

Arjun Chhabra  
(CS LLB LLM)  
62 62 62 143 8 | 9552 52 143 8  
<https://www.arjunchhabratutorial.com/>



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**CMA INTER LAW REVISION NOTES****Important Topics/Questions/Sections****Sale of Goods Act, 1930****Question 1:**

How would you differentiate between contract of sale and agreement to sell? **[Dec 23 - 7 Marks (22)] [MQP Dec 25 Set 1 - 7 Marks]**

**Answer:**

<b>Basis</b>	<b>Contract of sale</b>	<b>Agreement to sell</b>
<b>Transfer of property</b>	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time subject to certain conditions to be fulfilled.
<b>Type of contract</b>	It is an executed contract.	It is an executory contract.
<b>Type of goods</b>	Sales takes place only for existing and specific goods.	Future and contingent goods.
<b>Risk of loss</b>	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer.
<b>Breach of contract</b>	The seller can sue the buyer for price and for damages in case of breach by the buyer.	The seller can sue for damages only in case of breach by the buyer.
<b>General and particular property</b>	It gives buyer to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against the seller to sue for damages.
<b>Insolvency of the buyer</b>	In the absence of lien over the goods the seller is to return the goods to the official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
<b>Insolvency of the seller</b>	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee.	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

**Question 2:**

Explain the different type of Implied conditions. **[June 23 - 8 Marks (22)]**

**Answer:**

**Implied conditions are of the following types.**

**i) Condition as to title [Section 14(a)]:** In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is 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.

**ii) Sale by description [Section 15]:** 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. Goods are sold by description when they are described in the contract, and the buyer contracted relying on such description of goods by the seller.

**iii) Condition as to quality or fitness [Section 16]:** As per Sec 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of Caveat Emptor which means „let the buyer beware“

**iv) Sale by sample [Section 17]:** 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.

In the case of a contract for sale by sample there is an implied condition –

- o That the bulk shall correspond with the sample in quality.
- o That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- o That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

**Question 3:**

What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule? **[Dec 17 - 8 Marks (16)] [Model Question Paper Set 1 – Dec 23 – 7 Marks]**

**Answer:**

**Doctrine of Caveat Emptor:**

The term "caveat emptor" is a Latin word which means "let the buyer beware." This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires.

If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose.

The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "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".

It is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

The principle was applied in the case of *Ward v. Hobbs*, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

**However, there are some exceptions to Section 16 which are as under:**

**a)** Where the buyer, expressly or by implication,

- makes it 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 judgment, 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 be fit for such purpose.
- However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.

**b)** 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.
- However, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.
- In order to apply the implied condition as to merchantability the following requirements must be satisfied:
  - i) the **seller should be dealer in goods of that description**;
  - ii) the **buyer must have not opportunity to examine the goods** or there must be some **latent defect** in the goods which would not be apparent on reasonable examination of the same.

**c)** An implied warranty or condition as to quality or fitness for a particular purpose may be **annexed by the usage of trade**. In some cases, the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased.

**For example**, if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly, if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.

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

**Question 4:**

What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected? **[Dec 17 - 5 Marks (12)]**

**Answer:**

**Destruction of Goods-Consequences:**

(I) In accordance with the provisions of the Sale of Goods Act. 1930 as contained in **Section 7**,

- a **contract for the sale of specific goods is void**
- if at the time when the contract was made;
- the goods without the knowledge of the seller,
- perished or become so damaged
- as no longer to answer to their description in the contract,
- then the **contract is void abinitio**.
- This section is based on the rule that whether **both the parties** to a contract are under a **mistake** as to a matter of fact essential to a contract, the act is void.

(II) In a similar way **Section 8** provides that

- **an agreement to sell specific goods becomes void**

- if 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 agreement
- before the risk passes to the' buyer.
- This rule is also based on the **ground of impossibility** of performance as stated above.

