

SALE OF GOODS ACT

SALE OF GOODS ACT

1. Definitions
2. Contract of Sale - 'The Price', Conditions & Warranties.
3. Transfer of Property of title.
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Questions Bank

SALE OF GOOD ACT

- 1 (a) Distinguish a sale from an agreement to sell, (b) Distinguish Conditions from Warranty.
2. "He who has no title, cannot pass a title" - discuss.
3. Explain the rules relating to the passing of property in specific goods.
4. Who is an Unpaid seller ? Explain his right to lien.
5. Explain the Unpaid sellers' right to stoppage in transit'. Can the Unpaid seller resell?
6. Summarise the provisions relating to "Delivery" of goods.
7. Write a note on :
 - (i) Sale by Description (ii) Sale by Sample (iii) Caveat Emptor (iv) C.I.F. and F.O.B. Contracts (v) Sale on approval or return basis (vi) Auction Sale (vii) Delivery (viii) Goods, specific & future goods (ix) Price

CHAPTER-1

SALE OF GOODS ACT

Ch. 1-1. (1) **Delivery :**

According to the Sale of Goods Act Sn. 2(2), delivery means voluntary transfer of possession from one person to another. The essence of it, is that the deliverer places the deliverer in the same position of control over the goods as he himself held before the delivery. Delivery may be symbolic or constructive.

Symbolic : The delivery of the key of a godown is a symbolic delivery of the goods stacked there. A sells his specific goods to B and delivers the key of the godown where the goods were stored, to B. This is symbolic delivery.

Constructive : There is a voluntary transfer of possession, but in reality there is no physical or actual delivery of the goods.

A sells 100 bales of cotton to B. B asks A to keep the goods for 15 days, in A's godown. A agrees, there is transfer of possession from A to B, but no physical transfer. This is constructive delivery.

If the seller agrees to sell his goods which are with C, to B, there is "attornment", if C agrees to keep the goods as bailee of B. This is also constructive delivery. The leading case is *Hurry V. Mangles*.

The sale of goods act has provided for provisions relating to delivery, part delivery, instalment delivery, etc. in sections 33 to 34.

ii) Goods, future and specific goods :

"Goods" means every kind of Movable property. It includes stock and shares, growing crops, grass, severed things which were attached to land or forming part of the land.

Goods *does not* include "Money" and "Actionable claims". Similarly Coal, minerals, gravel etc. which are part of the soil are not "Goods" and hence, cannot be the subject of the sale of goods. However, after removing from the soil these become goods and may be sold as such.

Future goods : means goods which are to be manufactured or produced or acquired by the seller after the making of the contract of sale. These are goods which are not identified and agreed upon and hence are also called "generic" or "unascertained goods". A contract for sale of 10,000 vials of penicillin, which are to be manufactured is a contract for sale of future goods. The property (title) in the goods passes to the buyer when the goods are made ready and notice is given to buyer.

Specific goods : (Existing or ascertained goods)

These are goods which are identified and appropriated to the contract of sale. Sale of ready TV., or radio sets is specific. Similarly sale of 1000 bales of cotton identified, is specific.

The property in the goods passes, according to the intention of the parties. Sn. 20 to 23 sale of goods act deal with such passing of property to the buyer.

iii) Documents of title to goods :

According to Sn. 2(4) of the Sale of Goods Act, the document of title to goods includes :

- a) Bill of lading
- b) Dock warrant
- c) Warehouse-Keeper's certificate
- d) Wharfinger's certificate
- e) Railway receipt, warrant or order for delivery of goods.
- f) Any other document used in the ordinary course of business

as proof by the possessor to receive the goods. Eg. Lorry Way Bill.

These documents may be transferred by endorsement or delivery. The transferee thereby acquires the right either to transfer the documents or to receive the goods.

iv) Price : (Sns. 9 & 10) :

Price according to Sn. 2(10) of the sale of goods act means the money consideration for the sale of goods. The price may be fixed by the contract itself, or may be fixed in a manner agreed to under the contract by the parties. Price may also be determined according to the course of dealings in business by the parties. In such cases, there is an implied condition to pay a reasonable price. What is reasonable, depends on the facts and circumstances of each case. Where

there is market price, that price is reasonable.

