

Sales of Goods Act, 1930

Unit - I Formation of Contract of Sale

Q. No.	Questions & Answers
1.	<p>Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.</p> <p>a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.</p> <p>b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?</p> <p style="text-align: right;">(Nov 2021 RTP, June 2022, Dec 2023 RTP, MTP Dec 2022)</p>
Ans.	<p>As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale , the <u>property in the goods is transferred from the seller to the buyer</u>, the contract is called a <u>sale</u>, but where the transfer of the property in the goods is to take place at a <u>future time or subject to some condition thereafter to be fulfilled</u>, the contract is called an <u>agreement to sell</u> and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.</p> <p><u>Facts of the case:</u></p> <p>Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.</p> <p><u>Conclusion:</u></p> <p>a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid.</p> <p>b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika</p>
2.	<p>Classify the following transaction according to the types of goods they are:</p> <ol style="list-style-type: none"> 1) A wholesaler of cotton has 100 bales in the godown. He agrees to sell 50 bales, and these bales were selected and set aside. 2) A agrees to sell to B one packet of sugar out of the one hundred packets lying in his shop. 3) T agrees to sell to S all the apples which will be produced in his garden this year. <p style="text-align: right;">(ICAI SM, RTP Nov. 2019, May 2022 RTP, MTP June 2023)</p>
Ans.	<p>1) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales, and these bales were selected and set aside. On selection, the</p>

	<p>goods become ascertained. In this case, <u>the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified</u> and agreed upon after the formation of the contract.</p> <p>2) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, <u>it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.</u></p> <p>3) T agrees to sell S all the apples which will be produced in his garden this year. It is a contract of sale of <u>future goods, amounting to 'an agreement to sell.</u></p>
3.	<p>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? (RTP Nov. 2020, June 2022, Dec 2023 RTP)</p>
Ans.	<p>Destruction of Goods-Consequences:</p> <p>1) As per the provision of the Sale of Goods Act, 1930, a contract for the <u>sale of specific goods is void</u> if at the time when the contract was made, goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract. The <u>contract becomes void ab initio.</u></p> <p>2) As per the provision of the Sale of Goods Act, <u>an agreement to sell specific goods</u> becomes void if subsequently, without any <u>fault of the seller or buyer</u>, goods are perished or become so damaged as no longer to their description before the risk passes to the buyer.</p> <p>3) The above two provisions apply only to <u>specific goods and not to unascertained goods.</u> If there is an agreement to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods, which are in possession of the seller, will not relieve him of his <u>obligation to deliver the goods.</u></p>
4.	<p>X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? (ICAI SM, Nov 2021 RTP, June 2023)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, Payment of the price by the buyer is <u>an important ingredient of a contract of sale.</u> If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will <u>rather be a valid contract</u>, and the buyer shall pay a reasonable price.</p> <p>Facts of the case: X and Y have entered into a contract for the sale of the car, but they did not fix the price of the car. X refused to sell the car to Y on this ground.</p> <p>Conclusion: X and Y have entered into a contract for the sale of the car, but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X, and X can <u>recover a reasonable price of the car from Y.</u></p>
5.	<p>State the essential elements of a contract of sale under the Sale of Goods Act, 1930 briefly. (RTP May 2021, RTP May 2020)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, the following elements must co-exist so as to constitute a contract of sale of goods: -</p> <ol style="list-style-type: none"> 1) There must be <u>at least two parties.</u> 2) The subject matter of the contract must <u>necessarily be goods.</u> 3) A price in money (not in-kind) should be <u>paid or promised.</u> 4) A <u>transfer of property in goods</u> from the seller to the buyer must take place. 5) A contract of sale must be <u>absolute or conditional.</u> 6) All other <u>essential elements of a valid contract</u> must be present in the contract of sale.
6.	<p>Explain the term "Delivery, and it forms" under the Sale of Goods Act, 1930. (May 2018, MTP Dec 2022)</p>

Ans.	As per the provision of the Sale of Goods Act, 1930, delivery means voluntary <u>transfer of possession</u> from one person to another. Delivery of goods may be by doing anything which has the effect of putting the goods into the possession of the buyer or any person authorized to hold them on his behalf. Forms of delivery: 1) Actual Delivery: When the goods are <u>physically delivered</u> to the buyer. 2) Constructive Delivery: When it is affected <u>without any change</u> in the custody or actual possession of the goods. 3) Symbolic Delivery: When there is a delivery of a thing in <u>token of a transfer</u> of something else, i.e., delivery of goods in the course of transit may be made by handing over the documents of title to goods like a bill of lading, railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to the buyer.
7.	A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within the next two months. Unknown to the parties, the ship has already sunk. Does B have any right against A under the Sales of Goods Act, 1930? (ICAI SM, May 2022 RTP)
Ans.	As per the provision of the Sale of Goods Act, 1930, where there is an agreement to sell specific goods and the goods without <u>any fault of either party perish, damaged or lost</u> , the agreement is thereby avoided. This provision is based on the ground of <u>supervening impossibility of performance</u> which makes a contract void. Facts of the case: A agrees to sell to B 100 bags of sugar arriving on a ship from Australia to India within the next two months. The parties are not known that the ship has sunk. Conclusion: In the present case, A and B has an agreement for specific goods. The goods are lost because of the sinking of the ship before the property or risk passes to the buyer. The loss of goods is not due to the fault of either party. So, <u>all the conditions required to treat it as a void contract are fulfilled</u> in the above case. So, B does not have any right against A.
8.	Define Ascertained and Unascertained Goods with an example each. (Nov. 2018)
Ans.	Ascertained Goods are those goods that are <u>identified</u> in accordance with the <u>agreement</u> after the <u>contract of sale</u> is made. When from a large number of <u>unascertained goods</u> , the number or quantity contracted for is <u>identified</u> , such identified goods are called <u>ascertained goods</u> . Example: A person goes to a vegetable market and demand 2kgs of tomatoes. When the seller <u>appropriates</u> 2kgs of tomatoes in accordance with the agreement, the goods become <u>ascertained</u> . Unascertained goods: The goods which are <u>not specifically identified</u> or <u>ascertained</u> at the time of the making of the contract are known as ' <u>unascertained goods</u> '. Example: X agrees to sell Y one bag of wheat out of hundreds of bags placed in his/her godown, which is the sale of <u>unascertained goods</u> because it is <u>not known</u> which bag is to be delivered.
9.	A agrees to buy a new TV from a shop keeper for ₹30,000 payable partly in cash of ₹20,000 and partly in exchange for an old TV set. Is it a valid contract of sale of goods? Give reasons for your answer. (ICAI SM)
Ans.	As per the provision of the Sale of Goods Act, 1930, goods should be exchanged for money. If the goods are <u>exchanged for goods</u> , it will not be called a sale. It will be considered as a barter. However, a contract of sale of goods for <u>a fixed price payable</u> partly in goods and partly in cash is held to be a valid contract of sale. Facts of the case:

	<p>The new TV set is agreed to be sold for ₹30,000 and the price is payable partly in exchange for the old TV set and partly in cash of ₹20,000.</p> <p>Conclusion: In the present case, the new TV set is agreed to be sold for ₹30,000 and the price is payable partly in exchange for the old TV set and partly in cash of ₹20,000. So, in this case, it is a valid contract of sale.</p>		
10.	Distinguish between Sale' and 'Hire Purchase' under the Sale of Goods Act, 1930. (Dec 2021)		
Ans.	Basis of Difference	Sale	Hire Purchase
	Time of passing the property	Property in the goods is transferred to the buyer immediately <u>at the time of the contract.</u>	The property in goods passes to the hirer upon <u>payment of the last instalment.</u>
	Position of the party	The position of the buyer is that of the <u>owner of the goods.</u>	The position of the hirer is that of a <u>bailee</u> until he pays the last instalment.
	Termination of contract	The buyer cannot terminate the contract and is <u>bound to pay</u> the price of the goods.	The hirer may, if he so likes, terminate the contract by <u>returning the goods</u> to their owner without any liability to pay the <u>remaining instalments.</u>
	Burden of risk of insolvency of the buyer	The seller takes the <u>risk</u> of any loss resulting from the <u>insolvency of the buyer.</u>	The owner takes <u>no such risk</u> , for if the hirer fails to pay an instalment, the owner has the <u>right to take back the goods.</u>
	Transfer of title	The buyer can <u>pass a good title</u> to a <u>bona fide purchaser</u> from him.	The hirer <u>cannot pass any title</u> even to a bona fide purchaser.
	Resale	The buyer in the sale can <u>resell the goods.</u>	The hire purchaser <u>cannot resell</u> unless he has paid all the instalments.
11.	State the difference between Sale and Agreement to sell. (June 2023 RTP)		
Ans.	The differences between Sale and Agreement to sell are as follows:		
	Basis of difference	Sale	Agreement to sell
	Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
	Nature of contract	It is an executed contract i.e. contract for which consideration has been paid.	It is an executory contract i.e. contract for which consideration is to be paid at a future date.
	Remedies for breach	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
	Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
	Burden of risk	Risk of loss is that of buyer	Risk of loss is that of seller.

		since risk follows ownership.	
	Nature of rights	Creates Jus in rem means right against the whole world.	Creates Jus in person am means rights against a particular party to the contract.
	Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
	In case of insolvency of seller	The official assignee will not be able to take over the goods but will recover the price from the buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
	In case of insolvency of buyer	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.
12.	<p>Avyukt purchased 100 Kgs of wheat from Bhaskar at ₹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.</p> <p style="text-align: right;">(June 2023 RTP)</p>		
Ans.	<p>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.</p> <p>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.</p>		

Unit - II Condition and Warranties

Q. No.	Questions & Answers
1.	<p>Ms Geeta went to local rice and wheat wholesale shop and asked for 100 Kgs of Basmati Rice. The shopkeeper quoted the price of the same as ₹125 per Kg, to which she agreed. Ms Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon the purchase. The shopkeeper showed her a bowl of rice as a sample. The sample exactly corresponded to the entire lot.</p> <p>The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice, but it contained a mix of long and short grains.</p> <p>The cook, on opening the bags, complained that if the dish is prepared with these rice would not taste the same as the quality of rice was not as per the requirement of the dish.</p> <p>Now, Ms Geeta wants to file a suit of fraud against the seller, alleging he of selling a mix of the good and cheap quality of rice. Will she be successful?</p> <p>Decide the fate of the case and options open to the buyer for grievance redressal.</p> <p>What would be your answer in case Ms Geeta specified her exact requirement as to the length of rice?</p> <p style="text-align: right;">(July 2021, Nov. 2019, ICAI SM, Nov 2021 RTP, Nov 2022 RTP, Dec 2023 RTP)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an <u>implied condition</u>:</p> <ol style="list-style-type: none"> 1) the bulk shall <u>correspond with the sample in the quality</u>; 2) the buyer shall have a <u>reasonable opportunity of comparing</u> the bulk with the sample. <p>Also, the goods shall be <u>free from any defect</u> rendering them un-merchantable, which would not be apparent on a <u>reasonable examination</u> of the sample. This condition is applicable only with regard to defects that <u>could not be discovered</u> by an ordinary examination of the goods. But, if the defects are <u>latent</u>, then the buyer can <u>avoid the contract</u>.</p> <p><u>Facts of the case:</u></p> <p>Ms Geeta went to local rice and wheat wholesale shop and asked for 100 Kgs of Basmati Rice. The shopkeeper quoted the price of the same as ₹125 per Kg, to which she agreed. Ms Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon the purchase. The shopkeeper showed her a bowl of rice as a sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice, but it contained a mix of long and short grains. The cook, on opening the bags, complained that if the dish is prepared with these rice would not taste the same as the quality of rice was not as per the requirement of the dish. Now, Ms Geeta wants to file a suit of fraud against the seller, alleging he of selling a mix of the good and cheap quality of rice.</p> <p><u>Conclusion:</u></p> <p>Mrs Geeta cannot file a suit of fraud against the seller, alleging him of selling a mix of good and cheap quality rice. Since the defect in the rice can be discovered through ordinary examination. Hence, Mrs Geeta does not have any option available for grievance and redressal.</p> <p>If Mrs Geeta specified her exact requirement as to the length of rice, then the sample she was shown must correspond to the bulk in terms of quality and length both. If the quality or length had mismatched the sample, Mrs Geeta would sue the seller for the damages.</p>
2.	<p>What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also, explain, when shall a 'breach of condition' be treated as 'breach of warranty' under the provision of the Sale of Goods Act, 1930?</p> <p style="text-align: right;">(Dec. 2021, RTP May 2021, RTP Nov. 2020, Jan. 2021, MTP June 2023)</p>

Ans.	Difference between Condition and Warranty		
	Basis	Condition	Warranty
	Main purpose	A condition is a stipulation <u>essential</u> to the main purpose of the contract.	A warranty is stipulation <u>collateral</u> to the main purpose of the contract.
	Breach	In the breach of the condition, the <u>contract can be repudiate or the damages can be claimed or both.</u>	Breach of warranty, the <u>aggrieved party can claim damages only.</u>
Treat	Breach of condition may be treated as a <u>breach of warranty.</u>	A breach of warranty cannot be treated as a <u>breach of condition</u>	
	<p>According to the provision of the Sale of Goods Act, 1930, a breach of condition may be treated as a breach of the warranty in the following circumstances:</p> <p>i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the <u>buyer may waive the condition.</u></p> <p>ii) <u>Where the buyer elects to treat the breach of condition as a breach of warranty.</u></p> <p>iii) Where the contract of sale is non-severable, and <u>the buyer has accepted the whole goods or any part thereof.</u></p> <p>iv) Where the fulfilment of any condition or warranty is <u>excused by law by reason of impossibility</u> or otherwise.</p>		
3.	<p>State the various essential elements involved in the sale of unascertained goods and their appropriation.</p> <p style="text-align: right;">(Nov. 2019, May 2018, Dec 2022, Dec 2023 RTP)</p>		
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, appropriation of goods involves the <u>selection of goods with the intention of using them in the performance of the contract</u> and with the <u>mutual consent of the buyer and seller.</u> The essentials are:</p> <ol style="list-style-type: none"> 1) There is a contract for the sale of <u>unascertained or future goods.</u> 2) The goods should conform to the <u>description and quality stated in the contract.</u> 3) The goods must be in a <u>deliverable state.</u> 4) The goods must be <u>unconditionally</u> (as distinguished from an intention to appropriate) <u>appropriated</u> to the contract either by delivery to the buyer or his agent or the carrier. 5) The appropriation must be made by: <ul style="list-style-type: none"> ✓ the seller with the <u>assent of the buyer,</u> or ✓ the buyer with the <u>assent of the seller.</u> 6) The assent may be <u>express or implied.</u> 7) The assent may be given either <u>before or after appropriation.</u> 		
4.	<p>Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her skin as her skin was abnormally sensitive. But she did not make this fact known to the seller, i.e., P. Mrs G filed a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?</p> <p style="text-align: right;">(Dec. 2021, ICAI SM, RTP May 2021)</p>		
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, in a contract of sale, there is <u>no implied condition or warranty as to quality or fitness</u> for any particular purpose of goods. But if the buyer:</p> <ul style="list-style-type: none"> ✓ expressly or impliedly makes known to the seller the <u>particular purpose for which the goods are required,</u> ✓ <u>relies</u> on the seller's skill and judgement, ✓ and the <u>seller sell goods of that description</u> which the buyer wants, then the buyer can make the seller responsible. 		

