Shri Jai Narayan P.G.College, Lucknow

B.Com Semester II

Paper II- Business Laws

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Unit III (Important Questions with Answers)

Contract of Agency

Q1) Explain the Contract of Agency. What are the two general rules of Agency?

Creation of agency in India is governed under the Indian Contract Act, 1872. There are two parties in the agency system one is the principal and the other is the agent. An agent is a person acting on behalf of his principal. It's a connecting link between the principal and the third party. Once the contract is entered on behalf of the principal with a third party, the agent then drops out and ceases to be a party to the contract. The contract then binds the principal and the third party as if they have made it themselves.

A contract of agency may be express or implied. Consideration is **not an essential** element in the agency contract.

General Rules of Agency: Two important rules-

1) A person **competent** to contract may employ an agent under contract of agency to do tasks except those which involve personal skills and qualifications. Ex. A painter cannot assign his agent to paint a picture for his customer because that involves his personal skill and knowledge.
2) Contracts entered through an agent and obligations arising from acts done by an agent may be enforced with the same legal consequences as if it had been entered into by the principal himself. Ex. M an agent of X, enters into contract with S. Now, the legal obligations and consequences are between X and S and not between M and S.

Q2) What is the Test of Agency? Is there any difference between an agent and a servant?

i. Whenever a person has the power/authority to create contractual obligations between the other person and third persons, an agency is said to exist.

ii. An adviser to a business or a servant **rendering personal service** to the master are not agents because they are not acting on behalf of the person in dealings with third parties.

iii. In partnership, one partner is an agent of the other in the partnership dealings with third parties.

An agent and a servant are not the same. A principal directs the ***agent*** as to **what is to be done**, while a master has the further right to direct his ***servant*** **how the work is to be done.** Moreover, a servant acts under the direct control and supervision of the principal. He acts according to the orders of the master and cannot bind his master to any legal obligations to third parties. On the other hand, an agent is not subject to the direct control and supervision of the principle. His has more freedom/discretion to act within the scope of his authority.

Q3) Briefly explain the various modes of creation of Agency.

The following are different modes of creation of agency.

1. Agency by Express agreement.
2. Agency by Operation of law.
3. Agency by Ratification.
4. Agency by Implied authority.
5.

Agency by Express agreement: Number of agency contract come into force under this method. It may be Oral or documentary(written) or through power of attorney.

Agency by operation of law: At times contract of agency comes into operation by virtue of law.

For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency. On account of such implied agency only a partner can bind over firm as well as other partners, to his activities. In the same way according to companies act promoters are regarded as agents to the company.

Agency by Ratification: Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation. The person who has done the activity will become agent and the person who has given ratification will become principal.

Ratification can be express or implied. In case where adoption of activity is made by means of expression, it is called express ratification. For example: Without A`s direction, B has purchased goods for the sake of A. There after A has given his support (adoption) to B`s activity, it is called Ratification. Now A is Principal and B is agent.

The ratification where there is no expression is called implied ratification. For example: Mr. Q has P`s money with him. Without P`s direction Q has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount from R. It implies that P has given his support to Q`s activity. It is implied ratification.

Agency by implied authority: This type of agency comes into force by virtue of relationship between parties or by conduct of parties.

For example: A and B are brothers, A has got settled in foreign country without any request from A, B has handed over A`s agricultural land on these basis to a farmer and B is collecting and remitting the amount of rent to A. Here automatically A becomes principal and B becomes his agent.

Agency by implied authority is of three types as shown below;

- Agency by Necessity
- Agency by Estoppel
- Agency by Holding out.

By Necessity*:* At times it may become necessary to a person to act as agent to the other. For example: A has handed over 100 quintals of butter for transportation, to a road transport company. Actually it is bailment contract, assume that in the transit all vehicles has got stopped where it takes one week for further movement. So the transport company authorities have sold away the butter in those nearby villages. Here agency by necessity can be seen.

By Estoppel: *This is based on the doctrine of estoppel which states that where a person by his conduct or words makes the third party believe that certain facts or circumstances exist. Hence, he is estopped or prevented from denying the truth later on.* In presence of A , B says to C that he (B) is A`s agent though it is not so actually. A has not restricted B from making such statement. Here agency by Estoppel can be seen.