Where the price is to be fixed by a third party (valuer) according to the contract of sale, then, such third party may fix up such a price. If he does not or cannot fix up, then the contract is avoided. However, if in the meanwhile the goods or any part have been delivered and appropriated according to the contract of sale, then the buyer must pay a "reasonable price".

Where a party prevents such a valuer from fixing up the price, then the party not at fault, may file a suit to recover damages against the other party.

Ch. 1-2. Sale and agreement to sell, distinguished :

Sale	Agreement to sell
1. A sale creates a jus in rem. creates	1. An agreement to sell
That is, there is a transfer of general property in the goods to the buyer.	a jus in personam. There is a personal remedy to either party and also against the estate in case of default.
2. If the buyer fails to pay the price of the goods, the seller may sue for the price. damages.	2. If the buyer fails to accept and pay for the goods, the seller can sue only for
3-If the seller commits a breach, the buyer has not only a personal remedy against the seller, but also a remedy under a suit for detinue or conversion	3. <i>breach, the buyer has only a personal remedy against the seller i.e., a claim for damages. Seller may dispose of the goods.</i>
4. If the goods are destroyed	4. If the goods are destroyed

the buyer should bear the loss. the loss is to the seller.

5. Executed contract. 5. Executory.

In contract of sale, the property in the goods is transferred to the buyer ; where 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 an agreement to sell.

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled.

CHAPTER-2

PASSING OF PROPERTY

Goods may be specific (ascertained) or generic. Specific goods mean goods identified and agreed upon at the time a contract of sale is made, i.e., they are ascertained goods. Radio and T.V. set etc.

Generic goods are defined by description only i.e., 5 tones in a big heap of rice. When the seller puts 5 tonnes separately by weighing, this generic becomes specific. The goods are appropriated to the contract.

The passing of property in the goods is an important incident of sale. Sns. 19,20,21,22,23 and 24 deal with the passing of specific goods.

i) In a contract of sale of specific goods, the property passes when the parties intend it to pass. The intention may be inferred from the circumstances and the terms and conditions. Sns. 20,21,22 & 23 help the courts to ascertain the intention.

ii) In a contract of sale of specific goods in a deliverable state, the property passes when the contract is made.

The parties may agree for the postponement of the payment of price or the time of delivery of goods, but this will not affect the passing of property.

A offers to B his horse for Rs.1,000/- on 1.1.1984. The horse is to be delivered to B on 10.10.1984 and the price is to be paid on 20.10.1984. Property passes as soon as the offer is accepted.

iii) In a contract of sale of specific goods, if the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property passes as soon as it is done and notice is given to buyer.

A places an order for a ship with B. B is yet to build the vessel.

The property passes when he makes the ship ready and gives notice to A.

iv) In a contract of sale of specific goods, if the seller is to weight, measure, test or to do some other act for the purpose of finding the price, the property passes when he does so and gives notice to the buyer.

A agrees to sell to B 1,000 kgs. of a chemical in 1 kg.

packing. A weighs, packs, labels, and keeps ready the goods and gives notice to B. Property passes to B.

v) When goods are delivered on approval or on sale or return basis the property passes to the buyer :

a) when he accepts the goods.

b) If he does not accept but retains the goods without giving notice, the property passes on the expiry of time, if time is fixed, or if no time is fixed on the expiry of a reasonable time.

CHAPTER-3

Unpaid seller

Ch. 3-1. Unpaid seller:

Sn. 45, Sale of goods act defines an unpaid seller. A seller is deemed to be an unpaid seller:

i) If the whole of the price has not been paid or tendered or

ii) When a bill of exchange or other document has been received as conditional payment and the condition has not been fulfilled by reason of the dishonour of the instrument.

Seller includes his agent or consignor. **Unpaid seller's rights:**

1) A lien over the goods in his possession.

