rise to a right to treat the contract as repudiated. But the breach of warranty gives rise to the claim for damages but not to a right to reject the goods and treat the contract as repudiated.

iii) Option of treatment: In case of condition, a breach of condition can be treated as a breach of warranty as an option on the part of the aggrieved party. But, in case of breach of warranty no such option is essential to the aggrieved party. So the breach of warranty can not be treated as breach of condition.

The distinctions between condition and warranty can be easily more understood from the example given below.

Example: P went to Q and asks to show a healthy horse which could run at a speed of 35 m. p. h. Q pointed out at a particular horse and said that it will suit his purpose. P bought and discovered that the horse run at a speed of 20 m. p. h. and weak. Now, P may reject the horse as the representation made by Q, which is the condition of sale is not fulfilled.



LET US KNOW

The Sale of Goods Act, 1930 deals with the law relating to sale of goods in India only. The Sale of Goods Act 1930 is mainly based on the English Sale of Goods Act 1893. Before the Sale of Goods Act 1930, the law relating to sale of goods was covered under the chapter VII of Indian Contract Act, 1872, the provision of which was found to be inadequate. Therefore, a strong need was felt to have an independent Sale of Goods Act and consequently a new Act called Sale of Goods Act, 1930 was passed. The presently Act containing 66 sections came into force from 1st July 1930 which extends to whole of India except the State of Jammu and Kashmir.



CHECK YOUR PROGRESS

Q. 2: Mention two differences between sale and agreement to sell.

i)

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ii)

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5.6 PASSING OF PROPERTY IN GOODS

A contract of sale can be performed by the two ways.

1. Property in goods or ownership of goods and
2. Possession of the goods.

A person may have possession of goods but he may not be the owner e.g. a servant, agent etc. On the other hand, a person may be the owner but may not have the possession of goods. In the contract of sale, when the ownership of goods is transferred to the buyer from the sellers, he becomes the owner of the goods.

As per general rule, the transfer of ownership depends on the intention of the parties to the contract. But sometimes the intention of the parties cannot be ascertained from the contract. In that case, the intention of the parties is ascertained on the basis of provisions laid down in sections 18 to 24 of the Sale of Goods Act. These provisions are discussed as under—

1.) Incase of the unascertained goods (section 18 and 23);
2.) Incase of specific goods (section 20 to 22) and
3.) Incase of sale on approval (section 24)

TRANSFER OF OWNERSHIP IN CASE OF UNASCERTAINED GOODS:

a.) *Unascertained Goods:* Under section 18 of the Sale of Goods Act, the unascertained goods are not transferred unless the goods are ascertained. Theses goods are not specifically identified at the time of contract of sale. It is identified and is set apart for the purpose of delivering to the buyer.

b.) *The Intention of the parties:* Under section 19 the transfer of ownership depends upon the intention of both the parties and ownership transfer from the seller to the buyer at the time fixed by the parties.

c) *Unascertained or future goods:* Under section 23, in sale of unascertained or future goods, goods are passed to the buyer by description. When goods of that description in a deliverable state are unconditionally appropriated to the contract, then the property in goods

passes to the buyer. It is to be done by the seller with the assent of the buyer or by the buyer with the assent of the seller.

Example: "A" agrees to sell "B" 200 kg of Rice out of a large quantity of A's godown, whatever the price that is to be paid on the specific day under the contract. Otherwise the 100 kg of Rice that was separated from the godown of 'A' will not pass from A to B.

TRANSFER OF OWNERSHIP IN CASE OF SPECIFIC GOODS:

a.) *Specific goods:* - Under section 20, the goods that are at a deliverable state and the ownership of which is transferred from the seller to the buyer at the time of making of contract of sale.

b.) *When seller has something to do:-* Under section 21 in case of sale of specific goods if the goods are not in a deliverable state and the seller has to do something to put the goods in a deliverable state, the ownership does not passes until such thing is done and the buyer has noticed thereof.

c.) *When goods are to be measured, tested:* Under section 22, in case of a contract of sale of specific goods and the goods are in a deliverable state but, the seller has to weight, measure, test or perform some other act or thing with reference to the goods for ascertaining the price, the ownership does not pass until such act or thing is done and the buyer has noticed thereof.

TRANSFER OF OWNERSHIP IN CASE OF SALE ON APPROVAL:

a) *Goods sent on approval:* - In case of sale on approval or sale on return, the buyer has an option to return the goods to the seller within a reasonable period of time. Thus, the ownership transferred to the buyer when he accepts the goods. If the buyer does not return the goods within the reasonable time, the seller can recover the price of the goods from the buyer.

