UNIT-3

The Sale of Goods Act, 1930

Contracts or agreements related to the sale of goods are governed under the Sale of Goods Act 1930. This act came into effect on the 1st of July 1930 in the whole of India except the state of Jammu and Kashmir.

Sale of Goods Act, 1930 – Important Terms--

The Sale of Goods Act, 1930 herein referred to as the Act, is the law that governs the sale of goods in all parts of India. It doesn't apply to the state of Jammu & Kashmir. The Act defines various terms which are contained in the act itself. Let us see below:

I. Buyer And Seller

As per the sec 2(1) of the Act, a buyer is someone who buys or has agreed to buy goods. Since a sale constitutes a contract between two parties, a buyer is one of the parties to the contract.

The Act defines seller in sec 2(13). A seller is someone who sells or has agreed to sell goods. For a sales contract to come into existence, both the buyers and seller must be defined by the Act. These two terms represent the two parties of a sales contract.

A faint difference between the definition of buyer and seller established by the Act and the colloquial meaning of buyer and seller is that as per the act, even the person who agrees to buy or sell is qualified as a buyer or a seller. The actual transfer of goods doesn't have to take place for the identification of the two parties of a sales contract.

II. Goods

One of the most crucial terms to define is the goods that are to be included in the contract for sale. The Act defines the term "Goods" in its sec 2(7) as all types of movable property. The sec 2(7) of the Act goes as follows:

"Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale will be considered goods"

As you can see, shares and stocks are also defined as goods by the Act. The term actionable claims mean those claims which are eligible to be enforced or initiated by a suit or legal action. This means that those claims where an action such as recovery by auction, suit, refunds etc. could be initiated to recover or realize the claim.

We say that goods are in a deliverable state when their condition is such that the buyer would, under the contract, be bound to take delivery of these goods. Goods may be further understood in the following subtypes:

1. Existing Goods

The goods that are referred to in the contract of sale are termed as existing goods if they are present (in existence) at the time of the contract. In sec 6 of the Act, the existing goods are those goods which are in the legal possession or are owned by the seller at the time of the formulation of the contract of sale. The existing goods are further of the following types:

A) Specific Goods
   According to the sec 2(14) of the Act, these are those goods that are "identified and agreed upon" when the contract of sale is formed. For example, you want to sell your mobile phone online. You put an advertisement with its picture and information. A buyer agrees to the sale and a contract is formed. The mobile, in this case, is specific good.
B) Ascertained Goods:
   This is a type not defined by the law but by the judicial interpretation. This term is used for specific goods which have been selected from a larger set of goods. For example, you have 500 apples. Out of these 500 apples, you decide to sell 200 apples. To sell these 200 apples, you will need to separate them from the 500 (larger set). Thus you specify 200 apples from a larger group of unspecified apples. These 200 apples are now the ascertained goods.
C) Unascertained Goods:
   These are the goods that have not been specifically identified but have rather been left to be selected from a larger group. For example, from your 500 apples, you decide to sell 200 apples but you don't specify which ones you want to sell. A seller will have the liberty to choose any 200 apples from the lot. These are thus the unascertained goods.

2. Future Goods

In sec 2(6) of the Act, future goods have been defined as the goods that will either be manufactured or produced or acquired by the seller at the time the contract of sale is made. The contract for the sale of future goods will never have the actual sale in it, it will always be an agreement to sell.

For example, you have an apple orchard with apples in it. You agree to sell 1000 apples to a buyer after the apples ripe. This is a sale that has to occur in the future but the goods have been identified already and the agreement made. Such goods are known as future goods.

3. Contingent Goods

Contingent goods are actually a subtype of future goods in the sense that in contingent goods the actual sale is to be done in the future. These goods are part of a sale contract that has some contingency clause in it. For example, if you sell your apples from your orchard when the trees are yet to produce apples, the apples are a contingent good. This sale is dependent on the condition that the trees are able to produce apples, which may not happen.

III. Delivery

The delivery of goods signifies the voluntary transfer of possession from one person to another. The objective or the end result of any such process which results in the goods coming into the possession of the buyer is a delivery process. The delivery could occur even when the goods are transferred to a person other than the buyer but who is authorized to hold the goods on behalf of the buyer.

There are various forms of delivery as follows:

●Actual Delivery: If the goods are physically given into the possession of the buyer, the delivery is an actual delivery.

●Constructive delivery: The transfer of goods can be done even when the transfer is effected without a change in the possession or custody of the goods. For example, a case of the delivery by attornment or acknowledgment will be a constructive delivery. If you pick up a parcel on behalf of your friend and agree to hold on to it for him, it is a constructive delivery.

●Symbolic delivery: This kind of delivery involves the delivery of a thing in token of a transfer of some other thing. For example, the key of the godowns with the goods in it, when handed over to the buyer will constitute a symbolic delivery.

IV. The Document of Title to Goods

From the Sec 2(4) of the act, we can say that this “includes the bill of lading, dock-warrant, warehouse keeper’s certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

V. Mercantile Agent [Section 2(9)]

Mercantile agent is someone who has authority in the customary course of business, either to sell or consign goods under the contract on behalf of the one or both of the parties. Examples include auctioneers, brokers, factors etc.

VI. Property [Section 2(11)]

In the Act, property means ‘ownership’ or the general property i.e. all ownership right of the goods. A sale constitutes the transfer of ownership of goods by the seller to the buyer or an agreement of the same.

VII. Insolvent [Section 2(8)]

The Act defines an insolvent person as someone who ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

VIII. Price [Section 2(10)]

In the Act, the price is defined as the money consideration for a sale of goods.

IX. Quality of Goods

In Sec 2(12) of the Act, the quality of goods is referred to as their state or condition.

Sale and Agreement of Sale (Section 4)

A contract is a formal or verbal agreement that is enforceable by law. Every contract must have an agreement but every agreement is not a contract. The section 4(1) of the Sale of Goods Act, 1930 states that – 'A contract of sale of goods is a contract whereby the seller either transfers or agrees to transfer the property in goods to the buyer for a decided price.'

In Section 4(4) of the Act, it is maintained that for an agreement of sale to become a sale, the time has to elapse or the conditions have to be fulfilled subject to which the property in the goods is to be is to be transferred.

The point that is to be understood from the above discussion is that a contract for the sale of goods can either be a sale or an agreement of sale. Let us see both the cases in the light of the Act.

Sale:

Here the property in goods is transferred at once to the buyer from the seller. The Section 4(3) of the Act says that "where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is then known as a sale." A sale is carried out on deliverable goods. Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

The transfer of goods may be affected directly, after the fulfillment of a contingency or to a party authorized by the seller.

Agreement To Sell:

We saw that in a sale the property in the goods is transferred from the seller to the buyer. However, in an agreement to sell, the ownership of the property in goods is not transferred immediately. The objective of the agreement is to transfer the goods at a future date, once some contingent clauses in the agreement or certain conditions are satisfied.

The Act in Section 4(3), defines what an agreement to sell is. The section 4(3) of the sale of Goods Act defines it as, “where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.”

Thus we see that a contract for the sale of goods may be either sale or agreement to sell. This depends on the condition whether it postulates an immediate transfer of property from the seller to the buyer or whether it postulates the transfer to take place at some future date.

Now the question is that how does this transition from agreement to sell to sale occur? The agreement to sell will become a sale if and only when the time elapses or the conditions are fulfilled subject to which the contract of sale is to be fulfilled.

☆Elements of A Contract Of Sale

From the Sale of Goods Act, 1930, we see that certain elements must co-exist for a contract of sale to be constituted. they are as follows:

○The presence of two parties is a must. As is the case with a contract, there must be at least two parties in the contract of sale. One shall become the seller and the other a buyer.

○The clauses therein present in the contract of sale must limit their scope to only the movable property. This “movable property” may constitute existing goods, goods in the possession or the ownership of the seller or future goods.

○One of the important elements is the consideration of price. A price in value (currency and not in kind) has to be paid or promised. The price consideration or the actual payment could be partly in kind and partly in money but never in kind alone.

○The ownership of the property of goods must change from the seller to the buyer. In the contract of sale, like we saw in the elements of a contract, an offer has to be made and then accepted. The offer is made by a seller and then accepted by the buyer.

○The contract of sale may be absolute or conditional.

