

SUMMARY SALES OF GOODS ACT

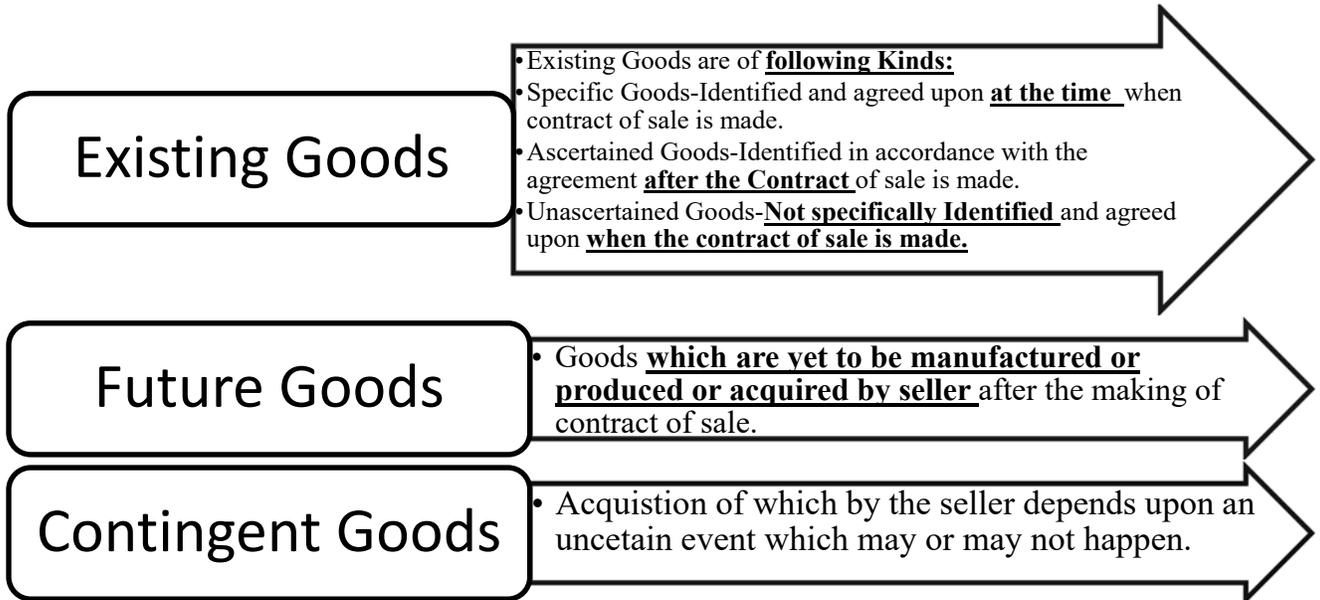
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MKGUPTA CA EDUCATION

CA JYOTI MADAN SAPRA

KEY SUMMARY POINTS FROM SOGA**Formation of Contract Of Sale**

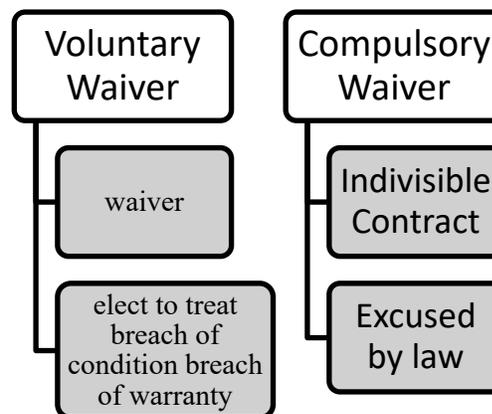
1. The sales of Goods Act, 1930 deals with the contracts relating to the **sale of movable goods.**
2. A 'contract of sale' is legally defined in Section 4(1) of the Sale of Goods Act, 1930 in the words reading as under:
"A contract of sale of goods is a contract whereby the seller **transfers or agrees to transfer the property in the goods to the buyer for a price.**"
3. **The parties are free to decide terms and conditions for a contract of sale , wherever a contract is silent, rules provided by SOGA will apply.**
4. Legally the expression **'contract of sale' includes both 'sale' as well as 'agreement to sell'.**
5. In case of **sale', the ownership of goods is immediately transferred** from a seller to the buyer, and in case of agreement to sell, the ownership is transferred at some future date.*The transaction is a sale even though the price is payable at a later date or delivery is to be given in the future, provided the ownership is transferred from the seller to the buyer.*
6. A contract of sale is formed by offer and acceptance. There is an offer to sell or buy goods for a price and the acceptance of such an offer.
7. The contract shall provide for Delivery of goods. Delivery may be immediate, simultaneous, by instalments or in future. The contract shall provide for Payment of price. Payment of price may be immediate, simultaneous, by instalments or in future.
8. A contract for the sale of future goods is an agreement to sell.
9. The term 'goods' means every kind of movable property and includes (a) stock and shares, (b) growing crops, grass, and (c) things attached to or forming part of the land which can be severed from the land [Section 2(7)].
10. The term 'goods' does not include 'money' or 'actionable claims'. It is to be noted that Money means the legal tender or currency of the country and it does not include old coins and currency.
11. Goods can be classified as Existing Goods, Future Goods and Contingent Goods.