By Holding out*:* B is A`s servant and A has made B accustomed to bring good on credit from C. On one occasion A has given amount to B to bring goods from C on cash basis. B has misappropriated that amount and has brought goods on credit as usually, Here, it is agency by holding out and therefore A is liable to pay amount to C.

Contract of Sale of Goods Act, 1930

Q1) What is a Contract of Sale of Goods? Discuss the essential characteristics of a contract of sale of goods.

The law relating to Sale of Goods is contained in the Contract of Sale of Goods Act, 1930. It is like any other contract, where there is an offer by one party and its acceptance by the other. Section 4(1) of the Sale of Goods Act defines a contract of sale of goods as – " A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

Essentials of a Contract of Sale of Goods.

1. Two Parties: A contract of sale of goods is bilateral in nature wherein property in the goods has to pass from one party to another. One cannot buy one's own goods.
For example, A is the owner of a grocery shop. If he supplies the goods (from the stock meant for sale) to his family, it does not amount to a sale and there is no contract of sale. This is so because the seller and buyer must be two different parties, as one person cannot be both a seller as well as a buyer. However, there shall be a contract of sale between part owners.

Suppose A and B jointly own a television set, A may transfer his ownership in the television set to B, thereby making B the sole owner of the goods. In the same way, a partner may buy goods from the firm in which he is a partner, and vice-versa.

However, there is an exception against the general rule that no person can buy his own goods. Where a pawnee sells the goods pledged with him/her on non-payment of his/her money, the pawnor may buy them in execution of a decree.

2. Goods: The subject matter of a contract of sale must be goods. Every kind of movable property except actionable claims and money is regarded as 'goods'. Contracts relating to services are not considered as contract of sale. Immovable property is governed by a separate statute, 'Transfer of Property Act'.

Transfer of ownership: *Transfer of property in goods is also integral to a contract of sale. The term 'property in goods' means the ownership of the goods. In every contract of sale, there should be an agreement between the buyer and the seller for transfer of ownership. Here property means the general property in goods, and not merely a special property.*
Thus, it is the general property, which is transferred under a contract of sale as distinguished from special property, which is transferred in case of pledge of goods, i.e., possession of goods is transferred to the pledgee or pawnee while the ownership rights remain with the pledger. Thus, in a contract of sale there must be an absolute transfer of the ownership. It must be noted that the physical delivery of goods is not essential for transferring the ownership.

3. **Price:** The buyer must pay some price for goods. The term 'price' is 'the money consideration for a sale of goods'. Accordingly, consideration in a contract of sale has necessarily to be in money. Where goods are offered as consideration for goods, it will not amount to sale, but it will be called barter or exchange, which was prevalent in ancient times. Similarly, if a person offers the goods to somebody else without consideration, it amounts to a gift or charity and not sale. **In explicit terms, goods must be sold for a definite amount of money, called the price.** However, the consideration can be partly in money and partly in valued up goods. Furthermore, payment is not necessary at the time of making the contract of sale.

4. **All essentials of a Valid contract:** A contract of sale is a special type of contract, therefore, to be valid, it must have all the essential elements of a valid contract, viz., free consent, consideration, competency of contracting parties, lawful object, legal formalities to be completed, etc. A contract of sale will be invalid if important elements are missing. For instance, if A agreed to sell his car to B because B forced him to do so by means of undue influence, this contract of sale is not valid since there is no free consent on the part of the transferor.

5. **Includes both a 'Sale' and 'An Agreement to Sell':** The 'contract of sale' is a generic term and includes both sale and an agreement to sell. The sale is an executed or absolute contract whereas 'an agreement to sell' is an executory contract and implies a conditional sale. A contract of sale can be made merely by an offer, to buy or sell goods for a price, followed by acceptance of such an offer. Interestingly, neither the payment of price nor the delivery of goods is essential at the time of making the contract of sale unless otherwise agreed.Subject to the provisions of the law for time being in force, a contract of sale may be

made either orally or in writing, or partly orally and partly in writing, or may even be implied from the conduct of the parties.

Note: An agreement to Sell is said to happen when the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled. It is an executory contract and refers to a conditional sale. Ex: A agrees with B that he will B his scooter for a sum of Rs. 3000 on 1 July 2020. It is an agreement to sell since A agrees to transfer the ownership of the scooter to B at a future date/time.

Q2) Explain the differences between sale and agreement to sell.