○The other essential elements of a contract, that we have already seen must also be present here. The crucial elements of a contract like competency of parties, the legality of object and consideration etc. have to be present like in any other contract.

Ascertainment of Price--

The Sale of Goods Act, 1930 has two sections, that discuss the ascertainment of a price. Ascertainment of price means to specify without ambiguity the price of a commodity. The Act has two sections that discuss this – sec 9 and sec 10. Let us see each of these separately and try to understand what provisions exist herein.

The sec 9 of the Act states the following:

The price in a contract of sale may be fixed by the contract, or it may be left to be fixed in manner thereby agreed or it can be determined by the course of dealing between the parties to the contract.

Where the price is not determined in accordance with the said provisions, the buyer shall pay the seller a reasonable price. Reasonable price will depend on the individual case or circumstance.

If you look at the first part, the term price has to be defined. Section 2 (10) of the Act defines price as the monetary consideration or value decided for the sale of goods. Thus we see that for a price to come into existence, a sale has to come into existence.

Price of a Contract

Also, from the Section 9 (1), we can see that the price in the contract of sale may be determined or stated by:

the contract, i.e. the price is explicitly mentioned or decided within the contract of sale itself or

the contract has some clause(s) that has the or defines the authority that will eventually ascertain the price. For example, the contract asks for a valuer to be commissioned for the purpose of the ascertainment of price.

the price may also be determined by the course of dealings. For example, if the two parties have a long history of dealing with each other, then the price if not specified clearly can be ascertained from the previous history of dealings and prices. Clearly, this portion of the section is only applicable if the parties have a tradition or history of similar deals.

Similarly, Sec 9 (2) says that if the price is not determined through either of the methods discussed in sec 9 (1) then the buyer will have to pay the seller a reasonable price. This price will be decided in accordance with the market value.

For example, if the Government of your State has been purchasing its electricity from a neighboring state at a given price. If they enter into a new contract, then the price will either be:

explicitly mentioned in the contract.

fixed by the two parties after due consideration with each other.

or the price will be the same as was traditionally accepted by the two parties.

Agreement to sell at Valuation (Section 10)

Since now the sec 9 of the Act discussed what we can call the direct modes of ascertaining the price. However, there are other modes of price determination that we will define in the sec (10). Let us state the Section and then we will move on to explanation and analysis.

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided; PROVIDED that, if the goods or any part thereof have been delivered to and appropriated by, the buyer, he shall pay a reasonable price, therefore.

Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault."

The method of determination or mode of ascertaining the price here is by a third party. This comes into effect when both the parties have decided to the clause that the price will be decided by the third party. However in case the third party is not capable or refuses to make a proper valuation of the goods to be purchased, then the agreement will be void.

In some cases, the third party may be obstructed by the default of one of the parties. In such case, the party at fault will be responsible to pay proper compensation in terms of damages to the other party, provided that the other party is not at fault. Once the goods have been appropriated and received, the buyer is liable to pay the price thereof.

Warranty And Conditions

In a contract of sale, parties may make certain statements about the stipulation or the course of trade. These stipulations in the contract of sale are made with reference to the subject matter of the sale. These stipulations may either be a condition or in the form of a warranty.

The provisions of the conditions and warranty are provided in the sections 11 to 17 of the Act. The stipulations are the essence of the contract of sale and a breach of these stipulations provides a remedy to the grieved party.

What are Express and Implied Warranties?

To understand the concept of warranty and conditions, we need to learn about the stipulation as to time. The stipulation as to time may be with regards to the delivery of goods or it may be with regards to the payment of the price.

However, it may be noted that stipulations as to the time of delivery of the goods are usually the essence of the contract. In Section 11 of the Act, the topic of the stipulation as to time has been discussed. The Sec 11 states the follows:

Stipulations as to time: Unless a different intention can be ascertained from the contract, stipulations as to the time of payment are not considered to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not will ultimately depend on the terms of the contract.

This means that whether the stipulations as to the time of payment of the price is of the essence of the contract or not depends on the terms of the contract. Unless the terms of the contract specify something different than this.

Conditions

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the right to repudiate the contract and to claim damages. (Sec 12 (2)). We can understand this with the help of the following example:

Say ‘X’ wants to purchase a car from ‘Y’, which can have a mileage of 20 km/lt. ‘Y’ pointing at a particular vehicle says “This car will suit you.” Later ‘X’ buys the car but finds out later on that this car only has a top mileage of 15 km/ liter. This amounts to a breach of condition because the seller made the stipulation which forms the essence of the contract. In this case, the mileage was a stipulation that was essential to the main purpose of the contract and hence its breach is a breach of condition.

Express and Implied Conditions

Warranty

A warranty is a stipulation collateral to the main purpose of the said contract. The breach of warranty gives rise to a claim for damages. However, it does give a right to reject the goods or treat the contract as repudiated. (Sec 12(3)). Let us understand this with the help of an example below.

A man buys a particular car, which is warranted to be quite to drive and very comfortable. It turns out that after some days the car starts to make a very unpleasant noise every time it is operated. Also sitting inside it is also not very comfortable.

Thus the buyer's only remedy is to claim damages. This is not a breach of the condition but rather a breach of warranty, because the stipulation made by the seller was only a collateral one.

Identification of a Stipulation as a Condition or Warranty

Whether a stipulation is a condition or a warranty is a very important aspect to have the knowledge about. A stipulation in a contract of sale is either a condition or is a warranty depending in either case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

Implied Warranties

In case the buyer is content is content with his right to damages or can't reject the goods, a condition (implied or express) may reach to the level of a warranty. Implied Warranties are disclosed in Section 14 and 16 of the Sale of Goods Act, 1930 and are the warranties which the law implies into the contract. In case the parties don't want any of the implied warranties to be included, they will have to expressly mention that in the contract. Implied Warranties are as follows.

Warranty As To Undisturbed Possession

Well once you buy the goods, they shouldn't be taken away from you. This warranty means that the buyer should have and enjoy quiet possession of the goods after having gotten the possession of the goods. If he is disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

For example, A buys a laptop from B. After the purchase, A spends some money on its repair and uses it for some time. Unknown to the parties, it turns out that the laptop was stolen and was taken from A and

delivered to its rightful owner. B shall be held responsible for a breach and A is entitled to damages of not only the price but also the cost of repairs.

Warranty As To Non-Existence Of Encumbrances

This is an implied warranty which maintains that the goods are free from any encumbrance or charge from any third party who has not been introduced or known to the buyer at or before the time of the contract of sale is entered into.

For example, a person A pledges his computer to another person B against a loan of Rs. 30,000. “A” also promises B that A will produce the laptop and give it to B the next day. Later that day, A goes on to sell the laptop to C who is unaware of the course of dealings between A and B. In this case, C can ask A to clear the loan immediately or clear the loan by himself or herself and then proceed to file a suit against A for the recovery of the money spent including the interest.

Learn Sale and Agreement of Sale here.

Disclosure Of Dangerous Nature Of Goods

In case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant or unaware of the danger, an implied warranty on the part of the seller emerges. The seller must warn the buyer duly about the dangerous nature of the goods if any. In case of a breach of this warranty, the seller will be liable in damages.

For example, a person X purchases a bottle of disinfectant from a person Y. Y knows that the cap of the bottle is defective or cheap and if opened by a novice without care, it may spill and result in partial burning or other damages of the person. When X opens the bottle, he is injured. In this case, X is liable in damages to Y as Y should have been duly warned of the probable danger.

Warranty As To Qualify Or Fitness By Usage Of Trade

An implied warranty as to the quality or the fitness for a particular purpose may be annexed by the usage of the trade. For example, consider the following example:

A drug was sold through an auction and according to the usage of trade. It was to disclose in advance any sea-damage, otherwise, it will be taken as a breach of warranty if no such disclosure has been made and the goods found to be defective.

This concludes the topic of the Implied Warranties. We can say that any warranty that is not expressed becomes an implied warranty. Let us now understand the Express Warranties.

Express Warranties

Warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Section 12(3)]

Warranties that are inserted into the contract at the will and knowledge of the parties are said to be expressed warranties or the Express Warranties.

Passing of Property

There are four primary rules that govern the passing of property:

Specific or Ascertained Goods

Passing of Unascertained Goods

Goods sent on approval or “on sale or return”

Transfer of property in case of reservation of the right to disposal

In this article, we will be looking at the first two rules.