12. Specific Goods perished before making the contract without the knowledge of seller, the contract is void.
13. The money consideration for the sale of goods is legally known as 'price', and it may be partly in cash and partly in terms of *valued up* goods.
14. A contract for the sale of goods at a price to be fixed by the third party, is valid. If such third party fails to fix the price, then the contract becomes void. **However if Buyer has received and appropriated the goods or any part thereof, he becomes bound to pay reasonable price.**
15. Stipulation (Term) relating to time of payment are not regarded as essence but relating to Time of Delivery are Treated as essence.
16. In case of hire-purchase agreement, the hirer has two options, namely (a) he may purchase the goods after paying all the instalments, or (b) he may return the goods at any time and stop further payment of the instalments. In such a case, the instalments already paid are treated as the hire charges for the use of goods hired.

CONDITION AND WARRANTY

1. The term 'conditions' is legally defined in Section 12(2) of the Sale of Goods Act, 1930, in the words reading as:
2. *"A condition is a stipulation essential to the main purposes of the contract, the breach of which gives rise to a right to treat the contract as repudiated."*
3. The term 'warranty' is legally defined in Section 12(3) of the Sale of Goods Act, 1930, in the words reading as:
4. *"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim damages but not a right to reject the goods and treat the contract as repudiated."*
5. Condition can be treated as a Warranty :



In those cases, where a condition is changed to the status of a warranty, the buyer loses the right to reject the goods, but he retains the right to claim damages.

The buyer may, at his option, treat the breach of condition as a breach of warranty, but he cannot treat the breach of warranty as the breach of condition.

6. In case of breach of condition, the buyer has the right to terminate the contract and reject the goods.
7. In case of breach of warranty, the buyer has no right to terminate the contract, he can only claim damages from the seller.
8. Conditions and warranty may be express and implied. Express are those which have been expressly agreed upon by the parties. Implied terms are those which have been enacted in the sales of goods act.

9. Following are the various Implied Conditions:

<u>Title</u>	<ul style="list-style-type: none"> • In case of sale seller has right to sell the goods • In case of agreement to sell , he will have right to sell the goods
<u>Descriptio n (D)</u>	<ul style="list-style-type: none"> • Goods shall correspond with the description.
<u>Sample (S)</u>	<ul style="list-style-type: none"> • The bulk shall correspond with the sample in Quality • Buyer shall have reasonable opportunity of comparing the goods with the sample. • The goods shall be free from any latent defect.
(S) +(D)	<ul style="list-style-type: none"> • Goods shall correspond both with the sample and description
<u>Merchanta -bility</u>	<ul style="list-style-type: none"> • Merchantable means goods are commercially saleable and that they are fit for which they are generally used.
<u>Wholeso m-eness</u>	<ul style="list-style-type: none"> • It implies that eatables shall be fit for human consumption.
<u>Quality or fitness</u>	<ul style="list-style-type: none"> • General rule is there is no implied condition as to quality or fitness .This is based on doctrine of Caveat emptor, i.e. let the buyer beware.However in the following situation seller will be responsible.

Quality or fitness contd:

The implied condition that the goods shall be fit for buyer's specific purpose is applicable only where the buyer tells his purpose to the seller and relies upon seller's skill and judgment.