Sale	Agreement to Sell
1. The ownership rights are transferred to the buyer immediately.	Here, the ownership rights are transferred to the buyer only in future.
2. If the goods are destroyed, the loss will fall on the buyer even if the goods are in the possession of the seller.	If the goods are destroyed, the loss will fall on the seller even if the goods are in the possession of the buyer.
3. If the buyer fails to pay the price, the seller can sue him for the price.	In a similar case, the seller can only sue the buyer for damages.
4. The seller cannot re-sell the goods (if he is keeping possession). If he does so, the second buyer does not get a good title.	In case of re-sale by the seller, the second buyer gets a good title provided he buys in good faith. The first buyer can only sue the seller for damages.
5. It creates 'jus in rem' (right against the world) i.e., right to a enjoy the goods against the whole world.	It creates 'jus in personam' (right against a person) i.e., right to the buyer to sue the seller for damages.
6. If the buyer becomes insolvent before paying the price, the seller can get only a rateable dividend from the buyer's estate towards the price.	If the buyer becomes insolvent before paying the price, the seller is not bound to part with the goods.
7. If the seller becomes insolvent, the buyer can recover the goods from the Official Receiver.	If the buyer has already paid the price and the seller has become insolvent, the former can claim only a rateable dividend from the latter's estate and not the goods.

Conditions and Warranties

Q1) Explain Condition and Warranties in Contract of Sale of Goods.

In a contract of sale of goods, there are various terms/stipulations regarding the quality of the goods, the price, the mode of its payment, the delivery of goods and its time and place. But all of them are not of equal importance. Some of these stipulations may be **major** terms which go to the very root of the contract and their breach may frustrate the very purpose of the contract, while others may be **minor** terms which are not so vital that their breach may seem to be a breach of the contract as such. In law of Sales, **major terms are called Conditions** and **minor terms are called Warranties.**

There is no hard and fast rule as to which stipulation is a condition and which one is a warranty. Whether a term/stipulation in a contract of sale is a condition or a warranty depends on how the contract is constructed/written.

Q2) Explain briefly the difference between Condition and Warranty with an example.

Condition	Warranty
1. A condition is a stipulation which is essential to the main purpose of the contract.	A warranty is a stipulation which is collateral to the main purpose of the contract.
2. For the breach of condition, the affected party can abandon the contract of sale.	For the breach of warranty, the affected party can claim damages only.
3. A breach of condition may be treated as a breach of warranty. This happens if the affected party decides to claim damages only.	A breach of warranty cannot be in any way treated as breach of condition.

Example: A agrees to supply B 10 bags of first quality sugar at Rs. 1000 per bag but supplies second quality sugar, the price of which is Rs. 800 per bag. There is a breach of condition and the buyer may reject the goods. But if the buyer so chooses, he may treat it as a breach of warranty, accept the second quality sugar and claim the damages at Rs. 200 per bag (Rs.1000 – Rs.800).

Q3) Case Study:

P bought a car from Q who had no title to it. P used the car for several months. After that the true owner came forward and demanded the car. State the rights of P and the true owner of the car.

A seller has the right to sell the goods if either he is the owner of the goods or he is owner's agent. As a result of this condition, if the seller's title turns out to be defective the buyer is entitled to reject the goods or to recover his price. In this case, there is an Implied Condition of title to the goods. It cannot be treated as a breach of warranty and the damages be thus claimed. Q does not have a good title to the goods (i.e. no ownership) and hence P can not get a transfer of title to the car he purchased. Hence, P shall return the Car to Q and claim the entire money he paid for the Car to Q even though he had used it for several months.

Transfer of Ownership in Goods

Q1) What is transfer of ownership in Goods?

Transfer of Ownership in Goods means transfer of property in goods. Property in goods is different from possession of goods. Ex. A buys goods from B and property has passed to A, but he goods remain at B's warehouse. Hence, ownership remains with A although possession is with B.

Q2) Why is it important to know the exact time of passing of property from the buyer to the seller?

Passing of property from seller to the buyer decides various rights, and liabilities of the seller and buyer. In particular it is necessary to know, the precise moment of time of passing of the property from the seller to the buyer for the following reasons:

1. For ascertaining risk or loss:

It is a cardinal rule of law that risk follows property, i.e., ownership. It means that whosoever is the owner of the goods at the time of risk, i.e., loss, shall bear the loss. Ex. A sold a radio to B. B left the radio in A's shop. The radio is destroyed in an accidental fire. Since B was the owner of the radio, B will bear the loss as the ownership has passed from the seller A to the buyer B

2. For ascertaining right of action against the third parties:
It is the owner of the goods who can take action against the third parties, if they cause loss to the goods.