	<p>Facts of the case: Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her shin as her skin was abnormally sensitive. But she did not make this fact known to the seller, i.e., P. Mrs G filled a case against the seller to recover damages.</p> <p>Conclusion: In the present case, Mrs G purchased the tweed coat without informing P about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. Mrs G cannot treat it as a breach of implied condition as to fitness and quality and has no right to recover damages from the seller.</p>
5.	<p>Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. the goods were not according to the sample. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B and B sued A. Advice B and C the Sale of Goods Act, 1930?</p> <p style="text-align: right;">(ICAI SM, May 2022 RTP, June 2023(M))</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, where a contract of sale is not severable, and the buyer has accepted the goods (wholly or partly), the <u>breach of any condition can only be treated as a breach of warranty</u> and not as a ground for rejecting the goods and treating the contract as repudiated.</p> <p>Facts of the case: Certain goods were sold by sample by A to B, who sold the same goods by sample to C and C by sample sold the goods to D. the goods were not according to the sample. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B, and B sued A.</p> <p>Conclusion: In the present case, D could reject the goods and treat it as a breach of implied condition as to sample. The buyer should be given a reasonable time and opportunity of comparing the bulk with the sample. Whereas C can recover only damages from B and B can recover damages from A. For C and B, it will not be treated as a breach of implied condition as to sample as they have accepted and sold the goods accordingly.</p>
6.	<p>M/s Woodworth & Associates, a firm is dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rosewood, Mango wood, Teakwood, Burma, wood etc.</p> <p>Mr Das, a customer, came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyer's requirements.</p> <p>The carpenter visited Mr Das's house the next day, and he found that the seller has supplied Mango Tree wood which would be most unsuitable for the purpose. The carpenter asked Mr Das to return the wooden logs as they would not meet his requirements.</p> <p>The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr Das and hence could not be resold.</p> <p>i) Explain the duty of the buyer and seller according to the doctrine of "Caveat Emptor". ii) Whether Mr Das would be able to get the money back or the right kind of wood as required serving his purpose?</p> <p style="text-align: right;">(May 2019, ICAI SM, May 2022 RTP)</p>
Ans.	<p>i) As per the provision of the Sale of Goods Act, 1930, 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 <u>goods turnout to be defective</u>, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The <u>seller is not bound to disclose the defects in the goods which he is selling.</u></p>

	<p><u>Duty of the seller according to the doctrine of “Caveat Emptor”</u>: The following exceptions to the Caveat Emptor are the duties of the seller:</p> <ol style="list-style-type: none"> 1) Fitness as to the quality or use. 2) Goods purchased under patent or brand name. 3) Goods sold by description. 4) Goods of Merchantable Quality. 5) Sale by sample. 6) Goods by sample as well as a description. 7) Trade usage. 8) Seller actively conceals a defect or is guilty of fraud. <p>ii) Facts of the case:</p> <p>M/s Woodworth & Associates, a firm is dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rosewood, Mango wood, Teakwood, Burma, wood etc. Mr Das, a customer, came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyer's requirements. The carpenter visited Mr Das's house the next day, and he found that the seller has supplied Mango Tree wood which would be most unsuitable for the purpose. The carpenter asked Mr Das to return the wooden logs as they would not meet his requirements. The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr Das and hence could not be resold.</p> <p>Conclusion:</p> <p>As Mr Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames, but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr Das is entitled to get the <u>money back or the right kind of wood as required serving his purpose</u>. It is the duty of the seller to supply such goods as are reasonably <u>fit for the purpose</u> mentioned by the buyer.</p>
7.	<p>What is an implied warranty, and state the various types of Implied Warranties? (RTP May 2020, May 2019, June 2022)</p>
Ans.	<p>Implied warranties: It is a warranty which the <u>law implies into the contract of sale</u>. In other word, it is the stipulation which has not been included in the contract of <u>sale in express words</u>. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.</p> <p>As per the provision of the Sale of Goods Act, 1930 discloses the following implied warranties:</p> <ol style="list-style-type: none"> 1) <u>Warranty as to undisturbed possession</u>: There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer's possession of the goods is later on disturbed, he is entitled to sue the seller for the breach of the warranty. 2) <u>Warranty as to the non-existence of encumbrances</u>: There is an implied warranty that the goods shall be free from any charge or encumbrances in favour of any third party, which have not been declared or known to the buyer before or at the time the contract is entered into. 3) <u>Warranty as to quality or fitness by the usage of trade</u>: An implied warranty as to quality or fitness for a particular purpose may be attached by the usage of trade. 4) <u>Disclosure of dangerous nature of goods</u>: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable for the damages.

8.	What are the implied conditions under a sale by sample? (RTP Nov. 2019, June 2022, Dec 2023 RTP)
Ans.	As per the provisions of the Sale of Goods Act, 1930, implied conditions under a sale by the sample are: i) there is an implied condition that the <u>bulk shall correspond with the sample in quality</u> ; ii) there is another implied condition that the buyer shall have a <u>reasonable opportunity of comparing the bulk with the sample</u> ; iii) there is further an implied condition of merchantability, as regards <u>latent or hidden defects</u> in the goods which would not be apparent on a reasonable examination of the sample.
9.	What is the doctrine of "Caveat Emptor"? What are the exceptions to the doctrine of "Caveat Emptor"? (Nov. 2020, Nov. 2018)
Ans.	As per the provision of the Sale of Goods Act, 1930, the doctrine of 'Caveat Emptor' means 'Let the buyer beware'. When the seller displays their goods in the open market, it is for the buyers to make proper selection or choice of the goods. If the goods turn out to be defective, the buyer 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. Exceptions to the rule of 'Caveat Emptor': 1) <u>Fitness as to quality or use</u> : 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. 2) <u>Goods purchased under patent or brand name</u> : In a 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. 3) <u>Goods sold by description</u> : Where the goods are sold by description, there is an implied condition that the goods shall correspond with the description. If it is not so, then the seller is responsible. 4) <u>Goods of Merchantable Quality</u> : 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. 5) <u>Sale by sample</u> : Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample. 6) <u>Goods by sample as well as description</u> : 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. 7) <u>Trade Usage</u> : 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. 8) <u>Seller actively conceals a defect or is guilty of fraud</u> : 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.
10.	A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke the buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930? (ICAI SM, Nov 2022 RTP)

Ans.	<p>As per the provision of the Sale of Goods Act, 1930, there is an <u>implied condition as to wholesomeness</u>, which provides that the eatables and other food items must be wholesome, i.e., it must be fit for human consumption.</p> <p>Facts of the case: A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke the buyer's tooth while eating.</p> <p>Conclusion: In the present case, the piece of bread contained a stone that broke the buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as a breach of implied condition as to wholesomeness and can also claim damages from the seller.</p>
11.	<p>X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests 'Santro', and X accordingly buys it from Y. the car turns out to be unfit for turning purposes. What remedy X is having now under the Sale of Goods Act. 1930?</p> <p style="text-align: right;">(ICAI SM)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, a stipulation in a contract of sale can be of two types: Condition or Warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to <u>treat the contract as repudiated</u>.</p> <p>Facts of the case: X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests 'Santro', and X accordingly buys it from Y. the car turns out <u>to be unfit</u> for turning purposes.</p> <p>Conclusion: In this case, the term that the car should be suitable for touring purposes is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car. X is therefore entitled to <u>reject the car and have a refund</u> of the price.</p>
12.	<p>Mr Amit was shopping in a self-service Supermarket. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr Amit would succeed in his claim?</p> <p style="text-align: right;">(RTP May 2020)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who <u>deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality</u>. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used.</p> <p>Facts of the case: Mr Amit was shopping in a self-service Supermarket. He picked up a bottle of cold drink from a shelf. While <u>he was examining the bottle, it exploded in his hand and injured him</u>. He files a suit for damages against the owner of the market on the ground of breach of condition.</p> <p>Conclusion: On an examination of the bottle of cold drink, it exploded and injured the buyer. Mr Amit would <u>succeed in a claim for damages from the owner of the shop</u>.</p>
13.	<p>Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.</p> <p>Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were</p>