In case of sale of goods under a patent or trade name, there is no implied condition as to the fitness of goods for any particular purpose.

10. **Following are the various implied Warranties:**

The buyer must get quiet possession.

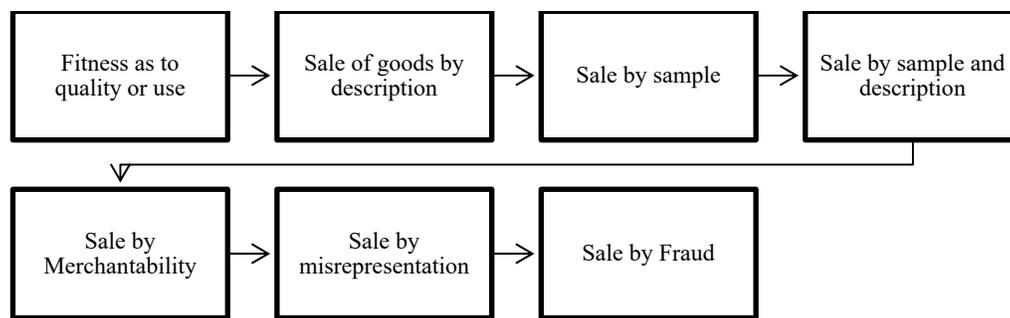
Goods must be free from Encumbrance(Charge)

Disclose Dangerous nature of goods.

Warranty for Quality or use by usage of Trade.

11. The doctrine of *caveat emptor* is incorporated in Section 16 of the Sale of Goods Act, 1930, and as per this doctrine “Let the buyer Beware.” It means that, ordinarily, a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame seller or recover damages from him.

EXCEPTIONS TO THE DOCTRINE OF CAVEAT EMPTOR:



Imp point:

- 1. Exception of Fraud and Misrepresentation will not apply if the defect in goods could have been discovered on reasonable inspection.**
- When the buyer buys an article by specifying its patent or other trade name, there is no implied condition of the fitness of the goods for any particular purpose. Since the buyer buys the good specifying the trade name, the seller's only undertaking is that the good shall be of the same trade name as demanded by the buyer. If the buyer mentions the trade name but still relies on the skill and judgment of the seller as regards the suitability of the goods for any particular purpose, the implied condition of fitness will be applicable.

TRANSFER OF PROPERTY

1. The term 'property in goods' as used in the Sale of Goods Act, 1930, means the 'ownership of goods', and is different from 'possession of goods' which simply means the custody or physical control over goods.
2. The main object of contract of sale is the transfer of ownership of goods to the buyer, and the ownership may pass with or without the transfer of possession.
3. The general rule that the 'risk passes with the ownership' means that the goods are at the risk of the party who has the ownership *i.e.* the loss or damage to the goods falls upon the owner.
4. In case of sale of ***specific goods***, the general rule is that the ownership of goods is transferred from the seller to the buyer at the time of making the contract. [Section 20]
5. In case of sale of specific goods, where the goods are to be put in a deliverable state by some act of the seller, the property is transferred to the buyer as soon as the seller puts the goods in deliverable state and the buyer comes to know about the same. [Section 21]
6. Where the specific goods are in a deliverable state but the seller has to do some act to ascertain the price, the property in goods is transferred to the buyer when the seller does that act and the buyer comes to know about the same. [Section 22]
7. ***In case of sale of unascertained goods***, the ownership is transferred to the buyer when the goods are ascertained and appropriated to the contract.
8. Appropriation can either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Assent may be express or implied. Assent may be given either before or after the appropriation.
9. A contract for the sale of unascertained goods is an agreement to sell.
10. In case of sale on approval, the ownership is transferred to the buyer in the circumstances, when the buyer, (a) accepts the goods, or (b) adopts the transaction, or (c) fails to return the goods within reasonable time.
11. **Transfer of property when Right of disposal is reserved.**

The object of reserving the right of disposal of goods is **to secure that the price is paid before the property passes to the buyer.**

In a contract for the sale of specific goods or where goods are subsequently appropriated to the contract,