2) A right to 'Stoppage in Transit' when the buyer becomes insolvent.

3) A right of re-sale as per the sale of goods act.

Ch. 3-2. Unpaid sellers lien : (Sn. 47) :

An unpaid seller who is in possession of goods, is entitled to retain possession of them until the price is paid or tendered in the following cases:

i) When the goods are sold without any condition as to credit, ii) When sold on credit, but the time of credit has expired, iii) When the buyer becomes insolvent.

Further, the seller may be in possession of the goods as an agent or bailee for the buyer, even then the right of lien can be exercised.

Part delivery: When the unpaid seller has made part delivery, he may exercise his right on the remainder. This will not apply, if by the transaction it may be presumed that the seller has waived his right

of lien. Eg., an essential part of a machinery, in which case the lien may not be exercised.

Termination of Lien:

The lien is lost or terminated:

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

ii) When the buyer or his agent takes lawful possession of goods, iii) By waiving the right.

Further, he does not lose his right of lien, merely because he has obtained a decree from the court (for the price of goods (Sn. 49).

Ch. 3-3. Stoppage in transit: (sn. 50)

Stoppage in transit is the right of the unpaid seller. This right may be exercised if the following conditions are fulfilled.

i) The seller must be unpaid.

ii) The buyer must be insolvent.

iii) The seller must have parted with the possession of goods.

iv) The buyer must not have acquired the goods i.e., the goods must be in transit.

The duration of transit: (Sn. 51) :

i) Goods are in transit, from the time they are delivered to a carrier (or bailee) for transmitting the goods, until the buyer (or his agent) takes delivery.

ii) If the buyer takes delivery at an intermediate station, the transit is at an end.

iii) If after arrival of goods at destination, there is an attornment (transfer) by carrier to the buyer, the transit is at an end. (This means there is a new agreement to hold goods, until the buyer (or his agent) takes actual delivery.

iv) If the buyer rejects, and the carrier continues in

possession, the transit is not at an end even if the seller refuses to take back.

v) When goods are delivered to ship chartered by the buyer, the question whether possession is with master as carrier or as agent of the buyer, depends on the circumstances.

vi) Where the carrier wrongfully refuses to deliver the goods, to the buyer the transit is deemed to be at an end.

vii) Where part-delivery has been made to the buyer, the seller may stop in transit the balance of the goods. (There may be an agreement to the contrary in which case there is no stoppage in transit).

How effected :

Seller may take actual possession of goods: or may give notice to the carrier or any bailee who is in possession.

Such a notice may be given to that person or to his principal. If given to the principal, it must be given at such time and in such circumstances, that he may with due diligence stop the goods in transit. The expenses, if any, of re-delivery to the seller, shall be borne by the seller.

In *James Vs. Griffin* : A sent his goods by a ship to B, deliverable on the river James. B became insolvent. He sent his son to take possession of the goods at the Wharf. B. had no intention to take delivery, but had done so, as the Captain of the ship had demanded. Question was whether transit was at an end. Held, it was not at an end. Hence, A may exercise his right of stoppage.

In G.I.P. Railway V. Hanuman Das, H. the seller booked his goods to the buyer B, through Railways, to a destination. At the destination, the buyer endorsed the R/R, loaded the goods to the carts. When the carts were still in the compound of the railways, the railways got notice of insolvency of B. Held, transit was at an end.

Ch. 3-4. Effect of sub-sale or pledge by buyer :

The right of stoppage in transit is not affected by the sub-sale or pledge by buyer.

Exception : (i) A person who buys in good faith for value from the buyer is protected.

A sells goods to B and sends documents to B. B becomes insolvent, but sells the documents to C who buys in good faith for value. A cannot stop the goods in transit.

ii) If the buyer pledges the goods with a pawnee and takes money, the seller may exercise his right subject to the right of the pawnee after paying the amounts due to the pawnee.