	<p>successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:</p> <p>i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.</p> <p>ii) Whether the replacement of damaged tiles be imposed on M/s Makrana Marbles? Explain.</p> <p style="text-align: right;">(Dec 2022)</p>
Ans.	<p>i) Yes, Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e. Mr. K.</p> <p>Duty of Mr. K (the buyer) is that he has to examine the marbles and tiles carefully and should follow the caution given by Mr. J i.e. the seller that tiles can bear only a reasonable weight before laying them in the parking space of his house.</p> <p>Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them.</p> <p>According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.</p> <p>In this case Mr. K has accepted the marbles without examination. Hence, there is no implied condition as regards to defects in marbles. Mr. J can refuse to replace the marble as he has supplied the marble as per the requirement of the buyer i.e., Mr. K.</p> <p>Alternate Answer</p> <p>i) According to doctrine of caveat emptor the buyer cannot hold the seller responsible for defect in goods supplied as it is the duty of the buyer to make a proper selection or choice of the goods. Section 16(1) also provides that there is no implied condition as to quality of fitness of the goods sold for any particular purpose. However, as an exception to this doctrine, the section further provides that if the buyer had made known to the seller the purpose of his purchase; relied on the seller's skill and judgement; and Seller's business is to supply goods of that description then it shall be the duty of the seller to supply such goods as are reasonably fit for that purpose.</p> <p>In the instant case, Mr. K has made known to Mr. J the purpose of his purchase and relied on his skill and judgement. It was the duty of Mr. J to supply the marbles fit for that purpose including for second floor. Since the marbles supplied were not fit for second floor Mr. J is liable to replace the marbles to the extent not fit for that purpose.</p> <p>Duty of Mr. K (the buyer) As per the above doctrine it was the duty of the buyer Mr. K to make known to Mr. J the purpose of his purchase of marbles. He has fully performed his part arranging the visit of Mr. J to the site.</p> <p>Duty of Mr. J (the seller) is that the goods supplied (i.e. tiles and marbles) shall be reasonably fit for the purpose for which the buyer wants them. If Mr. K relied on the skill and judgement of Mr. J he failed to perform his duty by neglecting the request of Mr. K to visit second floor resulting in supplies of unfit marbles for the purpose of Mr. K.</p> <p>Considering the above provisions Mr. J will be liable to replace the marbles not fit for the second floor as Mr. J is bound to the implied condition to supply the marbles as per the requirement of Mr. J when he has made him known about that and relied on his skill and judgement.</p>

	<p>ii) According to the doctrine of Caveat Emptor, it is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought.</p> <p>Here, Mr. J supplied the boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Even though the tiles were laid in the car parking space of Mr. K and got damaged later because of vehicle used for unloading of cement bags were beyond the reasonable weight. Hence, the seller i.e., M/ s Makrana Marbles is not liable as the buyer Mr. K as before laying down the tiles, has to satisfy himself that the tiles will serve the specific purpose i.e., can be used for car parking space only.</p> <p>Therefore, the replacement of the damaged tiles cannot be imposed on M/s Makrana Marbles.</p>
14.	<p>Priyansh orders an iron window to an Iron Merchant for his new house. Iron merchant sends his technician to take the size of windows. The technician comes at the site and takes size of area where window to be fitted. Afterwards, Iron merchant on discussion with his technician intimates Priyansh that cost of the window will be ₹5,000 and he will take ₹1,000 as advance. Priyansh gives ₹1,000 as advance and rest after fitting of window. After three days when technician try to fit the window made by him at the site of Priyansh, it was noticed that the size of window was not proper. Priyansh requests the Iron merchant either to remove the defect or return his advance. Iron merchant replies that the window was specifically made for his site and the defect cannot be removed nor can it be of other use. So, he will not refund the advance money rather Priyansh should give him the balance of ₹4,000. State with reason under the provisions of the Sale of Goods Act, 1930, whether Priyansh can take his advance back?</p> <p style="text-align: right;">(June 2023 RTP)</p>
Ans.	<p>By virtue of provisions of Section 16 of the Sale of Goods Act, 1930, there is an implied condition that the goods should be in merchantable position at the time of transfer of property. Sometimes, the purpose for which the goods are required may be ascertained from the facts and conduct of the parties to the sale, or from the nature of description of the article purchased. In such a case, the buyer need not tell the seller the purpose for which he buys the goods.</p> <p>On the basis of above provisions and facts given in the question, it is clear that as window size was not proper, window was not in merchantable condition. Hence, the implied condition as to merchantability was not fulfilled and Priyansh has the right to avoid the contract and recover his advance money back.</p>
15.	<p>Mr. X, a retailer is running a shop dealing in toys for children. Once, he purchased from a wholesaler number of toy cars in a sale by sample. A boy came to the retailers shop to buy few toys. The retailer sold one of those toy cars to a boy. When the boy tried to play with it, it broke into pieces because of a manufacturing defect therein and the boy was injured. Mr. X, the retailer was held bound to pay compensation to the boy because the child got injured due to the defective toy in his shop. Due to this incident, the retailer in his turn sued the wholesaler to claim indemnity from him.</p> <p>With reference to the provisions of Sale of Goods Act, 1930 discuss if the retailer can claim compensation from wholesaler?</p> <p style="text-align: right;">(MTP Dec 2022)</p>
Ans.	<p>Condition as to merchantability (Section 16(2) of the Sale of Goods Act, 1930):</p> <p>When goods are sold by description and the seller trades in similar goods, then the goods should be merchantable i.e. the goods should be fit to use or wholesome or for to consume. However, the condition as to merchantability shall consider the following points -</p> <p>i) Right to examine the goods by the buyer. The buyer should be given chance to examine the good.</p>

	<p>ii) The buyer should reject the goods, if there is any defect found in the good. But if the defect could not be revealed even after the reasonable examination and the buyer purchases such goods, then the seller is held liable. Such defects which cannot be revealed by examination are called latent defects. The seller is liable to pay to the buyer for such latent defects in the goods. [Section 17]</p> <p>In the instant case, the retailer can claim indemnity from the wholesaler because it was found that the retailer had examined the sample before purchasing the goods and a reasonable examination on his part could not reveal this latent defect. Under these circumstances, the wholesaler was bound to indemnify the retailer for the loss suffered by the latter.</p>
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Unit - III Transfer of Ownership and Delivery of Goods