Passing of Ascertained Goods

Section 19

This is the first rule of the passing of property. It deals with the passing of specified goods and states that –Specific or ascertained goods pass when intended to pass. Section 19 of The Sale of Goods Act, 1930, has three sub-sections as follows:

Sub-section (1): Imagine a contract for the sale of specific or ascertained goods with a clear mention of the time when the parties to the contract intend to transfer the property. In such cases, the property is transferred at the time mentioned in the contract.

Sub-section (2): To understand the intention of the parties, the terms of the contract, the conduct of the parties, and the circumstances of the case are considered.

Sub-section (3): Sections 20 to 24 of The Sale of Goods Act, 1930, contain rules to ascertain the intention of the parties. This intention is about the time at which the property in the goods will pass to the buyer. Let's look at these sections

Section 20

Section 20 relates to Specific goods in a deliverable state. It states that if the contract is unconditional for the sale of specific goods in a deliverable state, then the property in the goods passes to the buyer the moment the contract is made. This rule holds true even if the time of payment of price or delivery of the goods or both is postponed.

Example: Peter goes to an electronics store and buys a television set. He asks the shopkeeper to deliver it to his house. The shopkeeper agrees. The television immediately becomes the property of Peter.

Section 21

Speci-fic goods to be put into a deliverable state (Section 21) – Imagine a contract for the sale of goods where the seller has to do something before the goods are ready for delivery. In such cases, the passing of property happens only after the seller does the things and informs the buyer.

Example: Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery.

Section 22

Specific goods are in a deliverable state but the seller has to do something to ascertain the price – Imagine a contract of sale of goods which are in a deliverable state but the seller has to do something like weight, measure, test, or perform any other act on the goods to ascertain the price. In such cases, the property does not pass until the seller does the act and informs the seller.

Example: Peter sells a carpet to John and agrees to lay it in John's house as a part of the contract. He delivers the carpet and informs John that he will lay it the next day. That night the carpet gets stolen from John's premises. In this case, John is not liable for the loss since the property had not passed to him. According to the terms of the contract, the carpet would be in a deliverable state only after it is laid.

Passing of Unascertained Goods

If there is a contract for the sale of unascertained goods, then the passing of the property of the goods to the buyer cannot happen unless the goods are ascertained. This is specified under Section 18 of The Sale of Goods Act, 1930.

Section 23

Further Section 23 lists two important rules for the passing of property of unascertained goods:

Sale of unascertained goods by description: Imagine a contract for the sale of unascertained or future goods by description. If any goods of that description are appropriated to the contract either by the buyer or the seller with the consent of the other party, then the property of the goods passes to the buyer. The consent can be express or implied and given before or after the appropriation is made.

Delivery to the carrier: If the seller delivers the goods to the buyer or a carrier or a bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, but does not reserve the right of disposal, then he is deemed to have unconditionally appropriated the goods to the contract.

Some Points to Remember about the Appropriation of Goods:

If goods are selected with the intention of using them in performing the contract, with the mutual consent of the buyer and the seller, then it is called appropriation of goods. Here are some essentials:

A contract for the sale of unascertained or future goods exists

The goods conform to the quality and description stated in the contract

They are in a deliverable state

The goods are unconditionally appropriated to the contract either by delivery to the buyer of his agent or the carrier.

The appropriation is made by the buyer with the assent of the seller or the seller with the assent of the buyer.

The assent can be express or implied

The assent can be given before or after the appropriation.

Passing of Property

Goods Sent on Approval

When a seller sends good to a buyer on approval basis or on terms similar to ‘on sale or return’, the property passes to the buyer only when:

The buyer communicates his approval to the seller or does an act which signifies acceptance of the transaction.

He does not give his approval or acceptance to the seller but accepts the goods without giving notice of rejection. There are two possibilities here:

A time has been fixed for the return of goods – In this case, if the approved time has elapsed, then the property is passed to the buyer.

A time has not been fixed for the return of goods – In this case, the property is passed to the buyer once a reasonable time has elapsed.

The buyer does something to the goods which signifies acceptance of goods. For example, he sells the goods or pledges it.

Let us see an example. Peter is a jeweler. John visits his shop to buy a necklace for his wife Olivia. However, he is not sure if Olivia will like the necklace he has chosen. Peter agrees to deliver the necklace to John's house on a sale or return basis.

If Olivia does not like the necklace, then John can return it to Peter without having to pay for it. When Peter reaches John's house, another man called Chris is also present in the house. Olivia or John don't express their approval to Peter but John pledges the necklace with Chris for a certain amount.

In this case, the ownership of the necklace transfers to John since his act of pledging the necklace shows his unequivocal intention to buy it. Peter can recover the price of the necklace from John.

Cash Only or Return

In some cases, the terms of sale can be cash or return. This means that the seller will deliver the goods to the buyer under the condition that the goods continue to remain the property of the seller unless the buyer pays cash for it. In such cases, the buyer needs to pay cash in order to transfer the property in his name.

In example 1 above, if Peter agrees to deliver the necklace to John under a cash only or return basis and John pledges the necklace with Chris before paying cash for it, the pledge is deemed invalid by law and Peter can recover the necklace from Chris.

Reservation of the Right to Disposal

Section 25 of The Sale of Goods Act, 1930 deals with the conditional appropriation of goods. It has three sub-sections as follows:

Sub-section 1

In case of a contract for the sale of specific goods or where goods are appropriated to the contract subsequently, then the seller can reserve the right of disposal of goods till certain conditions are met. These conditions must be specified in the contract or appropriation. Even if the goods are delivered to the buyer or a carrier or a bailee for transmission to the buyer, the property in the goods does not pass to the buyer until the conditions are met.

Let us take an example. Peter sends furniture to John's company by a truck. He instructs the driver not to deliver the furniture until he confirms receipt of payment from the company. The truck reaches John's company and the furniture is unloaded. However, the property passes to the company only upon receipt of the payment.

Sub-section 2

If the goods are shipped or delivered to the railway administration for carriage by railway and are deliverable to the order of the seller or his agent by the bill of lading or railway receipts, then the seller is deemed to have reserved the right of disposal.

Sub-section 3

A seller can draw on the buyer for the price and transmit a bill of exchange along with the bill of lading/ railway receipt, to secure acceptance or payment of the bill of exchange. If the buyer does not honor the bill of exchange, then he is liable to return the bill of lading/ railway receipt. Even if he wrongfully retains it, the property in the goods does not pass to him.

Passing of Risk (Section 26)

When goods are sold, they remain at the seller's risk until the property in the goods is transferred to the buyer. Once the property is passed, the goods are at the buyer's risk even if the delivery has not been made.

There are some points that you need to remember about the passing of risk:

It holds true unless the buyer and seller have agreed to some other terms.

In cases where the delivery has not been made, if the delay in delivery is due to the fault of the seller, then the risk lies with the seller. If the delay is due to a fault of the buyer, then the goods are at the buyer's risk.

Regardless of the buyer or the seller bearing the risk, the duties and responsibilities of both of them as a bailee of goods for the other party, remain unaffected.

Hence, we can say that under ordinary circumstances, the seller bears the risk until the property is passed to the buyer which also passes the risk to him. The parties may, however, decide to pass the risk before or after passing the property in the goods to the buyer.

Let us take a look at an example. Peter is auctioning his great-grandfather's wristwatch at a function. In a true auctioneer style, he manages to get a gavel (hammer used by auctioneers) and sets up a table inviting bids for the historical watch. He manages to get the highest bid of Rs 25,000.

As he strikes the gavel to signify acceptance of the bid, he accidentally damages the watch. In this case, the property had not passed to the bidder. Hence, the risk was Peter's and he will have to bear the loss.

Transfer of Title

Section 27 deals with the sale by a person who is not the owner. Imagine a sale contract where the seller –

Is not the owner of the goods

Does not have consent from the owner to sell the goods

Has not been given authority by the owner to sell the goods on his behalf

In such cases, the buyer acquires no better title to these goods than the seller had, provided the conduct of the owner precludes the seller's authority to sell.

Let us see an example. Peter steals a mobile phone from his office and sells it to John, who buys it in good faith. However, John will get no title to the phone and will have to return it to the owner when he demands, i.e. there is no transfer of title.