It may however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods or generic goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

**Question 5:**

How can you apply the implied conditions in a contract of sale by sample. Discuss your answer with the appropriate examples and reference to the law. **[Model Paper – Set 2 – June 23 – 8 Marks]**

**Answer:**

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. In the case of a contract for sale by sample there is an implied condition –

- That the **bulk shall correspond with the sample in quality.**
- That the **buyer shall have a reasonable opportunity of comparing the bulk with the sample.**
- That the goods shall be **free from any defect**, rendering them un-merchantable, which would **not be apparent on reasonable examination of the sample.**

**Example:** David sold Indian variant of sunflower seeds at his shop and sold it in bulk for who ever wanted to buy the same. Tatiana tested the sample of the seeds at David's shop and decided to order it in bulk. However, when David sent the seeds in bulk, Tatiana decided to sow the seeds. Months later Tatiana discovered that the seeds were of Swedish variant and not the Indian variant that she has requested for. Tatian now wanted full refund for the seeds that were delivered to her by David. David is now bound to either reimburse her the whole amount or give her the quantity of Swedish variant that she requested for.

In case of **eatables and provisions**, in addition to the implied condition as to merchantability, there is another implied condition that the **goods shall be wholesome.**

**Question 6:**

How condition is different from warranty under Sales of Goods Act, 1930? Under what circumstances condition can be treated as warranty? **[June 25 - 7 Marks]**

**Answer:**

1. Under Section 12(2) of the Sales of Goods Act, 1930, 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. A condition in a contract of sale of goods is of fundamental nature for breach of which buyer can repudiate the contract.

2. Under Section 12(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.

Generally, the following are the differences between condition and warranty:

Condition	Warranty
A condition is a stipulation which is essential to the main purpose of the contract	A warranty is a stipulation which is collateral to the main purpose of the contract
The aggrieved party can repudiate the contract of sale in case there is a breach of a condition.	The aggrieved party can claim damages only in case of breach of warranty.
A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty cannot be treated as a breach of condition.

#### Question 7:

Who is an unpaid seller? Discuss about the rights of an unpaid seller against goods? (7) PTP  
16 Set 1

#### Answer:

According to Section 45(1), the seller of the goods is deemed to be 'unpaid seller' within the meaning of this Act-

- when the whole of the price has not been paid or tendered;
- 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;

Section 45(2) defines the term 'seller' as including 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.

#### Rights of an Unpaid Seller against the Goods

According to Section 46, an unpaid seller's right against the goods are:

- A lien or right of retention
- The right of stoppage in transit.
- The right of resale.
- The right to withhold delivery

**Right of Lien [Sections 47-49 and 54]:** An unpaid seller who is in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the payment or tender of the price in cases where:

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

The lien depends on physical possession. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

**Examples:** a) Rajnish sold his car to Manish under a contract. However, Manish gave Rajnish a cheque for the amount due. However, Manish became insolvent and filed for bankruptcy. Since the cheques would not get encashed anymore, Rajnish withheld the car by exercising his right of lien until the payment under the contract of sale was made for the same.

b) XYZ Co. Ltd. manages the Haldia Port. They have constructed a godown on their wharf to store goods. Diana Ship came to the wharf and alighted their goods. Mr. Prem Bhageria had to claim the goods from the wharf. However, Mr. Bhageria did not turn up on the day the ship arrived. Therefore, XYZ Co. Ltd. kept the consignment of goods in their store room. After 3 months, Mr. Bhageria came to claim the goods, however, XYZ Co. Ltd. asked Mr. Bhageria to pay Rs.20 Lakhs in rent for the store room facility utilized by the goods. Mr. Bhageria refused to pay the same. XYZ Co. Ltd. then refused to release the goods to Mr. Bhageria by exercising their right of lien over the goods.

**A lien is lost –**

- a) 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 of the goods;
- b) When the buyer or his agent lawfully obtains possession of the goods;
- c) By waiver of his lien by the unpaid seller

**Stoppage in transit [Sections 50-52] :** The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment or tender of the price.