- a) The seller may reserve the right of disposal of the goods until certain conditions are fulfilled.
- b) In such a case, even if the goods are delivered to the buyer himself or to a carrier or other bailee for transmission to the buyer, the buyer does not acquire ownership until the conditions imposed by the seller are satisfied.
12. A sale is a contract plus a Conveyance. As a Conveyance it involves Transfer of Title from the seller to the buyer.
13. The Latin maxim, '*nemo datquodnon-habet*' means that no one can transfer a better title than he himself has.
14. The rule that the buyer does not get a better title than that of the seller is provided in Section 27 of the Sale of Goods Act, 1930.
15. But there are some exceptions to the above Latin maxim(given on next page)
16. The finder of goods can validly sell the goods, when the true owner cannot be found with reasonable diligence, in any of the following circumstances:
(a) **If the goods are in danger of perishing or losing greater part of their value.**
(b) **If the lawful charges of the finder, in respect of the goods, amounts to a minimum of two-third of their value.**
17. **Mercantile Agent means means an agent having in the customary course of his business as such agent authority either**

To sell Goods

To Buy Goods

To consign
goods for sale

To raise money
on the security
of Goods

18. Delivery means Voluntary transfer of possession of goods from the seller to the buyer. It may be (i) actual (b) Symbolic and (c) constructive Delivery.
19. A symbolic delivery takes place when the means of obtaining the possession is handed over to the buyer. This happens when the goods are bulky and incapable of actual delivery.
20. The delivery of keys of the godown, where goods are lying, to the buyer, and the transfer of documents of title in buyer's name, **are the instances of symbolic delivery.**

- 21. Constructive delivery takes place when the person possession of the goods acknowledges that he hold the goods on behalf of and at the disposal of the buyer.

- 22. A 'CIF' a contract is contract for the sale of goods at a price which includes the cost of goods, insurance and freight charges, and in such contracts, the ownership is transferred to the buyer when the shipping documents are delivered to the buyer and he receives them by paying the price.

- 23. A "F.O.B." contract is a contract for the sale of goods where the seller has to put the goods on board a ship at his own expenses, and in such contracts, the ownership is transferred to the buyers as soon as the goods are loaded on board the ship.

Transfer of Title by Estoppel	Sale by a Mercantile Agent	Sale by one of several joint owners	Sale of goods obtained under a voidable agreement
Sale by the seller in possession of goods after sale	sale by buyer in possession of good sover which the seller has some rights	Sale by an unpaid seller	Sale under various other acts

RULES AS TO DELIVERY

Buyer to apply for the delivery

The seller of the goods is not obliged to deliver them until the buyer has applied for delivery, unless otherwise agreed

Time of delivery

- a) If specified-
then within that time
b) If not Specified -
within Reasonable time

Effect of part delivery

has the same effect for the purpose of passing the property in such goods as delivery of the whole.

Place of delivery

The place of delivery is usually stated in the contract. Where it is so stated the goods must be delivered at the specified place during working hours on a working day.

Where no place is mentioned, the goods are to be delivered at a place where they were at the time of the sale, and if not then in existence, at the place there they would be manufactured.

Expenses for delivery

The seller has to bear the cost of delivery unless the contract otherwise provides.

While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller

Delivery of wrong quantity

In case of delivery of lesser quantity of goods: The buyer may either accept the goods and pay for it at the contract price or reject it.

Delivery of wrong quantity

In case of delivery of larger quantity of goods: The buyer may either accept the goods and pay for it at the contract price or reject it.

Delivery of wrong quantity

In case of delivery of goods contracted mixed with goods of different description: The buyer may accept the relevant goods and reject the rest or reject the whole. However mixing of goods of quality does not amount to mixing of goods of different description.