In case of sale on approval, the ownership to the buyer is transferred in three ways:

- When the goods are accepted by the buyer, or

ceptance of the buyer, or

- When the buyer performs some acts which indicates implied acceptance of the buyer, or
- The buyer fails to return the goods within a reasonable time Under section 24, when goods are sold under a contract of sale or return or on approval, the sale is a conditional sale. As a result of significance of the buyer's approval, the goods will pass to the buyer.

b) *Reservation of Right of Disposal:* Under section 25, reservation of the right of disposal is defined as any action made by the seller, where it is expressed that an intention on his part not to part with control over the goods until certain condition are fulfilled. Then, the property will be passed subject to fulfillment of these conditions.

Example: 'A' supplies 100 bags of Rice to 'B' by a trunk, where no reservation of the right of disposal was there. In this case, the rice will pass to B immediately after goods are handed over to the carrier.

5.7 TRANSFER OF TITLE BY NON-OWNERS

According to the general rule, "the seller cannot transfer to the buyer of goods a better title than he himself has." If the title of the seller is defective, then the buyer's title will also become defective. Under section 27, it is laid down that. "Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner the buyer acquires no better title to the goods than the seller had…" The rule is expressed by the maxim "Nemo Det Quod Non Habet", which implies that no one can give what he has not got.

Of course, there are some exceptions to the above rule. So, though a person is not the owner of the goods, he may sell the goods and pass a better title than he himself has. Following are the exceptions to this rule.

1. **Sale by a mercantile agent:** If a mercantile agent is authorized by the owner of the goods to sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfillment of the

following conditions:-

i.) The person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner.

ii.) The person must sell the goods while acting in the ordinary course of business.

iii.) The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.

2. **Transfer of title by Estoppels:** This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

3. **Sale by a joint owner:** If there are several joint owners of goods, one of them has sole possession of the goods by permission of the co-owners, then the property in goods may be transferred to any person who buys them from such joint owner. In order to apply this exception following conditions must be fulfilled.

i.) One of the several owners must be in sole possession of the goods.

ii.) The joint owner must have permission of co-owners.

iii.) The buyer must purchase goods in good faith.

iv.) The buyer should not have notice regarding the matter that the seller has no authority to sell.

4) Sale by person in possession under voidable contract: - According to the Section 29, a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5) Sale by seller in possession after sale: - Under section 30 (1), it is laid down that where a person has sold goods but he continues in posses-

sion of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6) Sale by buyer in possession after sale:- Under section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods can and resells the goods to a bonafide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7.) Sale by an unpaid seller: - If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8.) Exception under other Acts: - According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-

i) Under section 169 of the Contract Act, a finder of the goods has the right to sell.

ii) Under section 176 of the Contract Act, a pawnee of goods has the right to sell the goods pawned subject to satisfying some conditions.

iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate; custom officers for duties remaining unpaid etc.

iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

9.) Sale in market overt: According to the English law, there is an exception of the rule that a person cannot make a valid sale of goods, which

does not belong to him. It is to be found in the case of sales made in market overt of course; this rule does not apply in India.

5.8 PERFORMANCE OF CONTRACT OF SALE

Under section 2 (2) of the Sale of Goods Act, the term 'delivery' is defined as a voluntary transfer of possession from one person to another. According to Sir Frederick Pollock, delivery is voluntary dispossession in favour of another. There are three modes of delivery, such as actual, symbolic and constructive delivery. Actual delivery is occurred in case of goods are delivered themselves physically to the buyer. Symbolic delivery is occurred where the goods are not physically delivered but delivered by indicating or giving a symbol, e.g. delivery of documents of title to the goods etc. Constructive delivery is occurred where the third person acknowledge the holding the goods on behalf of the buyer, e.g. A sold to B 50 bags of tea where P hold begs which is a warehouse and it is ordered by A to P to do so.

Rules regarding delivery:

Various rules regarding and other matters relating to the performance of the contract of sale are provided under different sections, which are as below-

1. **Mode of Delivery:** Under Section 33, 'deliveries of goods' may be done by performance of anything which, the party's agreement shall be treated as delivery or the effect of the putting of goods in the possession of the buyer or of any person authorized to hold them on his behalf. Thus the delivery of goods may be either actual or symbolic or constructive.
2. **Delivery and payment are concurrent condition:-**

   Under Section 32, payment of price and the delivery of the goods is a concurrent conditions unless otherwise agreed. If the buyer is not willing to pay the price, no delivery will be given or no need to pay

the price by the buyer unless the seller is ready and willing to give delivery.