The right to stop goods is available to an unpaid seller:

- when the buyer becomes insolvent; and
- the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

- a) If the buyer obtains delivery before the arrival of the goods at their destination;
- b) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;
- c) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the re-delivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

**Right of re-sale [Section 54]:**

The unpaid seller may re-sell:

- where the goods are perishable;
- where the right is expressly reserved in the contract;
- where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

**Example:** Ram contracted with Shyam to buy 50 litres of Milk from Shyam on 16th March, 2020 for Rs. 100 per litre. However, Ram failed to claim the consignment on the said date. Shyam runs the risk of getting the milk spoiled. Ram failed to claim the consignment until 20<sup>th</sup> March, 2020 and Shyam had to sell the same to Dham. Shyam is justified in doing so even though he had a valid contract with Ram with respect to the same milk.

**Rights to withhold Delivery**

If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

**Question 8:**

Under which circumstances can an unpaid seller exercise his right of lien? Distinguish between right of lien and right of stoppage of goods in transit, under the Sale of Goods Act, 1930. **[June 17 - 6 Marks (12)]**

**Answer:**

- (i) **Section 47** of the Sale of Goods Act, 1930 lays down cases in which an **unpaid seller is entitled to lien**. They are as follows:
- (ii) Where **goods have been sold without any stipulation as to credit**.
- (iii) Where **goods have been sold on credit but the term of credit expired**, or
- (iv) Where the **buyer becomes insolvent**.

Distinction between right of lien and right of stoppage of goods in transit

(1) The essence of a right of lien is to **retain possession** whereas the right of stoppage in transit is right to **regain possession**.

(2) Seller should be in possession of goods under lien while in stoppage in transit

(i) Seller should have parted with the possession

(ii) possession should be with a carrier and (iii) buyer has not acquired the possession.

(3) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.

(4) **Right of stoppage in transit begins when the right of lien ends**. Thus, the end of the right of lien is the starting point of the stoppage in transit.

**Question 9:**

Discuss the remedies available to buyer against seller for breach of contract. **[June 23 - 9 Marks (16)] [Dec 21 - 6 Marks (16)]**

**Answer:**

**A buyer also has certain remedies against the seller who commits a breach. These are as under:**

**1. Suit for Damages for Non-Delivery [Section 57]-** When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of non-delivery.

**2. Suit for price-** Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

**3. Suit for specific performance [Section 58]-** When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare painting, a unique piece of jewellery, etc.

**4. Suit for Breach of Warranty [Section 59]-** Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may, a) Set up the breach of warranty in extinction or diminution of the price payable by him, or b) Sue the seller for damages for breach of warranty.

**5. Repudiation of contract before the due date [Section 60] --** Section 60 provides that 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 or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

**6. Suit for interest--** The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed. In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

#### **Transfer of Title by Non-Owners of Goods**

As per section 27 of the Sale of Goods Act, 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 conduct precluded from denying the seller's authority to sell.

A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner.

"Nemo dat quod non habet" means that no one can give what he himself does not have. It means a non-owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce, there must be some safeguard available to a person who acquired such goods in good faith for value.

Accordingly, the Act provides the following exceptions to this doctrine which seek to protect the interest of bona fide buyers:

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

- The person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner
- The person must sell the goods while acting in the ordinary course of business.
- The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.

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

**3. Sale by a joint owner:** As per Section 28, if there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception, following conditions must be fulfilled:

- One of the several owners must be in sole possession of the goods.
- The joint owner must have permission of co-owners.
- The buyer must purchase goods in good faith.
- The buyer should not have notice regarding the matter that the seller has no authority to sell.

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

**5. Sale by seller in possession after sale:** Under Section 30(1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

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

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

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

- i. Under Section 169 of the Indian Contract Act, a finder of the goods has the right to sell.
- ii. Under Section 176 of the Indian Contract Act, a pawnee of goods has the right to sell the
- iii. Goods pawned subject to satisfying some conditions.
- iv. In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for dues and duties remaining unpaid etc.
- v. A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

### **Auction Sale**

Section 64 provides that in the case of a sale by auction-

- 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;
- 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;

• 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;

- 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;
- the sale may be notified to be subject to a reserved or set up price;
- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

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