Installment deliveries

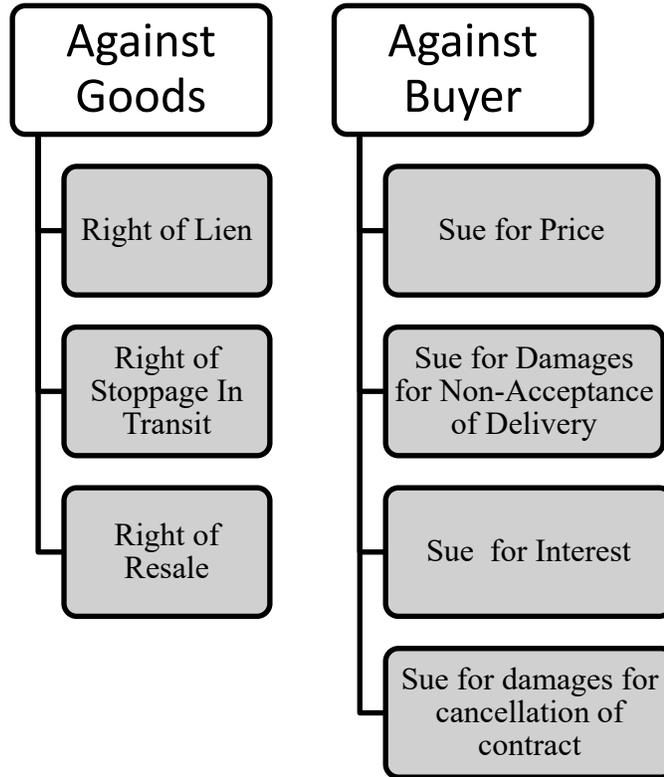
unless otherwise agreed, the buyer is not bound to accept delivery in installment.

Delivery to carrier

Subject to the terms of the contract, the delivery of the goods to the carrier for transmission to the buyer is prime deemed to delivery to the buyer.

UNPAID SELLER

1. An 'unpaid seller' means the seller to whom *the full* price of the goods Sold has not been paid on due date or if the payment is made by Negotiable Instrument it is dishonoured and the term is legally defined in Section 45 of the Sale of Goods Act, 1930.
2. Unpaid seller 's rights are categorized into two parts:



Right of Lien

- An unpaid seller's right of lien is provided in Section 47(1) of the Sale of Goods Act and by exercising this right the unpaid seller having possession of the goods, can retain the goods sold until the price of the goods is paid or tendered to him.
- The unpaid seller can retain the goods *only for the price* of goods and not for any other charges such as maintenances, storage etc.
- The unpaid seller's right of lien is indivisible in nature, and he cannot be compelled to deliver a part of the goods on the payment of proportionate price.
- The right of lien is linked with the possession of goods, and this right is lost as soon as the possession is lost.
- He can exercise Right of lien three cases :- cash sale, credit sale but credit period expired or where buyer becomes insolvent.

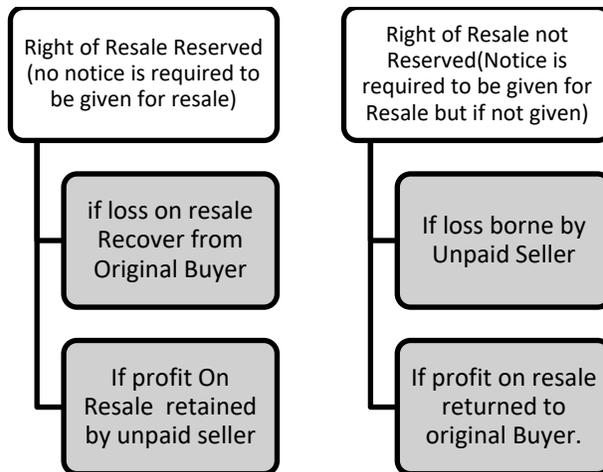
Right of SIT

- The unpaid seller's right of stoppage is provided in Section 50 of the Sale of Goods Act, which provides that where the buyer becomes insolvent and the unpaid seller has parted with the possession of the goods, he can stop the goods in transit until the price is paid or tendered to him.
- The right of stoppage can be exercised by the unpaid seller *only* for the payment of the price.
- Where by exercising the right of stoppage in transit, the unpaid seller regains the possession of the goods, then unpaid seller's right of lien revives.
- The unpaid seller's right of stoppage in transit is lost, when the transit comes to an end.
- This right can be exercised only if following conditions are fulfilled:
 - a) seller unpaid
 - b) seller parted with the possession
 - c) goods must be in Transit
 - d) Buyer must have become insolvent.
- Important point to be noted: **For exercising Right of lien Buyer may or may not be insolvent but for exercising Right of SIT buyer must be insolvent.**

