

BUSINESS LAW

UNIT 4: The Sale of Goods Act, 1930

TOPIC- PERFORMANCE OF CONTRACT OF SALE

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PERFORMANCE OF CONTRACT OF SALE

Performance of a contract of sale implies **delivery of goods by the seller and acceptance of delivery and payment for those goods by the buyer** as per the terms in contract (Sec.31). But if the terms of the contract are not very clear on aspects such as time, place and manner of delivery of goods, acceptance thereof and time, mode and manner of payment etc. then the following rules contained in the Sale of Goods Act, 1930 are applicable.

PROVISIONS AS TO DELIVERY OF GOODS

- **Delivery and payment are concurrent conditions (Sec.32)**- Unless otherwise agreed, the delivery of goods by seller and payment for those goods by the buyer must be simultaneous, just like a cash sale over a shop counter.
- **Delivery could be actual or symbolic or constructive (Sec.33)**- Delivery of goods means voluntary transfer of possession of goods from one person to another. In actual delivery, goods are physically handed over by the seller to the buyer. In symbolic delivery, the goods remain where they are but the means of obtaining possession of goods(like key of godown where goods are stored or documents of title etc.) is delivered. In constructive delivery, the person in possession of the goods (say warehouse keeper)acknowledges, as per sellers orders, that he holds the goods on behalf of the buyer and the buyer has assented to it. Thus, here there are 3 parties involved- the seller, the person holding goods and the buyer and they all must concur to constitute constructive delivery.

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- **Effect of part-delivery when delivery of whole is in progress (sec.34)** – When a part of the goods have been delivered with the intention of delivering the rest also, the property in whole of the goods is deemed to pass to the buyer as soon as some portion is delivered.
- **Buyer to apply for delivery (sec.35)**- A seller is not bound to deliver the goods until the buyer applies for the delivery. So, it is the duty of the buyer to demand delivery and if he fails to do so , he cannot blame the seller for non-delivery.
- **Time, place and expenses of delivery (sec.36)**- Where in a contract, the seller is to deliver goods to the buyer but time for delivery is not specified, then the goods must be delivered within a *reasonable time and at a reasonable hour*. If the place of delivery is stated in the contract then goods must be delivered at the *named place* otherwise as per the following rules

NATURE OF TRANSACTION	PLACE OF DELIVERY
Incase of sale	Goods are to be delivered at the place where they are at the time of sale
Incase of Agreement to sell	Goods are to be delivered at place where they are at the time of agreement to sell
Incase of future goods	Goods are to be delivered at the place where they are manufactured or produced

Further, the expenses of putting the goods into a deliverable state must be borne by the seller

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- **Defective delivery i.e. delivery of wrong quantity or different quality (Sec.37)**- A seller must deliver goods of such quality and quantity as is specified in the contract otherwise it will be regarded as a defective delivery which will entitle the buyer to seek any of the following actions-
 - ✓ reject the whole- In this case buyer must inform the seller about the rejection and then the seller must tender the required goods again
 - ✓ accept the whole-In this case , the buyer must pay for what he has actually accepted at the contract rate. If he accepts short delivery, he can claim damages from the seller.
 - ✓ accept the quantity and quality he ordered and reject the rest
- **Instalment deliveries (Sec.38)**- The buyer is not required to accept delivery in instalments. It is only when the parties agree for it that delivery of goods may be made by instalments.
- **Delivery to carrier or wharfinger (Sec.39)**- Where the seller is required to send goods to the buyer then the delivery of goods to the carrier for the purpose of transmission to the buyer is prima facie deemed to be ' delivery to the buyer' and the seller must also enter into reasonable contract on behalf of the buyer for the safety of goods.
- **Deterioration during transit (Sec.40)**- If the goods are to be delivered at a distant place, then the liability of deterioration incidental to the course of transit lies with the buyer even though the seller agrees to deliver at his own risk.

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PROVISIONS AS TO ACCEPTANCE BY BUYER

- **Buyer has the right to examine goods (Sec.41)**- Before accepting the goods, the buyer has a right to examine them and ascertain that they are in conformity with the contract. If he is not satisfied, he must promptly inform seller about rejection
- **Acceptance of delivery by the buyer(Sec.42)**- A buyer is deemed to have accepted the goods when
 - ✓ he intimates the seller that he has accepted the goods
 - ✓ he does something to the goods which is inconsistent with the ownership of the seller eg. consumes, uses, pledges, puts his marks, resells, gets them altered etc.
 - ✓ he retains goods beyond a reasonable time, without informing seller about their rejection
- **Return of rejected goods(Sec.43)**- On rejection of goods because of defective delivery, merely informing the seller is enough and the buyer is not bound to return the rejected goods to the seller.
- **Refusing delivery of goods(Sec.44)**-If the seller is willing and ready to deliver the goods but the buyer fails to take delivery within a reasonable time, then he is liable to the seller for any loss occasioned by his refusal . He is also liable to pay a reasonable charge for the care and custody of goods.