CHAPTER-4
CONDITIONS AND WARRANTY

Ch.4-1. Conditions and Warranty :

A contract of sale contains stipulations :

A stipulation may be a condition or warranty :

Condition	Warranty
1. Essential to the main purpose of the contractor.	1. Collateral to the main purpose of the contract.
2. In case of breach of condition the contract may be repudiated.	2. Breach gives rise to damages only. The buyer cannot reject the goods or repudiate the contract.
3. Party may waive a condition and prefer to treat it as warranty and sue for damages	3. Not so but for breach of warranty the buyer can sue for damages only.
4. Implied condition that the seller has 'title' to the goods.	4. Implied warranty. i) of quiet possession ii) that goods are free from any encumbrances.
5. Sale by description : There is an implied condition that the goods correspond with the description (Sn.15) In <i>sale by sample</i> : the implied condition is that the bulk corresponds with the sample, are merchantable and are free from any defect noticeable on a reasonable examination.	

<p>6. Caveat emptor : There is warranty ^no implied condition as to quality or fitness for any particular purpose. This is subject to some exceptions (Sn. 16).</p>	<p>6. There is no implied as to fitness or quality, but by usage of trade, a warranty may be given.</p>
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Ch. 4-2. 'He who has no title cannot pass a title' (Nemo dat qui non habet) :

Sn. 27 Sale of Goods Act deals with this principle. Where a seller who is not the owner and who has no authority or consent of the owner to sell, sells the goods to a buyer, the buyer acquires no better title than the seller. It would bring confusion into mercantile transactions and would be inconsistent with Law, if such a seller is allowed to pass all the insignia of possession and of title. This rule is not of course absolute, but is subject to the following exceptions.

i) Title by estoppel: The owner of the goods is by his conduct precluded or estopped from denying sellers authority to sell, where the owner by his conduct makes the buyer to believe that the seller has the title.

Pickard Vs. Sears:

A the owner of a machinery which was in possession of B allowed to be attached by C, under a court decree. He did not protest till it was sold in execution. He sued later. Held: That his conduct has been estopped from denying the title of the buyer in execution sale.

ii) Mercantile agent: He has authority by custom either to sell or to consign goods etc.

Eg: Factors, Auctioneers and brokers. Such an agent who is in possession of goods or documents with the consent of the owner will pass a good title, if the agent is acting in the ordinary course of business and if the buyer buys in good faith without notice of the lack of authority of seller.

CHAPTER-5 GENERAL TOPICS

Ch. 5-1. Sale by description : (Sn. 15) :

In the case of a contract of sale of goods by description, there is an implied condition that the goods correspond with the description given by the seller. Description means a particular class of goods. When the sellers give a description it may be with respect to :

- a) Quality or fitness.
- b) Time of despatch.
- c) Mode of packing.
- d) Mode of delivery.
- e) Price etc.

The fundamental rule is that the item supplied corresponds absolutely with the description given:

i) A places an order to B to supply goods manufactured by B himself. B sends goods manufactured by C. A may reject.

ii) A contracts to buy rice which was to be shipped at Madras in March. The seller shipped in February itself instead of in March. Buyer can reject.

iii) A places an order for 100 vials of a particular injection. B sends 1000 vials. A may reject.

Ch. 5-2. Caveat emptor : (Let the buyer beware) (Sn. 16) :

This is the common law rule regarding quality or fitness of the goods for the purpose for which they are purchased. Sn. 16 provides that when goods are sold there is no implied warranty or condition as to quality or fitness. A number of exceptions are provided for :

- i) When a buyer buys a specific article the rule Caveat Emptor

applies. But, if the buyer makes known to the seller, the purpose for which the goods are required, relies on the skill or judgement of the seller and the goods are of a description to be supplied as in the ordinary course of business to supply, then there is an implied condition that the goods are reasonably fit for the purpose they are bought.

Priest Vs.Last:

The purchaser of a hot water bottle was told by the seller that it was suitable for hot water but not for boiling water. When his wife used it, it burst and she suffered injuries. Held: Seller is liable.

Frost Vs. Dairy:

The Dairy D supplied milk to F. F and his family consumed. The milk contained typhoid fever germs and F's wife was infected and died. Held : D liable. The milk was not fit for human consumption.