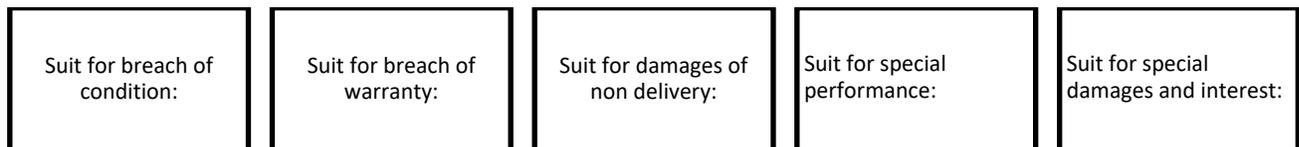
Right of Resale

On buyer's failure to pay the price within a reasonable time, the unpaid seller also has the right to resell the goods in the three circumstances provided in Section 54(2) of the Sale of Goods Act, namely,

- (a) where the goods are of perishable nature,
- (b) where the unpaid seller has exercised his right of lien or stoppage in transit and give notice to the buyer of his intention to resell the goods, and
- (c) where the unpaid seller has expressly reserved his right of resale.



Rights of Buyer Against the Unpaid Seller



Auction sale

The goods are sold to the higher bidder. The seller may notify that the sale be subject to reserve price or upset price below which the goods will not be sold even to the highest bidder.

The sale is completed when the auctioneer announces it by the fall of hammer or in other customary manner. Till such completion any bidder can revoke his bid.

Where a seller expressly reserves his right to bid, he may do so either by him self or appointing a person to bid on his behalf. Where a seller does not expressly reserve his right to bid, the buyer has an option to treat the sale as fraudulent. Further, he can appoint only one agent to bid on his behalf.

PRETENDED BIDDING

If the seller appoints puffers (people who do not intend to purchase the goods but make bids in order to rise the bid in the auction) to bid in the sale, **sale is voidable at the option of the buyer.**

KNOCK OUT AGREEMENT

It is an agreement between the bidders not to bid against each other. Such agreement are made by the bidders with a view to prevent competition among them. Then there is an agreement that only one of them will bid and the goods so purchased will be disposed off privately among themselves. **Such agreement is valid and not illegal.**

DAMPING

It is an unlawful act by which an intending buyer is prevented from bidding
Damping is illegal and the auctioneer has a right to withdraw goods from the auction sale in case where damping is observed.

SOME OF THE IMPORTANT SECTIONS OF THE SALE OF GOODS ACT, 1930

Sec 4	Contract of Sale
Sec 2 (7)	Goods
Sec 12 (2)	Condition
Sec 12 (3)	Warranty
Sec 16	Caveat Emptor
Sec 27, 28, 30	Sale by Non-owners
Sec 33 to 39	Delivery
Sec 45	Unpaid Seller
Sec 64	Auction Sale

PROBLEM 1

State whether each of the following transaction is a contract of sale under the Sale of Goods Act, 1930.

- (a) A partner agreed to sell his goods to the firm.
- (b) A partner agreed to buy goods from the firm.
- (c) X is the owner of some goods, but he is not aware of this fact. Y pretends to be the owner of these goods and sells them to X.
- (d) X, Y and Z are joint owners of some furniture and with the consent of Y and Z, the furniture was kept in possession of X. X buys Y's share from him.
- (e) X agreed to sell a set containing 100 new currency notes of ₹ 500 each for ₹ 50,000 to Y.
- (f) X agreed to sell 100 silver coins for ₹ 10,000 to Y.
- (g) X agreed to sell 100 shares for ₹ 10,000 to Y.
- (h) X agreed to sell his building for ₹ 1,00,000 to Y.
- (i) X agreed to sell the goodwill of his proprietorship firm for ₹ 1,00,000 to Y.
- (j) X agreed to transfer some jewellery to his prospective wife Mrs. Kajol on account of love and affection.
- (k) X agreed to exchange with Y 100 kg of rice (valued at ₹ 20 per kg) for 200 kg of wheat (valued at ₹ 10 per kg).
- (l) X agreed to exchange with Y 100 kg of rice (valued at ₹ 20 per kg) for 200 kg of wheat (valued at ₹ 12 per kg and pay the difference in cash.
- (m) X agreed to pledge his goods valued at ₹ 1,00,000 with Y.
- (n) X engaged an artist to paint a portrait, canvas and other materials were to be supplied by A to painter.
- (o) X agreed to buy a painting from an artist.
- (p) Supply of wagons or coaches on the under frame supplied by the Railways.
- (q) X delivered a manuscript to Y for printing. Y agreed to use his own ink and paper for printing the book.
- (r) X supplied a piece of cloth to a tailor to make a suit for him. The tailor agreed to supply the lining material and buttons.