Now, this seems to be a really straight-forward rule. However, enforcing this rule can mean that innocent buyers might suffer losses in most cases. Therefore, to protect the interest of the buyers, certain exceptions are provided.

In the following scenarios a non-owner of goods can transfer a better title to the buyer:

1] Sale by a Mercantile agent (Proviso to Section 27)

Consider a mercantile agent, who is in possession of the goods or a document to the title of the goods, with the consent of the owner. Such an agent can sell the goods when acting in the ordinary course of business of a mercantile agent. The sale shall be valid provided the buyer acts in good faith and has no reason to believe that the seller doesn't have any right to sell the goods. The transfer of title is valid in such a case.

2] Sale by one of the Joint Owners (Section 28)

Many times goods are purchased in joint ownership. In many cases, the goods are kept in the possession of one of these joint owners by the permission of the co-owners. If this person (who has the sole possession of the goods) sells the goods, the property in the goods is transferred to the buyer. This is provided the buyer acts in good faith and has no reason to believe that the seller does not have a right to sell the goods.

Example: Peter, John, and Oliver are three friends to buy a 42-inch television set to watch the upcoming cricket World Cup. They unanimously decide to keep the television set at Oliver's house. Once the World Cup is over, the TV is still at his house.

One day, Oliver's office colleague Julia visits his house and he sells the TV to her. She buys it in good faith and has no knowledge about the fact that it was purchased jointly. In this case, she gets a good title to the TV.

3] Sale by a Person in Possession of Goods under a Voidable Contract (Section 29)

Consider a person who acquires possession of certain goods under a contract voidable on grounds of coercion, misrepresentation, fraud or undue influence. If this person sells the goods before the contract is terminated by the original owner of the goods, then the buyer acquires a good title to the goods.

Example: Peter fraudulently obtains a gold diamond ring from Olivia. Olivia can void the contract whenever she wants. Before she realizes the fraud, Peter sells the ring to Julia – an innocent buyer. In

this case, Olivia cannot recover the ring from Julia since she didn't void the contract before the sale was made.

4] Sale by a Person who has already sold the Goods but Continues to have Possession [Section 30 (1)]

Consider a person who has sold goods but continues to be in possession of them or of the documents of title to them. This person might sell the goods to another buyer.

If this buyer acts in good faith and is unaware of the earlier sale, then he will have a good title to the goods even though the property in the goods was passed to the first buyer. A pledge or other disposition of the goods or documents of title by the seller in possession are valid too.

5] Sale by Buyer obtaining possession before the Property in the Goods has Vested in him [Section 30 (2)]

Consider a buyer who obtains possession of the goods before the property in them is passed to him, with the permission of the seller. He may sell, pledge or dispose of the goods to another person.

If the second buyer obtains delivery of the goods in good faith and without notice of the lien or any other right of the original seller, he gets a good title to them.

This rule does not hold true for a hire-purchase agreement which allows a person the possession of the goods and an option to buy unless the sale is agreed upon.

Example: Peter takes a car from John under the conditions that he will pay Rs. 5,000 every month as rent of the vehicle and that he can choose to purchase it for Rs. 100,000 to be paid in 24 equal installments. Peter pays Rs. 5,000 for three months and then sells the car to Oliver. In this case, John can recover his car from Oliver since Peter had neither purchased the car nor agreed to purchase it. He only had an option to buy the car.

6] Estoppel

If an owner of goods is stopped by the conduct from denying the seller's authority to sell, the buyer gets a good title. However, to get a good title by estoppel, it needs to be proved that the original owner had actively suffered or held out the seller in question as a person authorized to sell the goods.

Let us see an example. Peter, John, and Oliver are having a conversation. Peter tells John that he owns the BMW car parked nearby which actually belongs to Oliver. However, Oliver remains silent. Subsequently, Peter sells the car to John.

In this case, John will get a good title to the car even though the seller is Peter who has no title to it. This is because, Oliver, by his conduct, did not deny Peter's authority to sell the car.

7] Sale by an Unpaid Seller [Section 54 (3)]

If an unpaid seller exercises his right of lien or stoppage in transit and sells the goods to another buyer, then the second buyer gets a good title to the goods as against the original buyer. So in such a case transfer of title will occur.

8] Sale under the Provisions of other Acts

Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.

Purchase of goods from a -finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872]

A sale by a pawnee can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872]

Performance of Contract of Sale

There are many rules and definitions governing the law on sales in sections 31 to 40 of the Sale of Goods Act, 1930. In this article, we will be looking at various definitions and duties of buyers, sellers, and third parties (wherever applicable).

Definition of Delivery

According to Section 2 (2) of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. Hence, if a person takes possession of goods by unfair means, then there is no delivery of goods. Having understood delivery, let's look at the law on sales

Law on Sales

1] The Duty of the Buyer and Seller (Section 31)

It is the duty of the seller to deliver the goods and the buyer to pay for them and accept them, as per the terms of the contract and the law on sales.

2] Concurrency of Payment and Delivery (Section 32)

The delivery of goods and payment of the price are concurrent conditions as per the law on sales unless the parties agree otherwise. So, the seller has to be willing to give possession of the goods to the buyer in exchange for the price. On the other hand, the buyer has to be ready to pay the price in exchange for possession of the goods.

Rules Pertaining to the Delivery of Goods

The Sale of Goods Act, 1930 prescribes the following rules regarding delivery of goods:

a. Delivery (Section 33)

The delivery of goods can be made either by putting the goods in the possession of the buyer or any person authorized by him to hold them on his behalf or by doing anything else that the parties agree to.

b. Effect of part-delivery (Section 34)

If a part-delivery of the goods is made in progress of the delivery of the whole, then it has the same effect for the purpose of passing the property in such goods as the delivery of the whole. However, a part-delivery with an intention of severing it from the whole does not operate as a delivery of the remainder.

c. Buyer to apply for delivery (Section 35)

A seller is not bound to deliver the goods until the buyer applies for delivery unless the parties have agreed to other terms in the contract.

d. Place of delivery [Section 36 (1)]

When a sale contract is made, the parties might agree to certain terms for delivery, express or implied. Depending on the agreement, the buyer might take possession of the goods from the seller or the seller might send them to the buyer.

If no such terms are specified in the contract, then as per law on sales

The goods sold are delivered at the place at which they are at the time of the sale

The goods to be sold are delivered at the place at which they are at the time of the agreement to sell. However, if the goods are not in existence at such time, then they are delivered to the place where they are manufactured or produced.

e. Time of Delivery [Section 36 (2)]

Consider a contract of sale where the seller agrees to send the goods to the buyer, but not time of delivery is specified. In such cases, the seller is expected to deliver the goods within a reasonable time.

f. Goods in possession of a third party [Section 36 (3)]

If at the time of sale, the goods are in possession of a third party. Then there is no delivery unless the third party acknowledges to the buyer that the goods are being held on his behalf. It is important to note that nothing in this section shall affect the operation of the issue or transfer of any document of title to the goods.

g. Time for tender of delivery [Section 36 (4)]

It is important that the demand or tender of delivery is made at a reasonable hour. If not, then it is rendered ineffectual. The reasonable hour will depend on the case.

h. Expenses for delivery [Section 36 (5)]

The seller will bear all expenses pertaining to putting the goods in a deliverable state unless the parties agree to some other terms in the contract.

i. Delivery of wrong quantity (Section 37)

Sub-section 1 – If the seller delivers a lesser quantity of goods as compared to the contracted quantity, then the buyer may reject the delivery. If he accepts it, then he shall pay for them at the contracted rate.

Sub-section 2 – If the seller delivers a larger quantity of goods as compared to the contracted quantity, then the buyer may accept the quantity included in the contract and reject the rest. The buyer can also reject the entire delivery. If he wants to accept the increased quantity, then he needs to pay at the contract rate.

Sub-section 3 – If the seller delivers a mix of goods where some part of the goods are mentioned in the contract and some are not, then the buyer may accept the goods which are in accordance with the contract and reject the rest. He may also reject the entire delivery.