3. For ascertaining rights of insolvency of the seller or the buyer:
If the ownership has passed to the buyer, the buyer's Official Assignee or Receiver can take possession of the goods even if the goods have not been delivered by the seller. If the ownership has not passed, he cannot.Passing of ownership will depend upon whether the goods are unascertained, specific or ascertained.

Q2) Explain the rules regarding transfer of property?

Rules regarding the transfer of property can be studied under the following heads:

a) Transfer of property in specific or ascertained goods
b) Transfer of property unascertained and future goods.

Transfer of Property in Specific or ascertained goods:

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Thus, in the case of specific goods, the transfer of property takes place when the parties intend to pass it. Unless a different intention appears, the rule of **ascertaining the intention of the parties** as to the time at which the property in the goods is to pass to the buyer, are as follows:

i) **When goods are in a deliverable state:** The contract of sale is considered to be an unconditional one. The property in the goods passes from the seller to the buyer immediately at the completion of the contract. It is immaterial whether the price has been paid or the goods have been delivered, or one of these or both are to be done at some future date. The goods are said to be in a deliverable state when they are in such a state that the buyer would under the contract be bound to take delivery of them. **Ex.** A buys a bicycle for Rs.5000 on a month's credit and asks the shopkeeper to send it to his house. The shopkeeper agrees to do so. The bicycle immediately becomes the property of A.

ii**) When goods are to be put into a deliverable state:** Contract of sale is a conditional one. The seller has to do something to the goods for the purpose of making them into a deliverable state. Therefore, the property is to pass only when that something has been done by the seller and the notice has been given by him to the buyer. The word something here means an act like packing the goods or loading them on rail or ship or filling them in containers etc. Hence, when these acts as agreed have been done and the buyer was given notice, then the property passes on to the buyer from the seller and he bears all the risks associated with the goods.

iii) When seller has to do something to fix its price: The property is to pass only when something is done and price is fixed. If suppose the seller is to weigh, measure, test or do some such other act, then the property in goods will pass only when such thing has been done by the seller and the notice to this effect has been given by him to the buyer.

iv) When goods are sent on approval or on sale or return basis: When goods are sent on approval or on sale or return basis, the property passes to the buyer:

- when he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
- if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiry of such time, and if no time has been fixed, on the expiry of a reasonable time.

Transfer of property in un-ascertained goods:

If the goods are unascertained, the ownership shall pass to the buyer:

- when the goods are unconditionally appropriated to the contract,
- when the appropriation may be made by the buyer with the seller's assent or by the seller with the buyer's assent.

Q3**)** ***Nemo Det Quod Non Habet*****- No one can give what he has not got. Comment giving exceptions to this rule.**

The concept of ***Nemo dat quod non habet*** means that no one can convey a better title than what he has. If a person having no title to the goods sells them, e.g., a thief sells stolen property, it will not be a legal sale since purchaser will not have good ownership rights.

In a famous case, a judge observed, "If a person leaves a watch or a ring on a seat in the park or on a table at a cafe and it ultimately gets into the hands of a bonafide purchaser, it is no answer to the true owner to say that it was his carelessness and nothing else, that it enabled the finder to pass it off as his own."

Exceptions to the Rule.

The general rule that "no one can give what he has not get" is subject to some exceptions. In following cases, the buyer gets a better title to the goods than what is possessed by the seller.

i) Sale by Mercantile Agent: When a mercantile agent, who is in possession of the goods with the consent of the owner, sells goods to a buyer who buys them in good faith, the buyer gets a better title, even though the seller had no authority to sell, provided the following conditions are satisfied. Factors, brokers, auctioneers etc. are mercantile agents.