Example: P agrees to supply goods to Q, where Q will have to pay on delivery. So, P, unless Q is ready, need not deliver the goods.

3. **Effect of party delivery:** Under Section 34, a part of delivery of goods sold may be equal to the delivery of the whole, if it is so intended and agreed. But, in case of the fact where the part is intended to serve the whole, then the delivery of that part does not equal to delivery of the whole.

   Example: X has sold 100 kg of wheat to Y. The wheat are remaining in the godown of X. After selling, Y again sold 20 kg of wheat to Z and as per desire of X; Y sent this 20 kg of wheat to Z. This is a legal effect of delivery of the whole.

4. **Buyer to apply for delivery: -** Under Section 35, the seller is not bound to deliver goods, unless agreed otherwise till the buyer applies for delivery.
5. **Place of Delivery:** Under Section 36 (i), at which place the delivery is to be made will be mentioned in the agreement between the parties. Apart from any such contract the goods will be delivered at the place at which they are sold.
6. **Time of Delivery:** Under section 36 (2) and (4), of the Contract of Sale of Goods Act, where the seller is bound to send the goods to the buyer , but no time for sending them in fixed the seller is bound to send them within a reasonable time and at a reasonable hour.
7. **Manner of Delivery:** Under Section 36(3), at the time of sale, if the goods are in the possession of a third person then there is no delivery by the seller to buyer till such third person acknowledges to the buyer that he holds the good on himself. The transfer of document of title of goods operates as delivery inspite of possession of goods by third party and this will not apply in such case.
8. **Expenses of delivery:** Under Section 36 (5) the buyer is to bear the expenses of or incidental to receive the delivery. But, any ex-

pense of putting the goods into a deliverable state is to be borne by the seller. If there is any agreement between the parties with respect to the cost of putting the goods in a deliverable state or of expenses incidental to putting into the deliverable state, then this agreement will determine the right of the parties.

9. **Delivery of wrong quantity:** Under Section 37, it is a duty of seller to comply with the order of the buyer regarding kind, quality and quantity of goods. Delivery should be according to the specification of order. In case of defective delivery the buyer can reject the goods.
10. **Installments of deliveries: -** Under Section 38, the buyer is not bound to receive the goods of delivery by installments unless otherwise mentioned in the agreement. The performance of the contract can be split up with mutual consent. Where payment is made in installments in a contract, than failure of such payment of installment, breach the contract.
11. **Delivery of carrier:** Under Section 39, it is provided that if the seller is authorized to send the goods to the buyer, then the seller must take all safety measure to protect the goods. It is the duty of seller to contract with the carrier. In case of sending goods by sea route, the seller must inform the buyer to insure them against sea perils.
12. **Goods delivered at a distance place:** Under Section 40, in case of agreement, where seller agrees to deliver the goods at his own risk the buyer shall bear the loss of deterioration of the goods in transit.
13. **Examining the goods on delivery:** Under Section 41, if the buyer had not examined the goods, the seller will not deliver the goods until the buyer has availed the opportunity of examining the goods. The buyer must give a reasonable opportunity of examining the goods in order to determine whether they are as per contract, otherwise the buyer may reject the goods.
14. **Acceptance complete on delivery:** Under Section 42, the buyer is deemed to have accepted the goods in case the buyer intimates

to the seller that he accepted that goods or goods was delivered to the buyer and he perform anything pertaining to them. More over, the buyer retains the goods beyond a reasonable time without intimation of rejection to the seller.

15. **Buyer not bound to return rejected goods:** Under Section 43, it is laid down that in case of goods delivered to the buyer and if the buyer refuses to accept the goods, then he may not return the goods to the seller. This intimation to seller is sufficient that he refuses to accept the goods. This rule will be applicable subject to the condition of contract between the parties.
16. **Liability of buyer for neglecting or refusing delivery of goods:** Under Section 44, for any loss occurred due to neglect of buyer or a reasonable charge for the care and custody of the goods, the buyer will be liable, where the seller is willing to deliver the goods and request the buyer to accept his delivery. It is further-provided by section 44, that the seller can exercise the right mentioned above inspite of the neglect to refusal made by the buyer to receive the delivery and it will amounts to a repudiation of the contract.