Sub-section 4 – The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

j. Installment deliveries (Section 38)

The buyer does not have to accept delivery in installments unless he has agreed to do so in the contract. If such an agreement exists, then the parties are required to determine the rights and liabilities and payments themselves.

k. Delivery to carrier [Section 36 (1)]

The delivery of goods to the carrier for transmission to the buyer is prima facie deemed to be ‘delivery to the buyer’ unless contrary terms exist in the contract.

l. Deterioration during transit (Section 40)

If the goods are to be delivered at a distant place, then the liability of deterioration incidental to the course of the transit lies with the buyer even though the seller agrees to deliver at his own risk.

m. Buyers right to examine the goods (Section 41)

If the buyer did not get a chance to examine the goods, then he is entitled to a reasonable opportunity of examining them. The buyer has the right to ascertain that the goods delivered to him are in conformity with the contract. The seller is bound to honor the buyer's request for a reasonable opportunity of examining the goods unless the contrary is specified in the contract.

Acceptance of Delivery of Goods (Section 42)

A buyer is deemed to have accepted the delivery of goods when:

He informs the seller that he has accepted the goods; or

Does something to the goods which is inconsistent with the ownership of the seller; or

Retains the goods beyond a reasonable time, without informing the seller that he has rejected them.

Return of Rejected Goods (Section 43)

If a buyer, within his right, refuses to accept the delivery of goods, then he is not bound to return the rejected goods to the seller. He needs to inform the seller of his refusal though. This is true unless the parties agree to other terms in the contract.

Refusing Delivery of Goods (Section 44)

If the seller is willing to deliver the goods and requests the buyer to take delivery, but the buyer fails to do so within a reasonable time after receiving the request, then he is liable to the seller for any loss occasioned by his refusal to take delivery. He is also liable to pay a reasonable charge for the care and custody of goods.

Rights of Unpaid Seller Against Goods

An unpaid seller has certain rights against the goods and the buyer. In this article, we will refer to the sections of the Sale of Goods Act, 1930 and look at the rights of an unpaid seller against goods namely rights of lien, rights of stoppage in transit etc.

Rights of Lien

Seller's Lien (Section 47)

According to subsection (1) of Section 47 of the Sale of Goods Act, 1930, an unpaid seller, who is in possession of the goods can retain their possession until payment. This is possible in the following cases:

He sells the goods without any stipulation for credit

The goods are sold on credit but the credit term has expired.

The buyer becomes insolvent.

Subsection (2) specifies that the unpaid seller can exercise his right of lien notwithstanding that he is in possession of the goods acting as an agent or bailee for the buyer.

Part-delivery (Section 48)

Further, Section 48 states that if an unpaid seller makes part-delivery of the goods, then he may exercise his right of lien on the remainder. This is valid unless there is an agreement between the buyer and the seller for waiving the lien under part-delivery.

Termination of Lien (Section 49)

According to subsection (1) of Section 49 of the Sale of Goods Act, 1930, an unpaid seller loses his lien:

If he delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.

When the buyer or his agent obtain possession of the goods lawfully.

By waiver.

Further, subsection (2) states that an unpaid seller, who has a lien, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Right of Stoppage in Transit

This right is an extension to the right of lien. The right of stoppage in transit means that an unpaid seller has the right to stop the goods while they are in transit, regain possession, and retain them till he receives the full price.

If an unpaid seller has parted with the possession of the goods and the buyer becomes insolvent, then the seller can ask the carrier to return the goods back. This is subject to the provisions of the Act.

Duration of Transit (Section 51)

Goods are in the course of transit from the time the seller delivers them to a carrier or a bailee for transmission to the buyer until the buyer or his agent takes delivery of the said goods.

Some scenarios of the transit ending:

The buyer or his agent obtain delivery before the goods reach the destination. In such cases, the transit ends once the delivery is obtained.

Once the goods reach the destination and the carrier of bailee informs the buyer or his agent that he holds the goods, then the transit ends.

If the buyer refuses the goods and even the seller refuses to take them back the transit is not at an end.

In some cases, goods are delivered to a ship chartered by the buyer. Depending on the case, it is determined that if the master is functioning as an agent or carrier of the goods.

If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit ends.

If a part-delivery of the goods has been made and the unpaid seller stops the remaining goods in transit, then the transit ends for those goods. This is provided that there is no agreement to give up the possession of all the goods.

How Stoppage is Affected (Section 52)

There are two ways of stopping the transit of goods:

The seller takes actual possession of the goods

If the goods are in the possession of a carrier or other bailee, then the seller gives a notice of stoppage to him. On receiving the notice, the carrier or bailee must re-deliver the goods to the seller. The seller bears the expenses of the re-delivery.

Effect of Stoppage

Even if the unpaid seller exercises his right of stoppage in transit, the contract stays valid. The buyer can ask for delivery of the goods after making the payment.

Right of Lien vs. Rights of Stoppage in Transit

Right of LienRights of Stoppage in TransitEssenceRetain possessionRegain possessionWho has the possession of the goods?The seller.The carrier or other bailee. The buyer should not have received the

goods.Buyer insolventNot a mandatory requirementThe right can be exercised only when the buyer becomes insolvent.In simple words, the right of stoppage in transit begins when the right of lien ends.

Pledge by the Buyer (Section 53)

Unless the seller agrees, the right of lien or stoppage is unaffected by the buyer selling or pledging the goods. The principle is simple: the second buyer cannot be in a better position that the seller (first buyer). However, if the buyer transfers the document of title or pledges the goods to a sub-buyer in good faith and for consideration, then the right of stoppage is defeated.

There are two exceptions to make note of:

a. The seller agrees to resale, mortgage or other disposition of the goods

If the seller agrees to the buyer selling, pledging or disposing of the goods in any other way, then he loses his right to lien.

b. Transfer of the document of title of goods by the buyer

When the seller transfers the document of title of goods to the buyer and the buyer further transfers it to another buyer who purchases the goods in good faith and for a price, then:

If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.

If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of the pledgee.

Right of Resale (Section 54)

The right of resale is an important right for an unpaid seller. If he does not have this right, then the right of lien and stoppage won't make sense. An unpaid seller can exercise his right of resale under the following conditions:

Goods are perishable in nature: In such cases, the seller does not have to inform the buyer of his intention of resale.

Seller gives a notice to the buyer of his intention of resale: The buyer needs to pay the price of the goods and ask for delivery within the time mentioned in the notice. If he fails to do so, then the seller can resell the goods. He can also recover the difference between the contract price and resale price if the latter is lower. However, if the resale price is higher, then the seller keeps the profits.

Unpaid seller resells the goods post exercising his right of lien or stoppage: The subsequent buyer acquires a good title to the goods even if the seller has not given a notice of resale to the original buyer.

Resale where the right of resale is reserved in the contract of sale: If the contract of sale specifies that the seller can resell the goods if the buyer defaults, then the seller reserves his right of sale. He can claim damages from the original buyer even if he does not give a notice of resale to him.

Property in the goods has not passed to the buyer: The unpaid seller can exercise his right of withholding delivery of goods. This is similar to the right of lien and is called quasi-lien.

Rights of Unpaid Seller Against Buyer

When the buyer of goods does not pay his dues to the seller, the seller becomes an unpaid seller. And now the seller has certain rights against the buyer. Such rights are the seller remedies against the breach of contract by the buyer. Such rights of the unpaid seller are additional to the rights against the goods he sold.

1] Suit for Price

Under the contract of sale if the property of the goods is already passed but he refuses to pay for the goods the seller becomes an unpaid seller. In such a case. the seller can sue the buyer for wrongfully refusing to pay him his due.

But say the sales contract says that the price will be paid at a later date irrespective of the delivery of goods,. And on such a day the if the buyer refuses to pay, the unpaid seller may sue for the price of these goods. The actual delivery of the goods is not of importance according to the law.

2] Suit for Damages for Non-Acceptance

If the buyer wrongfully refuses or neglects to accept and pay the unpaid seller, the seller can sue the buyer for damages caused due to his non-acceptance of goods. Since the buyer refused to buy the goods without any just cause, the seller may face certain damages.

The measure of such damages is decided by the Section 73 of the Indian Contract Act 1872, which deals with damages and penalties. Take for example the case of seller A. He agrees to sell to B 100 liters of milk for a decided price. On the day, B refuses to accept the goods for no justifiable reason. A is not able to find another buyer and the milk goes bad. In such a case, A can sue B for damages.

3] Repudiation of Contract before Due Date

If the buyer repudiates the contract before the delivery date of the goods the seller can still sue for damages. Such a contract is considered as a rescinded contract, and so the seller can sue for breach of contract. This is covered in the Indian Contract Act and is known as Anticipatory Breach of Contract.