The possession of the mercantile agent must be with the consent of the owner. The mercantile agent must sell in the ordinary course of business as mercantile agent. The buyer must act in good faith and the buyer should not have notice that the seller had no authority to sell.

ii)Sale by a joint owner: Where one of several joint owners of the goods has the sale possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in good faith without notice of the fact that the seller has no authority to sell.

iii)Sale by person with voidable title: When the seller of goods has obtained possession thereof under a voidable contract and the contract has not been rescinded by the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

iv)Sale of seller in possession of goods after sale: Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof to any person receiving

the same in good faith and without notice of previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same

v)Sale by buyer in possession after sale: Where the buyer has bought or agreed to buy the goods, with the consent of the owner obtains possession of the goods or documents of title to the goods, but the seller still has some lien or right over the goods, if the buyer sells the goods to a second buyer, who buys them in good faith, the second buyer gets a better title.

vi)Resale by an unpaid seller: An unpaid seller of goods who has exercised his right of lien or stoppage in transit can, even though, the ownership in them has passed to the buyer, sell the goods and convey a better title to another the buyer though no notice of resale has been given to the original buyer.

vii)Transfer of title by estoppel: Where the true owner by his conduct, or by an act or omission leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estoppel from denying the fact of want of authority of the seller. Sometimes the doctrine of estoppel may estop or preclude the true owner from denying seller's right to sell the goods and thus the buyer gets a good title.

viii) Under the **Negotiable Instruments Act**, a holder in due course gets a better title than what his endorser had.

Performance of contract of sale

Q1) Define the term delivery as used in a contract of sale and discuss the modes of delivery of goods?

Performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment for them by the buyer in accordance with the contract.

Delivery of goods means voluntary transfer of possession of goods from one person to another. If transfer of possession of goods is not voluntary i.e without consent, then there is no delivery.

Modes of Delivery

Delivery of goods may be made in any of the following ways:

1.**Actual Delivery**: Also known as **physical delivery**, actual delivery takes place when the goods are physically handed over by the seller or his/her authorized agent to the buyer or his/her agent authorized to take possession of the goods.
For example, A, the seller of a car hands it over to B, the buyer; it is a case of actual delivery of the goods.

2. **Symbolic Delivery**: Where the goods are bulky and heavy and it is not possible to physically hand them over to the buyer, delivery thereof may be made by indicating or giving a symbol. Here the goods itself are not delivered, but the means of obtaining possession of goods is delivered.

For example, delivering the keys of the warehouse where the goods are stored, or the keys of a purchased car to its buyer, bill of lading which will entitle the holder to receive the goods on arrival of the ship.

3. **Constructive Delivery**: In this case neither physical nor symbolic delivery is made. In constructive delivery the individual possessing the products recognizes that he holds the merchandise for the benefit of, and at the disposal of the purchaser. Constructive delivery is also called attornment.

Constructive delivery may be effected in the following three ways.

- Where the seller, after having sold the goods, agrees to hold them as bailee for the buyer.
- Where the buyer, who is already in possession of the goods as bailee of the seller, holds them as his own, after the sale, and
- Where a third party, for example, a carrier/transporter, who holds the goods, as bailee for the seller, agrees and acknowledges holding them for the buyer.

Q2) Explain the rules regarding the delivery of goods in a contract of sale.

(**1) Duties of Seller and Buyers**: It is the duty of the seller of deliver the goods and of the buyer to accept and pay for them, in accordance with the term of the contract of sale. Ex. A offers to sell his books to B for Rs.1000. It is the duty of A to deliver the books and B is bound to pay the price of books to A.

(2) Delivery and Payment: The seller should be ready and willing to deliver the goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of goods simultaneously. Ex. Suppose there is contract between *X* and Y that X will sells 100 pairs of shoes to Y. X need not deliver the shoes unless X is ready and willing to pay for the shoes on delivery and Y need not pay for the shoes unless X is ready and willing to deliver the shoes on payment**.**

(**3) Delivery maybe Actual or Symbolic or Constructive** : Delivery of goods may be either actual or symbolic or constructive, its depends upon the circumstances and will of the contracting parties.

(4) Effect of Part Delivery : Where a delivery of goods has been made with the intention of delivering the remaining goods also, the ownership in the whole of the goods is deemed to pass to the buyer as soon as some portion is delivered. So a delivery of part of the goods has the same effect as a delivery of whole for the purpose of passing the property in goods. Ex. X sold 100 Telephone set to Y. Y received 25 Telephone paid for it and refused to accept the remaining 75 telephone set. It is a case of part delivery.

(**5) Buyer *to* Apply for Delivery :** Seller is not bound to deliver the goods until the buyer applies for delivery. It is the responsibility of buyer to demand delivery and if he fails to do so, he cannot blame the seller for the non-delivery. Ex. X sells *5* T.V sets to Y. X is not legally bound to transfer the possession of T.V sets unless Y request for delivery.