Q. No.	Questions & Answers
1.	<p>“A non-owner can convey better title to the bonafide purchaser of goods for value”. Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sale of Goods Act, 1930?</p> <p style="text-align: right;">(Nov. 2020, May 2019, RTP May 2020, ICAI SM, Nov 2021 RTP, MTP dec 2022, MTP June 2023)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, “A non-owner can convey better title to the <u>bonafide purchaser</u> of goods for value” in the following case:</p> <ol style="list-style-type: none"> 1) Sale by a mercantile agent: A sale made by a <u>mercantile agent</u> of the goods for the document of title to goods would pass a good title to the buyer if: <ol style="list-style-type: none"> i) He was in possession of the goods or documents with the <u>consent of the owner</u>. ii) If the sale was made by him when <u>acting in the ordinary course of business</u> as a mercantile agent. iii) The buyer had acted in <u>good faith</u> and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. 2) Sale by one of the joint owners: If one of several <u>joint owners</u> 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 <u>coercion, fraud, misrepresentation or undue influence</u> provided that the contract had not been rescinded until the time of the sale. 4) Sale by one who has actually sold the goods but continues in possession thereof: If a person has sold the goods but <u>continues to be in possession</u> of them or of the documents of title to them, he may sell them to a third person, and if such person obtains delivery thereof in <u>good faith</u> and without the notice of the previous sale, he would have good title to them. 5) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer, with the <u>consent of the seller</u>, obtains possession of the goods, he may <u>sell or pledge or dispose</u> of the goods to the third person. 6) Effect of estoppel: When the owner let the other person sell his goods, and the owner does not deny his authority to sell those goods. 7) Sale by an unpaid seller: When an unpaid seller has exercised his right of <u>lien</u> or <u>stoppage in transit</u> resells the goods, the buyer acquires a good title to the goods as against the original buyer. 8) Sale under the provisions of the other Acts: <ol style="list-style-type: none"> i) Sale by an <u>Official Receiver</u> or <u>Liquidator</u> of the company. ii) Purchase of goods from a <u>finder of goods</u>. iii) A sale by <u>Pawnee</u> can convey a good title to the buyer.
2.	<p>Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to Mr M's house; at the time of opening the packet, he found that it was a table fan. He informed Mr T about the delivery of the wrong fan. Mr T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of the price.</p> <ol style="list-style-type: none"> i) Discuss whether Mr T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930? ii) What is the remedy available to Mr M? <p style="text-align: right;">(RTP May 2021, Jan. 2021, MTP June 2023, ICAI SM (modified))</p>

Ans.	<p>As per the provision of the Sale of Goods Act, 1930, where the goods are <u>sold by sample</u> as well as by description, the implied condition is that the goods supplied shall correspond to both the <u>sample and the description</u>. In case the goods do not correspond to both with the sample or with the description or vice versa or both, the buyer can <u>repudiate the contract</u>. Also, when the buyer makes known to the seller the particular purpose for which the goods are required, and he relies on the judgement or skill of the seller, it is the <u>duty of the seller to supply such goods</u> as are reasonably fit for that purpose.</p> <p>Facts in the case: Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to Mr M's house; at the time of opening the packet, he found that it was a table fan. He informed Mr T about the delivery of the wrong fan. Mr T refused to exchange the same.</p> <p>Conclusion:</p> <ol style="list-style-type: none"> i) In the given case, Mr M had revealed to Mr T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr T was unfit for the purpose for which Mr M wanted the fan, therefore, T cannot refuse to exchange the fan. ii) In the present case, the remedy available to Mr M is that he can either rescind the contract or claim a refund of the price paid by him, or he may require Mr T to replace it with the fan he wanted.
3.	<p>J, the owner of a Fiat car, wants to sell his car. For this purpose, he hands over the car to P, a mercantile agent for sale at a price not less than ₹50,000. The agent sells the car for ₹40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car. Decide giving reasons whether J would succeed.</p> <p style="text-align: right;">(ICAI SM, RTP Nov. 2020, RTP Nov. 2019)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, a mercantile agent <u>has the authority</u> either to sell goods or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods in the ordinary course of business. If the buyer buys goods from a mercantile agent, who has no authority from the principal to sell, <u>gets a good title of the goods</u> if the following conditions are satisfied:</p> <ol style="list-style-type: none"> 1) The agent should be in possession of the goods or documents of title to the goods <u>with the consent of the owner</u>. 2) The agent should sell the goods while acting in the <u>ordinary course of business</u> of a mercantile agent. 3) The buyer should <u>act in good faith</u>. 4) The buyer should not have, at the time of the contract of sale, notice that the <u>agent has no authority to sell</u>. <p>Facts of the case: J, the owner of a Fiat car, wants to sell his car. For this purpose, he hands over the car to P, a mercantile agent for sale at a price not less than ₹50,000. The agent sells the car for ₹40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car.</p> <p>Conclusion: In the present case, P, the agent, was in possession of the car with J's consent for the purpose of sale. The buyer, therefore, obtained a good title to the car. Hence, J, in this case, cannot recover the car from A.</p>
4.	<p>Ms Preeti owned a motor car which she handed over to Mr Joshi on a sale or return basis. After a week, Mr Joshi pledged the motor car to Mr Ganesh. Ms Preeti now claims back the</p>

	<p>motor car from Mr Ganesh, will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms Preeti.</p> <p style="text-align: right;">(ICAI SM, Nov. 2020, RTP May 2021)</p>
Ans.	<p>As per the provision of the sale of Goods Act, 1930, 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:</p> <ol style="list-style-type: none"> i) When the buyer signifies his approval or acceptance to the seller or does <u>any other act adopting the transaction</u>, or ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice to rejection, then if a <u>time has been fixed for the return of the goods on the expiration of such time</u>, and, if no time has been fixed, on the expiration of a reasonable time, or iii) He does something for the good, which is <u>equivalent to accepting the goods</u>, e.g., he pledges or sells the goods. <p><u>Facts of the case:</u> Ms Preeti owned a motor car which she handed over to Mr Joshi on a sale or return basis. After a week, Mr Joshi pledged the motor car to Mr Ganesh. Ms Preeti now claims back the motor car from Mr Ganesh.</p> <p><u>Conclusion:</u> In the present case, Mr Joshi pledged the motor car to Mr Ganesh, which has attracted the third condition that he has done something to the good, which is equivalent to accepting the goods. Therefore, the property therein passes to Mr Joshi. Now in this situation, Ms Preeti cannot claim back her Motor Car from Mr Ganesh, but she can claim the price of the motor car from Mr Joshi only.</p>
5.	<p>A delivered a horse to B on a sale and return basis. The agreement provided that B should try the horse for 8 days and return if he did not like the horse. On the third day, the horse died without the fault of B. A files a suit against B for the recovery of price. Can he recover the price?</p> <p style="text-align: right;">(ICAI SM, Nov 2022 RTP)</p>
Ans.	<p>As per the provision of the sale of Goods Act, 1930, 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:</p> <ol style="list-style-type: none"> i) When the buyer signifies his approval or acceptance to the seller or does <u>any other act adopting the transaction</u> ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice to rejection, then if a <u>time has been fixed for the return of the goods on the expiration of such time</u>, and, if no time has been fixed, on the expiration of a reasonable time or iii) He does something for the good, which is <u>equivalent to accepting the goods</u>, e.g., he pledges or sells the goods. <p>Also, if there is an <u>agreement to sell specific goods</u>, and subsequently, the goods, without any fault on the part of the seller or buyer, <u>perish</u> or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, <u>the agreement becomes void</u>.</p> <p><u>Facts of the case:</u> A delivered the horse to B on a sale or return basis. It was decided between them that B will try the horse for eight days, and in case he does not like it, he will return the horse to owner A. But on the third day, the horse died without any fault of B. the time given by seller A to buyer B has not expired yet.</p> <p><u>Conclusion:</u></p>