- (s) Supply of food by a hotel company to its resident customers, where no rebate is allowed if food is not taken by the customers.
- (t) X sold a car to Y, on the payment of ` 6,000 per month for 36 months at the end of which the ownership of the car will be transferred to Y. It was agreed that X can recover the car if Y makes a fault.

Solution: Section to which the given problem relates: Section 4.

DECISION AND REASON

Case	Decision	Reason
(a)	Yes	because there are two distinct parties-the firm being buyer and the partner being seller.
(b)	Yes	because there are two distinct parties-the firm being seller and the partner being buyer.
(c)	No	because there are not two distinct parties-buyer and seller. A person cannot buy his own goods. [Leading case: Bell v. Lever Bros Ltd.]
(d)	Yes	because a part-owner may sell to another part-owner as per the express provision of Section 4.
(e)	No	because money has been specifically excluded from the definition of 'goods'. Hence, the new currency notes cannot be the subject-matter of the contract of sale.
(f)	Yes	because old rare coins can be the subject-matter of the contract of sale. The term 'goods' excludes money which means current money and not old rare coins.
(g)	Yes	because shares can be the subject-matter of the contract of sale. The term 'goods' specifically includes stock and shares.
(h)	No	because immovable property cannot be the subject-matter of the contract of sale of goods. The immovable property does not fall in the definition of the term 'goods'.
(i)	Yes	because goodwill can be the subject-matter of the contract of sale. The term 'goods' includes goodwill as well.
(j)	No	because the consideration is not money but love and affection. Thus, it amounts to a gift and not sale.
(k)	No	because the consideration is not money but goods. Thus, it amounts to a barter and not sale.
(l)	Yes	because there is nothing in law to prevent the consideration from being partly in money and partly in goods. [Leading case: Shelden v. Cox]
(m)	No	because the property involved in this case is a special property and not general property.
(n)	No	because it is a contract for work and labour and not contract of sale. In this

		case rendering of service and exercise of skill is the essence of contract and the delivery of the goods is merely ancillary to the contract. [Leading case: Robinson v. Graves]
(o)	Yes	because it is contract of sale. In this case, delivery of the goods is the essence of contract.
(p)	No	because it is a contract of work and labour and not a contract of sale. In this case, rendering of service and exercise of skill is the essence of contract and the delivery of the goods is merely ancillary to the contract.
(q)	No	because it is contract of work and labour and not a contract of sale. In this case, rendering of service and exercise of skill is the essence of contract and the delivery of the goods is merely ancillary to the contract.
(r)	No	because it is contract of work and labour and not a contract of sale. In this case rendering of service and exercise of skill is the essence of contract and the delivery of the goods is merely ancillary to the contract.
(s)	No	because supply of food is essentially in the nature of service and not a transaction of sale because there is an indivisible contract of multiple services. [Leading case: Associated Hotels of India v. Excise and Taxation officer]
(t)	Yes	because X did not have any option to return, but was under compulsion to buy. Hence, it is not a hire purchase agreement. [Leading case: Lee v. Butler]

PROBLEM 2

State whether the following contracts of sale amount to sale or an 'agreement to sell'.

Case (a): X entered into a contract for sale of the entire crop of rice that would yield on his farm.

Case (b): A railway administration entered into a contract for sale of coal-ash that might accumulate during the period of contract.

Case (c): X entered into a contract for sale of some goods in a particular ship to be delivered on the arrival of the ship.

Case (d): X entered into a contract for sale of a painting only if Z, its present owner, sells it to him.

Solution:

	Cases (a) and (b)	Cases (c) and (d)
Relevant Section	Section 6(3)	Section 6(2)
Decision and Reason	The contract amounted to an agreement to sell because the subject matter of the contract is future goods which can be the subject-matter of an agreement to sell only.	The contract amounted to an agreement to sell because the subject matter of the contract is contingent goods which can be the subject-matter of an agreement to sell only.