LET US KNOW

A contract sale involves reciprocal promises, because, the seller promising to deliver the goods and the buyer to undertake to pay for the goods. The delivery of goods and payment of price are concurrent conditions, on the contrary, there are implied promises on the part of the seller to deliver goods without delay and an undertaking on the part of the buyer to accept the goods and pay the price. So, it is the duty of seller to deliver the goods to the buyer. Of course, he cannot do so until the buyer applies for delivery.



ACTIVITY

1) M is an owner of a car. M has handed over his car to N, a mercantile agent, for sale at not less than Rs. 10,000/-. N sells it to O for Rs. 8,000/- and runs away with the money. M asks N to give him his car. Can M recover the car from O.
2) A is the godown-keeper of a gas company. The manager B of the gas agency issues the delivery orders to A for 100 cylinders in favour of "C". C goes to A with the delivery order. A agrees to deliver 100 gas cylinders the next day. Can the gas agency stop A from delivering the gas cylinders to C?



CHECK YOUR PROGRESS

Q. 3: State true or false:

i) The risk of loss also passes with the ownership of the goods from the seller to the buyer. (True / False)

ii) The individuality of the thing to be delivered must be established before property in it can passes from seller to the buyer. (True / False)

iii) Delivery is a bilateral act. (True / False)

iv) Symbolic delivery is made where goods are small and light. (True / False)



CHECK YOUR PROGRESS

Q. 4: Fill up the blanks:

I. A contract of sale can be performed by the _____ ways (two/three).

II. Under section _____ reservation of the right of disposal is defined as any action made by the seller (24/25)

III. There are _____ types of modes of delivery (three/four).

IV. In case of defective delivery the buyer _____ reject the goods (can/can not)

5.9 RIGHTS OF UNPAID SELLER

The seller of goods is called unpaid seller, when the whole of the price has not been paid or tendered or where a bill of exchange or other negotiable instrument is received as a conditional payment. After all, the seller remains unpaid till the price or any portion of the price remain the unpaid.

The rights of an unpaid seller can be classified mainly into two categories. Such as-

I. Right of unpaid seller against the goods.

II. Right of unpaid seller against the buyer personally.

I. The right of unpaid seller against the goods: Inspite of passing the property in the goods to the buyer, the unpaid seller has the following rights against the goods.

a. *Right of Lien:* Lien implies such type of right, which can retain possession of goods and refuse to deliver them to the buyer till the price is paid. The unpaid seller can exercise his right of lien in three cases as mentioned below-

i) Where the goods are sold without any stipulation as to credit.

ii) Where the goods are sold on credit, but the term of credit has expired.

iii) Where the buyer becomes insolvent, but the time of credit is not expired.

If the buyers become insolvent, the lien exists inspite of goods is sold on credit and period of credit is not yet expired. In case of goods sold on credit, it is presumed that the buyer shall keep his credit good. So, before payment if the buyer becomes insolvent, the seller will be entitled to play this right and hold the goods as security for the price.

b. Right of stoppage of goods in Transit: The right of stoppage implies the right of stopping the goods while they are with a carrier for the purpose transmission to the buyer. So right of stoppage can be defined as an extension of the right of lien as because it entitles the seller to retain the possession of the goods even the seller has parted with the possession. According to section 50, unpaid sellers can exercise this right only on the following conditions.

i) When the buyer becomes insolvent.

ii) When the property has passed to the buyer.

iii) When the goods are in the course of transit.

Further, under section 51, it is laid down that the right of stoppage in transit can be exercised only so long as the goods are in the course of transit. But, the right of stoppage cannot be exercised when the transit comes to an end. As per section 51 the goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer. Until the buyer or his agent takes delivery of them. On the other hand, the transit is deemed to be at an end in the following cases-

i) When the buyer takes the delivery after the goods have reached destination.

ii) When the buyer obtains delivery of goods before arrival of the goods at the appointed destination

iii) When the goods have arrived at the destination and the carrier acknowledges to the buyer that he holds the goods on his behalf.

iv) When the goods are arrived at their destination but the buyer requests the carrier, instead of taking delivery request the carrier to carry the goods to some further destination and if the carrier agrees to take them to the new destination.

v) When the carrier wrongly refuses to give delivery of the goods to the buyer.

c.) Right of Resale: Besides the above two rights, the unpaid seller can also exercise the right of resale. Under section 54, some circumstances are provided where the right of resale can be exercised. These are-

i) Goods must be of a perishable nature.

ii) The unpaid seller must exercise the right of lien and stoppage in transit.

iii) The seller must give a notice to the buyer regarding his intention to resale.