Samuels Vs. Davies :

A dentist undertook to make a denture for his patient S and supplied one. Held: it must be reasonably fit for the purpose.

Exceptions:

a) If the article is under a patent or trade name, there is no implied condition as to its fitness for any particular purpose.

b) Where goods are bought by description from a seller who is a dealer in such goods, (manufacturer or not) there is an implied condition that the goods are of merchantable quality.

Grant vs. Australian Knitting Mills :

G bought woolen under-wears from D, a dealer thereof. After wearing, he contracted skin diseases. Held : Article was not merchantable and therefore D liable.

There is an exception. If the buyer has examined the goods, the seller, is not liable for defects, which that examination should have revealed.

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ii) There may be an implied condition or warranty as to quality or fitness for a particular purpose by usage of trade.

iii) The implied conditions and warranties are subject always to express agreement to the contrary.

Ch.5-3. Sale by Sample : (Sn. 17):

A contract of sale becomes a ' Sale by sample' by including such a term in the contract. In such a case, there is an implied condition that,

i) The bulk shall correspond with sample in quality.

ii) That the buyer shall have a reasonable opportunity

of comparing the bulk with the sample.

iii) That the goods are free from any defect, which make them un-merchantable and which are not apparent on reasonable examination of the sample. Merchantability test is paramount. A sold under sale by sample two parcels of wheat containing 700 and 1400 bushels respectively, to B. A showed the samples of the first parcel but not of the second. B rescinded the contract for the second. A sued. Held, B not liable.

Ch. 5-4. C.I.F. and F.O.B.

C.I.F. means cost, insurance and freight. The price quoted by the seller under C.I.F. includes the price of the goods, insurance premium during transit and the freight to the carrier.

The seller:

- i) Should ship the goods at the port of shipment.
- ii) Procure a contract of affreightment with a Shipping Company, i.e., Bill of Lading (B/L).
- iii) Insure the goods.
- iv) Make out an invoice, packing list certificates as may be necessary.

- v) To render these to the buyer directly or through bankers as per the agreement.

C.I.F. contract is sometimes called as sale of documents but it is not so. It is a contract for 'insured goods, lost, or not lost'.

F.O.B.; means 'Free on Board'. Here, the seller puts the goods on board a ship and the ownership passes at that moment to the buyer. The buyer has to insure when the seller gives notice of shipping. The risk is that of the buyer. The insurance and the freight should be borne by the buyer.

Ch. 5-5 : Sale 'on approval.' or 'return' basis :

A seller may send his goods 'on approval', on sale or return, or on trial basis and in such a case it remains an agreement to sell.

i) The buyer may approve or accept the goods, in which case the sale becomes complete.

ii) If the buyer retains such goods without sending his notice of rejection within a fixed time (or if no time limit is fixed within a reasonable time) the property passes to the

buyer on the expiry of such time.

A sells his TV set to B on approval basis and the time fixed is 7 days. B does not reject within this time. Property passes to B and the sale is completed.

Ch. 5-6. Auction sale :

The owner of goods may either himself or through an auctioneer sell his goods by auction. The rights and liabilities of the parties to such a sale are dealt with in Sn. 64.

i) Lots : If the goods are put up for sale in lots, then each lot is prima facie considered to be separate and forms a separate or distinct contract for sale.

ii) Completion: The sale by auction is complete when the hammer falls or when it is declared so in any customary manner.

However, until such an announcement is made, the sale is not completed, and hence, any bidder may retract his bid. i.e., he may withdraw his bid. The reason is that every bidding is an offer, and the contract is not binding until it is accepted by the seller. There cannot be one sided declaration.

iii) Reservation : The seller himself may bid at the auction, but, the right to bid must be reserved by him. In such a case he, or any one person on his behalf may bid at the auction. But if more than one bids it amounts to 'fraud'.