	In the present case, the ownership of the horse still belongs to seller A. B will be considered as the owner of the horse only when B does not return the horse to A within the stipulated time of 8 days. The <u>suit filed by A for the recovery of price</u> from B is invalid, and <u>he cannot recover the price from B.</u>
6.	The buyer took delivery of 20 tables from the seller on a sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930? (ICAI SM, Nov 2021 RTP)
Ans.	As per the provision of the Sale of Goods Act, 1930, in case of <u>goods on an approval basis</u> , the property in goods passes from the <u>seller to the buyer</u> i) When the person to whom the goods are given either accepts them or does an act that <u>implies adopting the transaction.</u> ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and <u>in case no time is fixed after the lapse of reasonable time.</u> Facts of the case: The buyer took delivery of 20 tables from the seller on a sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer <u>sought to return tables</u> to the seller. Conclusion: In the present case, the buyer is entitled to return only 15 tables to the seller and <u>not those 5 tables which he has already sold</u> to his customer. These tables are already accepted by him, so <u>the buyer becomes liable under the doctrine of Caveat Emptor.</u>
7.	Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire, and the entire stock was destroyed, including 60 bales that were already packed. Referring to the provision of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent? (ICAI SM, RTP May 2020)
Ans.	As per the provision of the sale of Goods Act, 1930, unless otherwise agreed, the goods remain at the seller's risk until the <u>property therein is transferred to the buyer</u> , but when the property therein is transferred to the buyer, the <u>goods are at buyer's risk whether delivery has been made or not.</u> Also, where there is a contract for the sale of <u>unascertained or future goods by description</u> and such goods, already in a deliverable state are <u>unconditionally appropriated</u> to the contract, either by the seller or buyer, the property in the goods passes to the buyer after appropriation. Facts of the case: Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire, and the entire stock was destroyed, including 60 bales that were already packed. Conclusion: In the present case, following conclusions can be considered: 1) In this case, the property in the 60 bales has been transferred to the buyer, and goods have been appropriated to the contract. Thus, loss arising due to fire in the case of 60 bales would be borne by Mr S. as regards 40 bales; the loss would be borne by Mr V since the goods have not been identified and appropriated. 2) If the bales were not selected with the consent of the buyer, then the property in the goods has not been transferred at all, and hence the loss of 100 bales would be borne by Mr V completely.

8.	<p>Mr G sold some goods to Mr H for a certain price by the issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr G asked Mr H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr H did not take delivery of the goods, Mr G kept the goods out of the godown in an open space. Due to the rain, some goods were damaged.</p> <p>Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending?</p> <p style="text-align: right;">(Modified July 2021, Nov. 2018)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, when the <u>seller is ready and willing to deliver the goods</u> 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 <u>loss occurred by his neglect or refusal to take delivery</u> and also for a reasonable charge for the care and custody of the goods.</p> <p>Also, goods remain at the seller's risk unless the property therein is transferred to the buyer, but after the transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.</p> <p>Facts of the case:</p> <p>Mr G sold some goods to Mr H for a certain price by the issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr G asked Mr H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr H did not take delivery of the goods, Mr G kept the goods out of the godown in an open space. Due to the rain, some goods were damaged.</p> <p>Conclusion:</p> <p>In the given case, since Mr G has already intimated Mr H that he wanted to store some other goods and thus, Mr H should take the delivery of goods kept in the godown of Mr G. The loss of goods damaged shall be borne by Mr H.</p> <p>If the price of the goods would not have settled in cash and some amount would have been pending, then Mr G will be treated as an unpaid seller, and he can enforce the following rights against the goods as well as against the buyer personally:</p> <ol style="list-style-type: none"> 1) If the <u>property in the goods has passed to the buyer</u>, and the <u>buyer wrongfully neglects or refuses to pay for the goods</u>, the seller may sue him for the price of the goods. 2) If the <u>price is payable on a certain day</u>, irrespective of delivery, and the <u>buyer wrongfully neglects or refuses to pay such price</u>, the seller may sue him for the price, even if the property in the goods has not passed and the goods have not been appropriated to the contract.
9.	<p>A B and C was joint owner of a truck, and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sale of Goods Act,1930. Whether the sale between B and X is valid or not?</p> <p style="text-align: right;">(ICAI SM)</p>
Ans.	<p>As per the provision of the sale of Goods Act, 1930, sale by one of the <u>several joint owners</u> is valid if the following conditions are satisfied:</p> <p>One of the several joint owners <u>has sole possession</u> of them.</p> <p>Possession of the goods is by the <u>permission of the co-owners</u>.</p> <p>The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller <u>has no authority to sell</u>.</p>

	<p>Facts of the case: A B and C was joint owner of a truck, and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck.</p> <p>Conclusion: In the present case, the sale between B and X is valid. In case one of the several joint owners has the possession of the goods by the permission of the co-owner. If the buyer buys them in good faith without the knowledge of the fact that the seller has no authority to sell, it will give rise to a valid contract of sale.</p>
10.	<p>A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract. Discuss if such a sale made by non-owner is valid or not as per the provisions of Sale of Goods Act, 1930?</p> <p style="text-align: right;">(May 2022 RTP)</p>
Ans.	<p>As per the provisions of the Sale of Goods Act, 1930, no man can sell and give a good title of goods unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods. One of the exceptions is sale by person in possession under a voidable contract:</p> <ol style="list-style-type: none"> 1) If a person has possession of goods under a voidable contract. 2) The contract has not been rescinded or avoided so far 3) The person having possession sells it to a buyer 4) The buyer acts in good faith 5) The buyer has no knowledge that the seller has no right to sell. <p>Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.</p> <p>Facts of the case: A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract.</p> <p>Conclusion: Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of ring made by Mr. A to Mr. C is a valid sale.</p>
11.	<p>A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type. Under the circumstances, what are the rights of A against B under the Sale of Goods Act, 1930?</p> <p style="text-align: right;">(Nov 2022 RTP)</p>
Ans.	<p>As per the provisions of the Sale of Goods Act, 1930, if the seller delivers to the buyer the goods <u>mixed with goods of a different description</u> (not included in the contract), the buyer may:</p> <ul style="list-style-type: none"> ✓ accept the goods which are <u>as per the contract</u> & reject the goods not as per the contract, or ✓ may <u>reject the whole goods</u>.

	<p>Facts of the case: A contract with B to buy 50 chairs of a certain quality. B delivers 25 chairs of the type agreed upon and 25 chairs of some other type.</p> <p>Conclusion: In the present case, A has the right to accept only 25 chairs as per the contract and reject the rest 25 chairs not as per the contract or A may reject the whole 50 chairs.</p>
12.	"Risk Prima Facie passes with property." Elaborate in the context of the Sale of Goods Act, 1930. (MTP Dec. 2022)
Ans.	<p>Risk prima facie passes with property (Section 26 of the Sale of Goods Act, 1930)</p> <p>According to Section 26, 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.</p> <p>It is provided that, where delivery has been delayed because of 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.</p> <p>Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.</p>



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Unit - IV Unpaid Seller

Q. No.	Questions & Answers
1.	<p>Suraj sold his car to Sohan for ₹75,000. After inspection and satisfaction, Sohan paid ₹25,000 and took possession of the car and promised to pay the remaining amount within a month; later on, Sohan refuses to give the remaining amount on the ground that the car was not in good condition. Advise Suraj as to what remedy is available to him against Sohan.</p> <p style="text-align: right;">(Modified July 2021, ICAI SM, RTP Nov. 2020, RTP Nov. 2019)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, an unpaid seller has a <u>right to institute a suit for price against the buyer personally</u>.</p> <p>i) Where under a contract of sale, the property in the goods has passed to the buyer, and the <u>buyer wrongfully neglects or refuses to pay for the goods</u>, the seller may sue him for the price of the goods.</p> <p>ii) Where under a contract of sale, the price is payable on a <u>certain day irrespective of delivery</u>, and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the <u>goods have not been appropriated</u> to the contract.</p> <p>Facts of the case: Suraj sold his car to Sohan for ₹75,000. After inspection and satisfaction, Sohan paid ₹25,000 and took possession of the car and promised to pay the remaining amount within a month; later on, Sohan refuses to give the remaining amount on the ground that the car was not in good condition.</p> <p>Conclusion: In the present case, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to:</p> <ol style="list-style-type: none"> 1) Interest on the <u>remaining amount</u>. 2) Interest during the <u>pending of the suit</u>. 3) <u>Costs of the proceedings</u>.
2.	<p>Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by the railway, he becomes bankrupt. Can Ram exercise the right of stopping the goods in transit?</p> <p style="text-align: right;">(Dec. 2021, ICAI SM, Dec 2023 RTP)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, dealing with <u>the right of stoppage of the goods in transit</u> available to an unpaid seller, the right is <u>exercisable by the seller</u> only if the following conditions are fulfilled.</p> <ol style="list-style-type: none"> i) The seller must be <u>unpaid</u> ii) He must have parted with the <u>possession of goods</u> iii) The goods must be in <u>transit</u> iv) The buyer must have become <u>insolvent</u> v) The right is <u>subject to the provisions of the act</u>. <p>Facts of the case: Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by the railway, he becomes bankrupt.</p> <p>Conclusion: In the present case, Ram being still unpaid, can stop the 100 bales of cloth sent <u>by railway as these goods are still in transit</u>.</p>