The seller can recover the loss of resale if any, from the defaulting buyer. The seller can keep a surplus on the resale with him. The unpaid seller has a right of withholding delivery of goods which are the subject matter of the contract. This right can be exercised by the unpaid seller even if the sale was on credit or in case of specific and unascertained goods.

II. Rights of unpaid seller against the buyer personally: The right of unpaid seller can be discussed as follows-

a.) *Suit for price:* Under section 55 in case of property of goods passing to the buyers and wrongfully the buyer neglects or refuses to pay for the goods, then the seller may sue with for price of the goods.

Under section 55 (2), in case of the price of goods is payable by the buyers to the seller on a certain day irrespective of the delivery of goods and the buyer neglects or refuses to pay such price, then the seller can sue him for the price of goods, even though the ownership of the goods are not transferred to the buyer.

b.) ***Suit for damages for non-acceptance:*** In case, where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. Under the provision laid down in the section 73 of the Indian Contract Act, such damages are measured. These provision are given below-

i) In case of having available market for the goods in question, the difference between the contract price and the market price on the date of breach will be measure of damages.

ii) In case of having no such availability of market, the measures will be the estimated loss suffered directly or indirectly resulting in the ordinary cause of events from such breach.

5.10 BREACH OF CONTRACT OF SALE

In case of contract of sale, where one party repudiates the contract by refusing to perform his obligation, then he is said to have committed a breach of the contract. As soon as party commits a breach of the contract; the other party becomes entitled to any one of the following remedies.

Remedies to seller:

In case of breach of contract of sale, the following remedies are available to the seller-

i) Suit for price.

ii) Suit for damages for non-acceptance of the goods

iii) Suit for interest.

iv) Suit for damages for repudiation of contract by the buyer before the due date.

Moreover, the seller has two more remedies, if a contract of sale is repudiated by the buyer before the due date of delivery.

i) The seller may treat the contract as subsisting and he can wait till the date of delivery.

ii) The seller may treat the contract as rescinded and he can sue for damages for the breach.

Remedies to buyer:-

In case of breach of the contract of sale by the seller, the buyer has the following remedies-

i) He can sue for damages for non-delivery of the goods.

ii) He can sue for specific performance.

iii) He can sue for breach of warranty.

iv) He can sue for damages for repudiation of contract by the seller before due date.

In case of breach of condition the buyer can reject the goods. Of course he cannot reject the goods under the following cases.-

i) Buyer waives the breach of condition and elects to treat it as a breach of warranty.

ii) If the contract is not reversible and the buyer has accepted the goods or part of the goods.

iii) The contract is for specific goods and the property has passed to the buyer.

On the other hand, in case of breach of warranty, the buyer can do any one of the following—

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 (Section59)

In case of breach of warranty damages are measured by estimating loss arising directly and naturally from the breach.

5.11 AUCTION SALE

Auction sale is a manner of sales, where property is auctioned usually to the highest bidder by public competition. The auctioneer is an agent of the seller. The auctioneers can auction his own property. In fact there is no need to express that he is selling, so contract is formed between auction-

eer and the buyer in case of sale by auction. Some liabilities are incurred by this contract. Of course, all of these liabilities are not for the seller. Under Section 64 certain rules are provided regarding auction sale. These are mentioned below-

i) Auction sale is – in lots and every lot is prima facie deemed to be the subject of a separate contract of sale.

ii) When the auctioneer announces its completion by the fall of the hammer or by other customary manner, then the sale by auction will be complete.

iii) It may be reserved as a right to bid expressly by or on behalf of the seller.

iv) The seller or other may bid at the auction on behalf of him if the right to bid is so reserved.

v) It will be not lawful, if sale is not notified to be subject to a right to bid on behalf of the seller for two cases. Firstly, for the seller to bid himself or to employ any person. To bid at such sale or secondly, for the auctioneer knowingly to take the bid from the seller or any other such person.

vi) It should be notified as a sale by auction subject to a reserved or upset price. A reserved price can be fixed by the seller to protect him against “knockout’ agreement.

vii) In case of making use of pretended bidding to raise the price by the seller, the sale will be avoidable.

If the auctioneer sells goods then he must take impliedly the following obligations.

i) Auctioneer warrants his authority to sell.

ii) Auctioneer warrants that he does not know of any defect in his principal’s title.

iii) Auctioneer gives the possession of the goods against the price paid into his hands.