If no reservation is made by the seller to bid, it will not be lawful for him (or through any person) to bid at the auction. If a bid is so made, it amounts to fraud.

iv) Reserved or upset price: The auction sale may be notified to be subject to a reserved price or an upset price. The seller may avoid the sale if the price is not reached.

v) Pretended bidding : If the seller makes use of pretended bidding to increase the bid price the sale is voidable at the option of the buyer.

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CHAPTER-6 DELIVERY

Ch. 6.1. Rules as to delivery of goods :

Delivery is defined in Sn. 2(2) of the Sale of goods act (Refer Ch.14.1).

Detailed provisions are made in Sns. 33 to 44 regarding the mode of delivery and of its legal implications.

i) Agreement:

The delivery of the goods should be made according to the contract of sale by the parties. It amounts to delivery if the effect is to put the buyer or his agent in possession of the goods.

A sells his goods in his godown to B and hands over the key of the godown to B. This is symbolic delivery.

A sells his horse to B. A asks B to lend the horse for two days. There is delivery of the horse.

ii) Part delivery :

Part delivery of goods is allowed as per the contract of sale. If the parties so agree, the delivery of a part, has the effect of the delivery of the whole of the goods and the property in the goods is transferred to the buyer. However, if the intention is not so, then it will not amount to the delivery of the remaining.

On arrival, the master of a ship carrying wheat, stated that the cargo was for A, and allowed A to take part delivery. Held, this constituted the delivery of the whole, and A is entitled to the remaining cargo.

(iii) Rules as to delivery :

a) Location : The contract of sale may provide for the mode of delivery of goods. Whether the buyer may take possession of goods or the seller should send the goods to the buyer depends on the agreement. This may be express or implied.

In the absence of any contract, the goods sold are to be delivered from the place of location of the goods. In case of agreement to sell, the goods are to be delivered from the place of location of goods at the time of agreement: if not so provided, the place of delivery is the place of manufacturer or production.

b) Time limit:

When the contract of sale is silent as to the time of delivery, the seller should send the goods within a reasonable time. What is reasonable depends on the facts or circumstances or trade custom.

c) Third party :

When goods are with a third party, there is no delivery to the buyer, until the party acknowledges to the buyer that he is holding the goods in favour of the buyer.

d) Reasonable time :

Demand for delivery of goods or tender of delivery must be made at a reasonable hour i.e., hours of business or depending on the facts of the case, any time under agreement or usage.

e) Expenses :

It is the seller who must bear the expenses to put the goods in a deliverable state, unless agreed otherwise.

iv) Wrong quantity delivery :

When there is short delivery of goods, the buyer may reject or accept. If he accepts, he must pay for the same.

If there is excess delivery of goods, the buyer may take delivery of so much as is to be appropriated to the contract of sale and pay for it, or, he may reject the whole. However, if he accepts the whole, he must pay for the same.

6 v) Instalment delivery:

The rule is that the buyer is not bound to accept the delivery of goods by instalments. This is subject to the agreement between the parties.

When the goods are to be delivered in instalments and paid for by the buyer, it is a question of the facts or circumstances to decide whether non-delivery or non payment amounts to the breach of the contract or not. The general rule is that such a breach will not give a right to treat the whole contract as repudiated.

A agrees to ship in one transaction 25 m.t. of pepper in November. He ships 20 m.t. in November and 5 m.t. in December. The buyer was entitled to reject the whole.

THE END

REFERENCE SECTION

Selected Sections of SALE OF GOODS ACT, 1930

CHAPTER I: PRELIMINARY

Sections

2. Definitions

In this Act, unless there is anything repugnant in the subject of context,-

(4) "**document of title to goods**" includes bill of lading dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, 4[multimodal transport document,] warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(7) "**goods**" means every kind of moveable 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;

CHAPTER II : FORMATION OF THE CONTRACT CONTRACT OF SALE

4. Sale and agreement to sell

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

(2) A contract of sale may be absolute or conditional.

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

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

FORMALITIES OF THE CONTRACT

5. Contract of sale how made

(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price of both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be

made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

SUBJECT MATTER OF CONTRACT

6. Existing or future goods

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Goods perishing before making of contract

Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

8. Goods perishing before sale but after agreement to sell

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

CONDITIONS AND WARRANTIES

11. Stipulations as to time

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

12. Condition and warranty

(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) 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.