PROBLEM 3

X agreed to sell to Y a parcel of 700 bags of groundnuts lying in his godown. Unknown to X, 109 bags had been stolen at the time of contract. X tendered delivery of 591 bags. Y declined to accept. State the legal position.

Solution:

Relevant Section	Section 7
Decision	The contract of sale has become void and thus, Y cannot be compelled to accept 591 bags.
Reason	There was a contract for sale of an indivisible lot of specific goods and some goods are destroyed at the time when the contract was made without the knowledge of the seller.

PROBLEM 4

X agreed to sell a horse to Y on condition that Y will keep it for 10 days on trial basis and have the option to return on the expiry of 10 days, if he does not find it suitable. However, the horse dies on the third day, without any fault of either the seller or buyer. State the legal position.

Solution:

Relevant Section	Section 8
Decision	The agreement to sell has become void and thus, the seller could not recover the price from the buyer.
Reason	There was an agreement to sell specific goods which are destroyed before it becomes a sale without any fault of seller or buyer.

SOME MORE QUESTIONS FOR WRITTEN PRACTICE BASED ON SOGA**QUESTION 1:**

Write any four exceptions to the doctrine of Caveat Emptor as per the Sale of Goods Act, 1930.

ANSWER

Caveat Emptor: In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

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

- 1. Fitness as to quality or use:** Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose [Section 16 (1) of the Sale of goods Act, 1930].
- 2. Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose [Section 16(1)].
- 3. Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
- 4. Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Section 16(2)].
- 5. Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample [Section 17].
- 6. Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Section 15].
- 7. Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Section 16(3)].

8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

QUESTION 2:

Explain any six circumstances in detail in which a non-owner can convey better title to the bona fide purchaser of goods for value under the Sale of Goods Act, 1930.

OR

“*Nemo Dat Quod Non Habet*” – “None can give or transfer goods what he does not himself own.” State the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

ANSWER

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

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

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

- (2) **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.
- (3) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (**Section 29**).

- (4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid [**Section 30(1)**].
- (5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [**Section 30(2)**].

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

- (6) **Effect of Estoppel:** Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
- (7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [**Section 54 (3)**].
- (8) **Sale under the provisions of other Acts:**
- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [**Section 169 of the Indian Contract Act, 1872**]
 - (iii) A sale by pawnee can convey a good title to the buyer [**Section 176 of the Indian Contract Act, 1872**]

QUESTION 3:

Mr. P was running a shop selling good quality washing machines. Mr. Q came to his shop and asked for washing machine which is suitable for washing woollen clothes. Mr. P showed him a particular machine which Mr. Q liked and paid for it. Later on, when the machine was delivered at Mr. Q's house, it was found that it was wrong machine and also unfit for washing woollen clothes. He immediately informed Mr. P about the delivery of wrong machine. Mr. P refused to

exchange the same, saying that the contract was complete after the delivery of washing machine and payment of price. With reference to the provisions of Sale of Goods Act, 1930, discuss whether Mr. P is right in refusing to exchange the washing -machine?

ANSWER

According to Section 15 of the Sale of Goods Act, 1930, whenever the goods are sold as per sample as well as by description, the implied condition is that the goods must correspond to both sample as well as description. In case the goods do not correspond to sample or description, the buyer has the right to repudiate the contract.

Further under Sale of Goods Act, 1930 when the buyer makes known to the seller the particular purpose for which the goods are required and he relies on his judgment and skill of the seller, it is the duty of the seller to supply such goods which are fit for that purpose.

In the given case, Mr. Q has informed to Mr. P that he wanted the washing machine for washing woollen clothes. However, the machine which was delivered by Mr. P was unfit for the purpose for which Mr. Q wanted the machine.

Based on the above provision and facts of case, we understand that there is breach of implied condition as to sample as well as description, therefore Mr. Q can either repudiate the contract or claim the refund of the price paid by him or he may require Mr. P to replace the washing machine with desired one.

QUESTION 4:

When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?

ANSWER

A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

- (i) the goods have been sold without any stipulation as to credit;
- (ii) the goods have been sold on credit, but the term of credit has expired;
- (iii) the buyer becomes insolvent.

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

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

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

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

QUESTION 5:

Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

ANSWER

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.