LETS US KNOW

1) Where goods are sold on credit, the seller is not unpaid until the price becomes due.
2) According to the usual practice a proposed auction is duly advertised and a printed catalogue of goods with conditions of sale is circulated.



CHECK YOUR PROGRESS

Q. 5: Choose the correct option from the following:

1. Which of the following is not a characteristic of an unpaid seller-

a) He must sell goods on cash terms.

b) He must be unpaid either wholly or partly.

c) He must refuse to accept payment when tendered.

d) He must not refuse to accept payment when tendered.

……

II) Which of the following is the right of unpaid seller against the buyer personally?

a) Suit for price.
b) Right of lien.
c) Right of stoppage.
d) Right of Re-sale.

……

III) Which of the following are the rights of unpaid seller against the goods?

a) Suit for damages for non-acceptance.
b) Suit for special damages and interest.
c) Right of stoppage in transit.
d) Repudiation of contract.

……

5.12 LET US SUM UP

According to the section 4 (3) of the Sale of Goods Act, 1930, in a contract of sale, the property in goods is transferred from the seller to the buyer. The essentials of a contract of sale are –

i) Movable Goods,

ii) Two parties

iii) Consideration etc.

The contract of sale includes both a sale and an agreement to sell. A sale is an executed contract, but an agreement to sell is an executory contract. In sale, ownership of goods is transferred immediately to buyer but in an agreement to sell, the goods will remain with the seller till it becomes sale.

Under section 12 (1), it is laid down that on the basis of essentiality, some stipulations are called conditions which are essential for main purpose and some are called warranties; which are collateral to the main purpose of the contract.

A contract of sale can be performed by the two ways. One is transfer of possession where the goods are not transferred and another is transfer of ownership of goods, where ownership is transferred from seller to buyer.

Under section 27, it is laid down that where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. This rule is known as *nemo dat quod non habet*. Of course, there are exceptions to this rule.

According to the section 2 (2) delivery is a voluntary transfer of possession from one person to another. There are three modes of delivery, such as actual, symbolic and constructive delivery.

Where the whole of the price has not been paid, the seller is called unpaid seller." There are two types of rights of unpaid seller, such as – i) Right of unpaid seller against the goods. ii) Right of unpaid seller against the buyer personally.

In case of contract of sale, where one party repudiated the contract by refusing to perform his obligation, he is said to have committed a breach of the contract. As a result of breach of contact, both the seller and buyer are entitled to enjoy some remedies.

Auction sale is a manner of sale, where property is sold by bids usually to the highest bidder by public competition.



5.13 FURTHER READING

1. Mercantile Law, By M.C. Shukla.
2. Commercial Law, By R.C. Chawta and K.C. Garg.
3. Mercant Law, By V.K. Batra 2 N.K. Kalra
4. Mercantile Law, By D. Chandra Bose.
5. Elements of Mercantile Law By N.D. Kapoor.
6. Mercantitle Law, By S.K. Dasgupta.
7. Business Regulatory Framework, By K.C. Garg, V.K. Sareen and Mukesh Sharma.



5.14 ANSWER TO CHECK YOUR PROGRESS

Ans. to Q. No. 1:

i) There must be buyer and seller in a contract of sale.

ii) The contract of sale covers only movable goods.

Ans. to Q. No. 2:

i) In case of sale, ownership of goods is transferred from the seller to the buyer immediately and in case of agreement to sell, the ownership of goods is transferred from the seller to the buyer at a future date.

ii) A contract of sale is an executed sale. But an agreement to sale is an executor sale.

Ans. to Q. No. 3:

(i) True (ii) True (iii) True (iv) False

Ans. to Q. No. 4:

(i) Two (ii) 25 (iii) Three (iv) Can

Ans. to Q. No. 5:

(i) c (ii) a (iii) c



5.15 MODEL QUESTIONS

1. What is a contract of sell? What are its essential elements?
2. Distinguish between sale and agreement to sell?
3. Define a condition and a warranty. Distinguish between the condition and warranty?
4. Explain the various rules regarding passing of property in sale of goods?
5. Nemo Dat Quod Non Habet (No one can give who possesses not). Explain this rule. Also mention the exception to this rule?
6. Define the term Delivery. Discuss the rules relating to delivery in the Sale of Goods Act.
7. Who is an unpaid seller? What are the rights of an unpaid seller?
8. Discuss the different remedies available to seller and buyer in case of breach of a contract of sale.
9. What is an Auction sale? Discuss the rules regarding the Auction sale.

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