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

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

13. When condition to be treated as warranty

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, 5[***] the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

14. Implied undertaking as to title, etc.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is-

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

15. Sale by description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

16. Implied conditions as to quality or fitness

Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:-

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and 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 producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

PROVIDED 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 its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality;

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

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

17. Sale by sample

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. (2) In the case of a contract for sale by sample there is an implied condition- (a) that the bulk shall correspond with the sample in quality; (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III : EFFECTS OF THE CONTRACT TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

18. Goods must be ascertained

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

19. Property passes when intended to pass

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

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

21. Specific goods to be put into a deliverable state

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

22. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price

Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the

purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

23. Sale of unascertained goods and appropriation

(1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Delivery to carrier-Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

24. Goods sent on approval or "on sale or return"

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

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

6[(2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

Explanation : In this section, the expressions "railway" and "railway administration" shall have the meanings respectively assigned to them under the Indian Railways Act, 1890.]

26. Risk prima facie passes with property

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:

PROVIDED that, where delivery 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:

PROVIDED ALSO that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title

27. Sale by person not the owner

Subject to the provisions of this Act and of any other law for the time being in force, 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, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

PROVIDED that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. Sale by one of joint owners

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

29. Sale by person in possession under voidable contract

When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

30. Seller or buyer in possession after sale

(1) Where a person, having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV : PERFORMANCE OF THE CONTRACT

31. Duties of seller and buyer

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

32. Payment and delivery are concurrent conditions

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

33. Delivery

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

34. Effect of part delivery

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

35. Buyer to apply for delivery

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

36. Rules as to delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

PROVIDED that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a

deliverable state shall be borne by the seller.

37. Delivery of wrong quantity

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

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

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

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

38. Instalment deliveries

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

39. Delivery to carrier or wharfinger

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

40. Risk where goods are delivered at distant place

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

41. Buyer's right of examining the goods

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders 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.

42. Acceptance

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

43. Buyer not bound to return rejected goods

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

44. Liability of buyer for neglecting or refusing delivery of goods

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods:

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

CHAPTER V : RIGHTS OF UNPAID SELLER AGAINST THE GOODS

45. "Unpaid seller" defined

(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act.-(a) When the whole of the price has not been paid or tendered;(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

46. Unpaid seller's rights

(1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller

of goods, as such, has by implication of law-

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

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

UNPAID SELLER'S LIEN

47. Seller's lien

(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

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

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

48. Part delivery

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

49. Termination of lien

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

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

STOPPAGE IN TRANSIT

50. Right of stoppage in transit

Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

51. Duration of transit

(1) 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 in

that behalf takes delivery of them from such carrier or other bailee.(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. How stoppage in transit is effected

(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

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

53. Effect of sub-sale or pledge by buyer

(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

PROVIDED that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

54. Sale not generally rescinded by lien or stoppage in transit

(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere

exercise by an unpaid seller of his right of lien or stoppage in transit.(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI : SUITS FOR BREACH OF THE CONTRACT

55. Suit for price

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

56. Damages for non-acceptance

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

57. Damages for non-delivery

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

58. Specific performance

Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the court may deem just, and the application of the plaintiff may be made at any time before the decree.

59. Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-(a) set up against the seller the breach of warranty in diminution or extinction of the price, or(b) sue the seller for damages for breach of warranty.(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same

breach of warranty if he has suffered further damage.

60. Repudiation of contract before due date

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

61. Interest by way of damages and special damages

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price-

(a) to the seller in a suit by him for the amount of the price-from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller-from the date on which the payment was made.

CHAPTER VII : MISCELLANEOUS

64. Auction sale

In the case of sale by auction-

(1) 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;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

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

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

7[64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted

(1) Unless a different intention appears from the terms of the contract, in the event of any tax of

the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax Where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such good tax-paid where tax was chargeable at that time,-

(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and

(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

THE END