3.	What are the rights of the buyer against the seller if the seller commits a breach of contract under the Sale of Goods Act, 1930? (RTP May 2020, June 2023)
Ans.	<p>If the seller commits a breach of contract, the buyer gets the following rights against the seller:</p> <ol style="list-style-type: none"> 1) Damages for non-delivery: Where the seller <u>wrongfully neglects or refuses to deliver</u> the goods to the buyer, the buyer may sue the seller for damages for non-delivery. 2) Suit for specific performance: Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for a specific performance. The court can order for specific performance only when the goods are <u>ascertained or specific</u>. 3) Suit for breach of warranty: Where there is a breach of warranty on the part of the seller, or where the buyer elects to treat a breach of condition as a breach of warranty, the buyer is <u>not entitled to reject</u> the goods only on the basis of such breach of warranty. But he may: <ul style="list-style-type: none"> ✓ Set up against the seller the breach of the warranty in <u>diminution or extinction</u> of the price; or ✓ Sue the seller for <u>damages</u> for breach of warranty. 4) Repudiation of the 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 <u>subsisting and wait</u> till the date of delivery, or he may treat the contract as <u>rescinded and sue for damages</u> for the breach. 5) Suit for interest: Nothing in this Act shall affect the right of the seller or the buyer to <u>recover interest or special damages</u>, in any case whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the <u>payment of it has failed</u>. <p>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 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.</p>
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 is such a right terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court? (ICAI SM, Nov 2022 RTP)
Ans.	<p>As per the provision of the sale of Goods Act, 1930, A lien a right to <u>retain possession of goods until the payment of the price</u>, it is available to the unpaid seller of the goods who is in possession of them where:</p> <ol style="list-style-type: none"> 1) The goods have been sold without any <u>stipulation as to credit</u>. 2) The goods have been sold on credit, but <u>the term of credit has expired</u>. 3) The buyer becomes <u>insolvent</u>. <p>The unpaid seller can exercise his right to lien even if the property in goods as agent of the buyer. He can exercise his right even if he is in possession of the goods as an agent or bailee for the buyer.</p> <p>Termination of lien: An unpaid seller loses his right of a lien thereon:</p> <ul style="list-style-type: none"> When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the <u>right of disposal of the goods</u>. When the buyer or his agent <u>lawfully obtains possession of the goods</u>. When the seller has <u>waived the right of lien</u>. <p>Yes, he can exercise his right of lien even after he has obtained a <u>decree for the price of goods from the court</u>.</p>

5.	Mr D sold some goods to Mr E for ₹5,00,000 on 15 days' credit. Mr D delivered the goods. On the due date, Mr E refused to pay for it. State the position and rights of Mr D as per the Sale of Goods Act, 1930. <p style="text-align: right;">(May 2018, ICAI SM)</p>
Ans.	As per the provision of the Sale of Goods Act, 1930, the seller of goods is deemed to be an ' <u>Unpaid Seller</u> ' when the <u>whole of the price has not been paid</u> or tendered, and the seller had an <u>immediate right of action for the price</u> . Facts of the case: Mr D sold some goods to Mr E for ₹5,00,000 on 15 days' credit. Mr D delivered the goods. On the due date, Mr E refused to pay for it. Conclusion: <u>Position of Mr D:</u> Mr D sold some goods to Mr E for ₹5,00,000 on 15 days' credit. Mr D delivered the goods. On the due date, Mr E <u>refused to pay</u> for it. So, Mr D is an <u>unpaid seller</u> . <u>Rights of Mr D:</u> As the goods have parted away from Mr D, therefore, Mr D cannot exercise the right against the goods; he can only exercise his rights against the buyer, i.e., Mr E, which are as under: ✓ <u>Suit for a price:</u> In the mentioned contract of sale, the price is payable after 15 days, and Mr E refuses to pay such price; Mr D may sue Mr E for the price. ✓ <u>Suit for damages for non-acceptance:</u> Mr D may sue Mr E for damages for non-acceptance if Mr E wrongfully neglects or refuses to accept and pay for the goods. ✓ <u>Suit for interest:</u> If there is no specific agreement between Mr D and Mr E as to interest on the price of the goods from the date on which payment becomes due, Mr D may charge interest on the price when it becomes due from such day as he may notify to Mr E.
6.	A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930? <p style="text-align: right;">(ICAI SM, June 2023 RTP)</p>
Ans.	As per the provision of the Sale of Goods Act, 1930, provides that the unpaid seller who is <u>in possession of the goods is entitled to exercise the right of lien</u> in the following cases: 1) Where the goods have been sold <u>without any stipulation as to credit</u> 2) Where the goods have been sold on <u>credit but the term of credit has expired</u> 3) Where the buyer has <u>become insolvent</u> even though the period of credit has not yet expired. Facts of the case: A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods. Conclusion: In the present case, the goods are still physically in possession of A, the seller. In the meantime, B, the buyer has <u>become insolvent</u> . In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has <u>expired without any payment of the price by the buyer</u> .
7.	Explain the rules to Auction as per the Sale of Goods Act, 1930. <p style="text-align: right;">(Jan. 2021)</p>
Ans.	As per the provision of the Sale of Goods Act, 1930, rules to regulate the sale of the auction are: - 1) Goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject to a <u>separate contract of sale</u> .

	<p>2) Completion of the contract of sale: The sale is complete when the auctioneer announces <u>its completion by the fall of the hammer</u> or in any other customary manner, and until such announcement is made, any bidder may retract from his bid.</p> <p>3) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller, and where such right is expressly reserved, but not otherwise, the <u>seller or anyone person on his behalf may bid at the auction.</u></p> <p>4) When the sale is not notified by the seller: When the sale is notified to be subject to a right to bid on behalf of the seller, it shall <u>not be lawful for the seller to bid himself or employ any person to bid at such sale,</u> 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.</p> <p>5) Reserved price: The sale may be notified to be <u>subject to a reserved or upset price.</u></p> <p>6) Pretended to bid: If the seller makes use of pretended <u>bidding to raise the price,</u> the sale is voidable at the option of the buyer.</p>
8.	<p>What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? (Nov. 2019)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, the unpaid seller has the following rights against the goods: -</p> <p>1) Seller's Lien: Subject to the provisions of this act, the <u>unpaid seller</u> of goods who is in possession of them is entitled to <u>retain possession</u> of them <u>until payment or tender of the price</u> in the following cases-</p> <ol style="list-style-type: none"> where the goods have been <u>sold without any stipulation as to credit;</u> where the goods have been <u>sold on credit,</u> but the <u>term of credit has expired;</u> where the <u>buyer becomes insolvent.</u> The seller may exercise his right of lien, <u>notwithstanding that he in possession of the goods as an agent or bailee</u> for the buyer. <p>2) Right of Stoppage in Transit: Subject to the provisions of this act, when the <u>buyer of goods become insolvent,</u> the unpaid seller who has <u>parted with the possession</u> of the goods has the <u>right of stopping them in transit.</u> He may <u>resume possession</u> of the goods as long as they are in the <u>course of transit</u> and may <u>retain</u> them until <u>paid or tendered</u> the price of the goods.</p> <p>The right of stoppage in transit is the <u>extension of the right of lien</u> because it entitles the buyer to <u>regain possession</u> even when the seller has <u>parted with the possession</u> of the goods.</p> <p>The right of stoppage in transit is exercised in the following conditions only-</p> <ol style="list-style-type: none"> The seller must be <u>unpaid.</u> He must have <u>parted with the possession</u> of the goods. The goods are <u>in transit.</u> The buyer has become <u>insolvent.</u>
9.	<p>J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R based on the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930? (ICAI SM)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, the right of lien and stoppage in transit is meant to <u>protect the seller.</u> But under two exceptional cases, these rights of the seller are affected:</p> <ol style="list-style-type: none"> When the buyer has made the transaction with the <u>consent of the seller.</u> When the buyer has <u>made the transaction based</u> on documents of title such as bill of lading, railway receipt or a delivery order etc.