4] Suit for Interest

If there is a specific agreement between the parties the seller can sue for the interest amount due to him from the buyer. This is when both parties have specifically agreed on the interest rate to be paid to seller from the date on which the payment becomes due.

But if the parties do not have such specific terms, still the court may award the seller with the interest amount due to him at a rate which it sees fit.

Remedies of Buyer Against the Seller

Just as the seller can rescind the contract, then so can the seller. When the seller breaches the contract the buyer also has certain remedies against the seller. Let us take a look at some remedies that the Sales Act prescribes for the buyer.

1] Damages of Non-Delivery

If the seller wrongfully or neglectfully refuses to deliver the goods to the buyer, then the buyer can sue for non-delivery of the goods. According to Section 57 of the Sale of Goods Act, if the buyer faces losses due to the wrongful actions of the seller (non-delivery) he can sue for damages caused due to this.

Let's take for example A whose agrees to sell to B 10 pair of shoes for 1000/- each. B was going to sell the same shoes to C for 1100/- a pair. A neglects to deliver the goods to B. Now, B can sue A for non-delivery. He can sue for the amount of 100/- per pair, i.e. 1000/- (the difference between B's cost price and sale price)

2] Suit for Specific Performance

If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. The court after deliberation can command the seller for specific performance. One important point to keep in mind is that this remedy is only available if the goods are ascertained or specific.

Example: There was a contract between A and B, that A will sell to B a very expensive painting on a specific date. On the said day A refuses to sell. B can approach the court, who orders A to sell the painting to B at the ascertained price.

3] Suit for Breach of Warranty

When the seller breaches the warranty of the goods, the buyer cannot simply reject the goods on such basis. The buyer has two options in such a case,

set up against the buyer the said breach of warranty in the extinction of the price

or sue the seller for breach of warranty

4] Repudiation of Contract

If the seller repudiates the contract, the buyer does not have to wait until the date of the contract. He can treat the contract as rescinded and sue for damages immediately. This will be an anticipatory breach of contract.

5] Sue for Interest

The Act specifically states that nothing in the act will affect the right of the seller or the buyer to recover interest or special damages due to him by the contract. And if there is no specific clause in the contract, the court can come to the rescue of the affected party.

Auction Sale

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.

The person carrying out the auction sale is the auctioneer. He is the agent of the seller. So all the rules of the Law of Agency apply to him.

But if an auctioneer wishes to sell his own property as the principal he can do so. And he need not disclose this fact, it is not a requirement under the law.

Rules of an Auction Sale

As we saw previously, the rules regarding an auction sale are found in the Sale of Goods Act. Section 64 of the Act specifically deals with the rules governing an auction sale. Let us take a brief look.

1] Goods Sold in Lots

In an auction sale, there can be many goods up for sale of many kinds. If some particular goods are put up for sale in a lot, then each such lot will be considered a separate subject of a separate contract of sale. So each lot ill prima facie be the subject of its own contract of sale.

2] Completion of Sale

The sale is complete when the auctioneer says it is complete. This can be done by actions also – like the falling of the hammer, or any such customary action. Till the auctioneer does not announce the completion of the sale the prospective buyers can keep bidding.

3] Seller may Reserve Right to Bid

The seller may reserve his right to bid. To do so he must expressly reserve such right to bid. In this case, the seller on any person on his behalf can bid at the auction.

4] Sale Not Notified

If the seller has not notified of his right to bid he may not do so under any circumstances. Then neither the seller nor any person on his behalf can bid at the auction. If done then it will be unlawful.

The auctioneer also cannot accept such bids from the seller or any other person on his behalf. And any sale that contravenes this rule is to be treated as fraudulent by the buyer.

5] Reserve Price

An auction sale may be subject to a reserve price or an upset price. This means the auctioneer will not sell the goods for any price below the said reserve price.

6] Pretend Bidding

But if the seller or any other person appointed by him employs pretend bidding to raise the price of the goods, the sale is voidable at the option of the buyer. That means the buyer can choose to honor the contract or he can choose to void it.

7] No Credit

The auctioneer cannot sell the goods on credit as per his wishes. He cannot accept a bill of exchange either unless the seller is expressly fine with it.

Unit-4

Partnership Act,1932

Meaning of Partnership:

When two or more persons join hands to set up a business and share its profits and losses it is called Partnership.

Section 4 of the Indian Partnership Act 1932 defines partnership as the 'relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all'.

Partners are the persons who have entered into partnership individually with one another. Partners collectively are called 'firm'.

Characteristics of a Partnership Firm: -

(i) Association of Two or More Persons:

In partnership there must be at least two persons. Partnership is the outcome of a contract, so there must be two or more persons. The persons becoming partners must be competent to enter into a contract. Minors cannot form a partnership firm as they are incompetent to enter into a contract.

According to section 11 of Contract Act, there is no maximum limit on partners in Partnership Act, but according to Companies Act, the maximum number of partners engaged in a banking business cannot exceed ten and twenty in any other business.

(ii) Contractual Relation:

The person joining the partnership enters into a contract for running the business. According to Partnership Act, the relation of partnership arises from contract and not from status. The contract may be oral or written but in practice written agreement is made because it helps to settle the disputes if they arise later on.

(iii) Earning of Profits:

The purpose of the business should be to make profits and distribute them among partners. If a work is done for charity purposes or to serve the society it will not be called partnership. So the motive of the business should be to earn profits. It does not mean that there will not be losses but the motive should be earning of profits.

(iv) Existence of Business:

Partnership can only be for some kind of business. The term 'Business' includes any trade, profession or occupation. By business we mean all activities concerning production, distribution and rendering of services for the purpose of earning profits. If the work is related to social service, we do not call it a business and hence no partnership.

(v) Implied Authority:

There is an implied authority that any partner can act on behalf of the firm. The business will be bound by the acts of partners.

(vi) Unlimited Liability:

As in the case of a sole-trade business liability of the partners of a firm is unlimited. In case some obligation arises then not only the partnership assets but also the private property of the partners can be taken for the payment of liabilities of the firm to the third parties. The creditors can claim their dues from anyone of the partner or from all the partners. The partners are liable individually and collectively.

(vii) Principal and Agent Relationship:

In partnership the relationship of Principal and Agent exists. It is not necessary that all partners should work in the business. Any one or more partners can act on behalf of other partners. Each partner is an agent of the firm and his activities bind the firm. He also acts as a principal because he is bound by the activities of other partners.

(viii) Utmost Good Faith:

The very bases of the partnership business are good faith and mutual trust. Every partner should act honestly and give proper accounts to other partners. The partnership cannot run if there is suspicion among partners. It is very important that partners should act as trustees and for the common good of all. Distrust and suspicion among partners lead to the failure of many firms.

(ix) Restriction and Transfer of Share:

No partner can sell or transfer his share to anybody else without the consent of the other partners. In case any partner does not want to continue in the partnership, he can give a notice for dissolution of the firm.

(x) Common management:

Every partner has a right to take part in the running of the business. It is not necessary for all partners to participate in the day-to-day activities of the business but they are entitled to participate. Even if partnership business is run by some partners, the consent of all other partners is necessary for taking important decisions.

(xi) Partners and Partnership are one:

A partnership firm has no separate entity from the partners. A firm is only a name to the collective name of partners. No firm can exist without partners. The rights and liabilities of partners are the rights and liabilities of the firm. Partners have implied authority to bind the firm for their acts.

(xii) Capital Contribution:

The partners contribute to the capital of the firm. It is not necessary to have capital in profit sharing ratio. A partner can be admitted to the firm even without contributing to the capital. It is not essential that all partners must contribute to the firm's capital.

(xiii) Protection of Minority Interest:

All important decisions are generally taken by concerns. It ensures protection of those who may not agree to the majority view point. A partner may even ask for the dissolution of partnership if he feels aggrieved.

(xiv) Continuity:

There is no true limit for the continuity of a partnership firm. It goes on only upto the time the partners want it to go. Any misunderstanding among partners, death or insolvency of a partner may dissolve the partnership. Dissolution of partnership does not necessarily mean dissolution of the firm. The remaining partners may continue the firm after meeting the claims of outgoing partners.

REGISTRATION OF PARTNERSHIP FIRM:-

Partnership Firms registration procedure under Indian Partnership Act-

A Partnership is one of the most important forms of a business organization, where two or more people come together to form a business and divide the profits thereof in an agreed ratio. A Partnership is easy to form, and the compliance is minimal as compared to companies.