	<p>Facts of the case: J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R based on the delivery order. J wanted to exercise his right of lien on the goods.</p> <p>Conclusion: In the present case, J is entitled to exercise the right of lien, but his right of lien is terminated because he has given the document of title to the buyer. K has made a transaction of sale based on this document of title to R. R can demand the delivery of the machine from K.</p>
10.	<p>A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller? (ICAI SM)</p>
Ans.	<p>As per the provision of the Sale of Goods Act, 1930, the right of stoppage of goods in transit means the right of stopping the goods after the <u>seller has parted with the goods</u>. After that, the seller regains possession of the goods. This can be exercised by an unpaid seller when he has lost his right of lien over the goods because the <u>goods are delivered to a carrier to take the goods to the buyer</u>. This right is available to the unpaid seller only when the buyer has become insolvent.</p> <p>The conditions necessary for exercising this right are:</p> <ol style="list-style-type: none"> 1) The buyer <u>has not paid a total</u> price to the seller. 2) The seller has delivered <u>the goods to a carrier</u>, thereby losing his right of lien. 3) The buyer has become <u>insolvent</u>. 4) The <u>goods have not reached the buyer</u>; they are in the course of transit. <p>Facts of the case: A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent.</p> <p>Conclusion: In the present case, the railway authorities cannot stop goods because the goods are not in transit. A, who has loaded the goods on his truck, is the agent of the buyer. That means railway authorities have given possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes possession of the goods.</p>
11.	<p>Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer falls the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? (Nov 2021 RTP)</p>
Ans.	<p>As per the provisions of the Sale of Goods Act, 1930, in case of auction sale, the <u>sale is complete when the auctioneer announces its completion by the fall of the hammer</u> or in some other customary manner.</p> <p>Facts of the case: In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.</p> <p>Conclusion: On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.</p>
12.	<p>What are the rights of unpaid seller in context to re-sale the goods under Sale of Goods Act, 1930? (Dec 2022)</p>

Ans.	<p>The unpaid seller can exercise the right of resale under the following conditions:</p> <ol style="list-style-type: none"> 1) <u>Where the goods are of a perishable nature</u>: In such a case, the buyer needs to be informed of the intention of resale. 2) <u>Where he gives notice to the buyer of his intention to resell the goods</u>: If, after the receipt of such notice, the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. It may be noted that in such cases, on the resale of goods, the seller is also entitled to: <ul style="list-style-type: none"> ➤ Recover the <u>difference between the contract price and resale price</u>, from the original buyer, as damages. ➤ <u>Retain the profits</u> if the resale price is <u>higher than the contract price</u>. <p>The seller can recover damages and retain the profits only when the goods are resold after giving the <u>notice of resale</u> to the buyer.</p> 3) <u>Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods</u>: The subsequent buyer acquires a good title thereof as against the original buyer, despite the fact that the notice of resale has not been given by the seller to the original buyer. 4) <u>A resale by the seller where a right of resale is expressly reserved in a contract of sale</u>: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes a default in the payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on the buyer's default. <p>In such cases, the seller is <u>not required to give notice of resale</u>. He is entitled to recover damages from the original buyer even if notice of resale is given.</p>
13.	<p>An auction sale of the certain goods was held on 7 March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8 March, 2023 followed by the delivery of goods on 10 March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete.</p> <p style="text-align: right;">(June 2023)</p>
Ans.	<p>Provision: An auction sale is a public sale. The goods are sold to all members of the public at large who are assembled in one place for the auction. Such interested buyers are the bidders. The price they are offering for the goods is the bid. And the goods will be sold to the bidder with the highest bid.</p> <p>As per the provision of the Sale of Goods Act, 1930 <u>the auction sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner</u>, and until such announcement is made, any bidder may retract from his bid.</p> <p>Fact of the case: An auction sale was held on 7 march 23by fall of hammer in favour of highest bidder. The payment was made on 8 march and goods were delivered on 10 March, 23.</p> <p>Conclusion: In the present case, <u>the auction sale is completed on 7 March,2023, on fall of hammer</u>. Date of payment of delivery of goods is irrelevant.</p>
14.	<p>Mr. Shekharan sells 100 bags of cement to Mr. Raghwan for cash and consigns goods to him through railways. He also sends the railway receipt to Mr. Raghwan. When the goods were in transit, Mr. Raghwan becomes insolvent and Mr. Raghwan sells the said goods to Mr. Ravi by assigning the railway receipt to Mr. Ravi who has no idea about the insolvency of Mr. Raghwan. Mr. Shekharan who is being unpaid seller wants to exercise his right to stoppage in transit.</p> <ol style="list-style-type: none"> a) State with reason, can Mr. Shekharan do so under the Sale of Goods Act, 1930? b) Whether your answer would be same if Mr. Ravi have knowledge of Mr. Raghwan's insolvency at the time of buying the goods? <p style="text-align: right;">(MTP June 2023)</p>

Ans.	<p>According to Section 50 to 52 of the Sale of Goods Act, 1930, 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 and 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. However right of stoppage in transit is available only in the following conditions:</p> <ol style="list-style-type: none"> i) The seller must be an unpaid seller. ii) When the buyer becomes insolvent; and iii) When the goods are in transit. <p>This right of stoppage in transit is lost if buyer makes sub – sale of such goods during in transit and that buyer purchased in good faith.</p> <ol style="list-style-type: none"> a) On the basis of above provisions and facts, it can be said that even Mr. Shekharan is an unpaid seller, he cannot apply his right of stoppage in transit as goods has been taken by Mr. Ravi in good faith. b) Further, if Mr. Ravi has knowledge of Mr. Raghwan’s insolvency at the time of buying the goods, Mr. Ravi has not bought the goods in good faith. Hence, Mr. Shekharan can exercise his right of stoppage in transit.
15.	<p>Discuss the rights of an unpaid seller against the buyer under the Sales of Goods Act, 1930. (MTP Dec. 2022)</p>
Ans.	<p>The right against the buyer are as follows:</p> <ol style="list-style-type: none"> 1) Suit for price (Section 55 of the Sale of Goods Act, 1930) <ol style="list-style-type: none"> a) 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. [Section 55(1)] b) Where under a contract of sale, the price is payable on a certain day 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. [Section 55(2)]. 2) Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non- acceptance. 3) Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the ‘rule of anticipatory breach of contract’. 4) Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer. In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.