●Name given to the Partnership firm-

Any name can be given to a partnership firm as long as you fulfill the below-mentioned conditions:

*The name shouldn't be too similar or identical to an existing firm doing the same business,

*The name shouldn't contain words like emperor, crown, empress, empire or any other words which show sanction or approval of the government.

●How should be the agreement between partners formed?

Partnership Deed

Agreement to carry on a business between the partners, partnership comes into existence. The partnership agreement can be either oral or written. The Partnership Act does not require that the agreement must be in writing. But when the agreement is in written form, it is called 'Partnership Deed'. Partnership deed should be duly signed by the partners, stamped & registered.

Partnership deed generally contains the following details:

1. Names and Addresses of the. firm and its main business;

2. Names and Addresses of all partners;

3. A contribution of the amount of capital by each partner;

4.The accounting period of the firm;

5.The date of commencement of partnership;

6. Rules regarding an operation of Bank Accounts;

7. Profit and loss sharing ratio;

8. The rate of interest on capital, loan, drawings, etc;

9. Mode of auditor's appointment, if any;

10. Salaries, commission, etc, if payable to any partner;

11. The rights, duties, and liabilities of each partner;

12. Treatment of loss arising out of insolvency of one or more partners;

13. Settlement of accounts on the dissolution of the firm;

14. Method of a settlement of disputes among the partners;

15. Rules to be followed in case of admission, retirement, a death of a partner; and

16. Any other matter relating to the conduct of business. Normally, all the matters affecting the relationship of partners amongst themselves are covered in partnership deed.

●Is it necessary to register a partnership firm?

Indian Partnership Act, 1932 governs the partnerships. Registration of partnership firm is optional and at the discretion of the partners.

Registration of partnership firm may be done at any time – before starting a business or anytime during the continuation of partnership.

It is always advisable to register the firm since a registered firms enjoy special rights which aren't available to the unregistered firms.

●How to register the partnership firm?

An application form along with fees is to be submitted to Registrar of Firms of the State in which firm is situated. The application has to be signed by all partners or their agents.

●Documents to be submitted to Registrar are:

*Application for registration of partnership (Form 1)

*Specimen of Affidavit

*Certified original copy of Partnership Deed

*Proof of principal place of business (ownership documents or rental/lease agreement)

*If the registrar is satisfied with the documents, he will register the firm in Register of Firms and issue Certificate of Registration.

Types of Partners:-

1] Active Partner/Managing Partner

An active partner is also known as Ostensible Partner. As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm.

Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

2] Dormant/Sleeping Partner

This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.

3] Nominal Partner

This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

4] Partner by Estoppel

If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

5] Partner in Profits Only

This partner will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities.

6] Minor Partner

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

Such a minor partner on attaining majority (becoming 18 years of age) has six months to decide if he wishes to become a partner of the firm. He must then declare his decision via a public notice. So whether he continues as a partner or decides to retire, in both cases he will have to issue a public notice.

Rights and Duties of Partners :-

The mutual right & duties of partners of a firm may be determined by contract between the parties.In the absence of express contract between the partners, the relation between partners are governed by section 9 to 16 & 25 of the act.

Right of a Partners :

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(1) To take part in the business :

Every partner has a right to take part in the conduct & management of the business,subject to any contract between the partners.

(2) To share the Profit :

In the absence of any agreement the partner has a right to share equally in the profits of the business earned & are liable to contribute equally to the losses sustained by the firm.

(3)To have access to the accounts :

Every partner has a right to have access to & to inspect & copy any of the books of the firm.

(4) To be indemnified :

Every partner has a right to be indemnified by the firm in respect of payment made & liabilities incurred in the ordinary conduct of business or doing any act in emergency.

(5) To be Consulted :

Every partner has a right to be heard & to be consulted if the matter's differences of opinion & also has a right to express his opinion.

(6) To interest on Capital :

The partnership agreement may contain a clause to the right of the partners to claim interest on capital at a certain rate such interest subject to contract between the partners is payable only out of profit, if any, earned in the firm.

(7) To retire :

A partner has a right to retire according to the nature of partnership.

(8) To use Partnership property :

The property of the firm shall be held & used by the partners exclusively for the purpose of business. No partner has a right to treat it as his individual property.

(9)To have business wound up after dissolution :

On the dissolution of a firm every partner or his representative, to have the property of firm applied in payment of the debts & liabilities of firm & to have the surplus distributed among the partners or representatives.

(10)Right to interest on advances :

Where a partner makes for the purposes of the business of the firm any advances beyond the amount of capital he is entitled to interest on each advance at the rate of 6% P.A. Such interest is not only payable out of the profit of the business but also act the assets of the firm.

Duties & Liabilities of a Partner :

(1)To carry on a business to common advantage :

. Every partner is bound to-

. (a)Carry on the business to the greatest common advantage.

(b)Be just & faithful to each other.

(c) Use reasonable care & skill in performing his duties.

(d) Render true account & full information.

(2) To indemnify :

Every partner shall indemnify the firm for any loss caused to it by-

(a)His fraud in the

conduct of the

business of the firm.

(b)Wilful neglect of duty

conduct of the

business of the firm.All

partner are jointly &

severally liable for

acts of the firm.

(3) To be diligent :

Every partners is bound to attend diligently to his duties in the conduct of the business.

(4) No remuneration :

A partner is not entitled to receive remuneration for taking part in the conduct of the business.It is,however,usual to allow some remuneration to the working partners provided there is a specific agreement to that effect.

(5) To account for personal profit made :

If a partners derives any benefit,with all the consent of the other partners from partnership transaction or by used of partnership property name or business connection,he must account for it.

(6) Not to Carry on competing business :

No partners shall carry on any business of the same nature as competing to the business of the partnership firm. If partners carries the business & then he shall account for & pay to the firm all the profit made by him in that business.

(7) To share losses :

Subject to the contract between the partners,partner in liable to contribute equally to the losses sustained by the firm,some partners may exclude their liability to share losses.

(8) Liable for acts of the firm :

Every partner has implied authority,where he exceeds the authority conferred on him & the firm,suffers a loss,he shall have to compensate the firm for any such loss.

DISSOLUTION OF A FIRM:-

Meaning :

Dissolution of a firm means a firm ceases to exist. The relationship existing between the partner discontinues. The dissolution of partnership between all the partners of a firm is called the dissolution of the firm.

Mode of Dissolution :

Section 40 to 44 lays down various modes of dissolution of a firm,which can be classified as follows :

1. By an act of the Parties :

(a)By Agreement :

A firm can be dissolved as per the mutual agreement between the parties or expressed terms in the partnership deed.

(b)By Consent :

A firm may be dissolved at any time with the consent of all partners. This applies to all cases, whether firm is for a fixed

period or otherwise.

(c)By Notice :

In case of “partnership at will” the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm. A notice once given cannot be withdraw with at consent of all the partners.

2.By Operation of Law :

(a)Compulsory dissolution

(b)On happening of certain contingencies.

(a)Compulsory dissolution :

(i)Insolvency of partner :

When all the partners or all the partner except one,are adjudicated insolvent, the firm is compulsory dissolved.

(ii)When some event

making partnership business unlawful :

When some event happens,which makes it unlawful for the business to be carried on in partnership.E.g. A wine shop carrying on the business of selling liquor is valid when business started,but new legislation comes into force which prohibits the sale of liquor, it would become an unlawful business. Where business is declared as unlawful,the firm must be compulsorily dissolved.

(iii)Illegal Partnerships :

Where two partners in a firm are carrying on business & one of the partner is a

foreigner & there was a outbreak of war between the country, foreign countries declare as an enemy country the partnership between the two partner become an illegal partnership & firm has to be compulsory dissolved.

(B) On happening of certain contingencies :

(i) By expire of term :

Where a partnership has been constituted for a fixed period, the firm is automatically dissolved on the expire of such fixed period .

(ii)By completion of undertaking :

Where a partnership has been constituted to carry out one or more adventures or undertaking the firm is

automatically dissolved on completion of such adventure on undertaking.

(iii) By Death of a partners :

Where a partner in a firm dies,the firm is automatically dissolved on the death of the partner.

(iv)By insolvency of a Partner :

In the absence of where a partner is declared insolvent by a court he ceases to be a partner forthwith & the firm is dissolved.

3. By Intervention of the Court :

(a)By insanity of a partner :

When a partner becomes a lunatic, either his relative or friend or any other partner can file a suit for dissolution this is because a contract by a

lunatic is void & so business cannot be carried on with such person.

(b)Permanent incapacity of Partner :

Where a partner becomes permanently incapable of performing his duties as a partner,on suit being filed by other partner, the court may order a dissolution of firm.

(c)By mis-conduct of a partner :

If a partner is guilty of conduct which is likely to affect prejudicially the business of the firm, any other partner can sue for dissolution of the firm E.g. Mis appropriation of customer money.

(d)By persistent breach of agreement :

Where a partner wilfully

or continuously commits breach of partnership agreement, relating to the management of the affairs, of the firm or the conduct of the business,any partner can file a suit for dissolution.

(e)By transfer of interest :

(i) When one partner has transferred the whole of his interest in the firm to a third party.

(ii)Allowed his interest to be charged in execution of a decree against him

(iii)He has allowed his share to be in recovery of arrears of land revenue. Any other partner can sue for dissolution .

(f)Business Running at loss :

When the business of the firm can not be carried on except at the loss then the firm can be dissolved. The

object of partnership is to earn profit & if it cannot be fulfilled then the firm cannot exist.

(g)Just & Equitable ground :

When on any other ground the court finds it just & equitable to dissolve a firm,it can order so. E.g. dead lock in the management.

Unit 5

Negotiable Instruments Act, 1881

Negotiable Instruments Act, 1881 is an act in India dating from the British colonial rule, that is still in force largely unchanged.

Section 13(1) says NIs include promissory notes, bills of exchange or cheques payable either to order or to bearer. Hence, the Act only includes these three types of NIs within its ambit.

A negotiable instrument is nothing but a document. Some laws and definitions also treat it as movable property.

Since every property has some monetary worth, even NIs possess some financial value. In order to purchase it, one just has to pay its value to its owner and acquire it as property.

According to these definitions, an instrument of this kind must always possess the following characteristics:

It should be freely transferable either by simple delivery or by endorsement and delivery.

Defects in the title of sellers of these instruments do not affect persons who purchase them in good faith.

Holders of these instruments can sue upon them in their own names.

CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

Freely transferrable:The property in a negotiable instrument gets transferred by a simple process of mere delivery if it is payable to bearer, endorsement and delivery or payable to order.

Recovery: One can sue upon the instrument in his own name.

Presumption as to considerations: These instruments are presumed to have been

made,

drawn,

accepted,

endorsed,

negotiated

or transferred for consideration.

Payable to order or bearer: It must be payable either to order or bearer.

Holder's title free from all defects: The holder (one who acquires the instrument in good faith and for consideration) in due course gets title free from all defects.

Presumption as to holder-:Every holder of negotiable instrument is presumed to be holder in due course.

TYPES OF NEGOTIABLE INSTRUMENTS

There are two types of Negotiable Instruments:

Instruments Negotiable by Statute:

The Negotiable Instruments Act mentions orgy three kinds of negotiable instruments (Section 13). These are:

Promissory Notes

Bills of Exchange

Cheques

PROMISSORY NOTES:

Section 4 of the Act defines a promissory note as an instrument in writing.

It contains an unconditional undertaking which is signed by the maker to pay of certain sum of money to, to the order of certain person, or to the bearer of the instruments. The person, who makes the promissory note, promises to pay and is called the maker. The person to whom the payment is to be mode is called the payee.

Essential features:

The following are the essential features of a Promissory note,:

The promise must be in writing.

The promise must be signed by the maker or payer.

The promise must be unconditional.

The amount to be paid must be definite in terms of money.

It must be payable on demand or at a fixed or determinable future date.

It must be payable to a definite person. The Payee must be certain.

Promissory note must bear stamp at the rate prescribed by law of a country.

There are two parties a promissory note,

Maker

Payee

NOTE: An instrument containing a promise to pay a sum after educating necessary expenses or imposing any other condition is not a promissory note.

Illustrations:

I promise to pay X Rs. 1500, and all other sums which shall be due to him.

I promise to pay Y Rs. 5500, first deducting there out any money which he may owe me.

Cases:

In Chandabolu Bhaskara Rao's case, the Honble High Court of Andhra Pradesh held that since promissory note is not a compulsorily attestable document, even if the signatures of the attesters are taken and after its execution it does not amount the material alteration. So it does not get vitiated. Therefore, whether there were attesters or not at the time of its execution is immaterial, more so when its execution is admitted.

In Haribhavandas Parasaran and Co. v. A.D. Thakur [A.I.R. 1963 Mys. 107], it was held that- It is mandatory that the presumption under Section 118(a) should be made until the contrary is proved.

BILL OF EXCHANGE:

It is an instrument in writing. Further, it contains an unconditional order signed by the maker, directing a certain person to pay

a certain sum of money only to, or

to the order or

certain person to the bearer of the instrument.

Essentials:

The amount payable must be certain.

The payment must be made in money.

The bill Payable may be either on demand or after a specified period.

The bill may be payable either to the bearer or to the order or payee.

Illustrations:

Please let the bearer have Rs. 15000 and oblige.

We hereby authorize you to pay on our account to the order of X, Rs 65000.

CHEQUE:

Definition of Cheque

Sec 6 of the Act defines a cheque as a bill of exchange which is drawn on a specified banker and it is expressly mentioned that it should not be paid unless a demand is made for its payment. ... It may be done either by the clearing house or by the bank which is either receiving or paying the payment.

Cheque refers to a negotiable instrument that contains an unconditional order to the bank to pay a certain sum mentioned in the instrument, from the drawer's account, to the person to whom it is issued, or to the order of the specified person or the bearer.

Parties to Cheque:-

Basically, there are three parties to a cheque:

1.Drawer: The person who draws the cheque, i.e. signs and orders the bank to pay the sum.

2.Drawee: The bank on which the cheque is drawn or who is directed to pay the specified sum written on the cheque.

3.Payee: The beneficiary, i.e. to whom the amount is to be paid.

Types of Cheque:-

1.Open Cheque: Otherwise called as uncrossed cheque, it is one on which cash is payable at the counter of the bank, or it is transferred to the bank account of the person whose name is written on the cheque. It is negotiable, i.e. it is transferable in nature.

2.Bearer Cheque:

Bearer cheque refers to the cheque which can be encashed by the person whose name is written on the cheque or anyone who presents the cheque before the bank for payment. It is negotiable in nature, which can be transferred by simply delivering it and so endorsement is not needed. No identification of the presenter or holder is required in case of a bearer cheque.

3.Order Cheque: As the name suggests, it is the cheque which becomes payable to the person or organization whose name is specified on the cheque or to his order. To convert a bearer cheque into an order cheque, the word ‘or bearer’ is stricken off from the cheque. Endorsement of the cheque to the third party is done by simply signing on the cheque.

4.Crossed Cheque: You might have observed, two transverse parallel lines at the top left corner of some cheques, which may or may not have the words – & Co., A/c payee or Non-Negotiable. Such cheques are regarded as crossed cheques. The amount on such cheques is credited to the account of the payee.

5.Self Cheque: When a person wants to withdraw money from his own account, by writing ‘self’ at the name of the payee, is called self-cheque. Do not cross the cheque or cancel the words ‘or bearer’ from the cheque. These cheques should not be crossed, as well as the words ‘or bearer’ should not be stricken off from the cheque, so that any person as your representative can receive the amount on your behalf.

6.Blank Cheque: A cheque which is only signed, but the name of the payee and date is not indicated, is called a blank cheque. Such cheques can be made account payee, and the maximum limit of withdrawal can be mentioned.

7.Post-Dated Cheque: When a cheque is drawn containing a future date, it is called post-dated cheque. In such cases, money will not be payable by the bank before that date.

8.Ante-dated Cheque: A cheque containing a prior date, is called an ante-dated cheque. Bank honours cheques until three months to the date mentioned.

9.Banker's Cheque: Otherwise called a pay order, it is a non-negotiable instrument, which is issued by the bank on behalf of the customer, which is payable in the same city.

10.Cancelled Cheque: Due to any kind of mistakes while writing the cheque, it is cancelled, and so it is called cancelled cheque.