(6) Place of Delivery: The goods must be delivered at specified place as per the agreement. In the absence or contract of goods must be delivered at a 'place at which they are at the time of sale or agreement to sell. If there is no decision regarding place of delivery then the delivery should be made at reasonable place which decided by the contracting party with mutual consent. Ex. X offers to sells 100 bags of sugar to Y for Rs. 5000. If there is no decision about delivery. X is bound to deliver the goods at Y's shop or warehouse. **(7) Time of Delivery**: Seller must deliver the goods to the buyer according to the specified time. *If* the time is not Specified, he must deliver the goods within reasonable time. Reasonable time means on working day at business hour but it should be in the notice or buyer. Ex. X agrees to sells 5 Computer to Y within one week. X is under a duty to delivers computers within one week. In case of delay in delivery X can terminate the contract.

(7) Possession of Third Party : If the goods are in the possession of third party at the time of the sale, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds the goods on his behalf. Ex. X sells goods to Y which are a Z go down. X gives an 'instruction to Z for the delivery of goods. to Y. This is a valid delivery**.**

(**8) Delivery Expenses:** Unless and otherwise agreed on the expenses of putting the goods into the deliverable state most be borne by the seller. Its means that if there is no decision by contracting parties regarding delivery expenses. It will be the cost of seller. Ex. Ali sells 5 T.V sets to Zahid for *Rs.*20000. The packing expenses made by Ali is not charged from buyer Zahid. It is the cost of **Ali.**

(9) Delivery of Wrong Goods: The seller must deliver the goods according to the specification of the buyer. If the goods are defective due to any reason e.g. wrong quantity or wrong quality, the buyer can reject the delivery of goods. Ex. X offers to sell 5 chairs of standard size to Y at the cost of Rs.10000, by mistake he transfer 3 chairs of small size. The delivery of chair are not according to the contract so Y can refuse to accept the delivery.

(10) Delivery In Installment: Under the law the buyer is not bound to accept the· goods in the form of installment. It can only happen whim the buyer has agreed to accept the goods in Installments. Where the seller delivers the goods in installments without the consent of buyer and he suffers a loss then seller is bound to compensate the loss. Ex. X bought from Y 100 bags of sugar a July 5 shipment. Y shipped 70 bags of sugar on 5th July and the balance 30 bags in September. X has a right to reject the whole delivery. ·

(11) Delivery to Carrier : Where the seller, is authorised or required to send the goods to the buyer, delivery of the goods 103 carrier is consider o delivery or the goods to the buyer. its means that delivery of goods may also be through a carrier if there is a change in time and mode of delivery. Ex.A sells 5 ton rice to B on- credit. A hires a carrier and hand over the rice in order to deliver it to B. This is a valid delivery .

(12) Buyers Right of Examining the Goods: Where goods ore delivered ta the buyer which he has not previously examined. he is not deemed to have accepted them unless and until he has had a reasonable opportunity to examine them- for the purpose of ascertaining whether they are in conformity with the contract", Ex. Ali sells 60 dozens ·of Bananas to Zahid. Ali is bound to allow reasonable time to Zahid lo check whether the quality of fruit is according to the requirement of the contract.

(**13) Acceptance by the Buyer**: The buyer is deemed to have accepted the goods. When he intimates to the seller that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the laps of a reasonable time, he retains the goods without intimating to the seller that has rejected them. Ex. X offers to sell certain goods to Y. After receiving the delivery of goods Y informs X that he has accepted the goods**.**

Rights of an unpaid seller

Q1) Who is an unpaid seller? What are his rights against the goods and the buyer?

The seller who has not received price of goods sold or the seller who has got his negotiable instrument dishonored will become Unpaid Seller. Sale of goods act, 1930. Those rights can be classified into two groups. They are as follows.

Rights against Goods
Rights against Buyer personally

i) Rights of the unpaid seller against the Goods:

When goods are in existence and title has not gone to buyer, Unpaid Seller can exercise the rights against goods. These rights are categorized into three types. They are as follows

1. Right of lien
2. Right of stoppage in transit
3. Right to Re-Sell

Right of lien

Right to retain goods by unpaid seller till amount is recovered is called right of lien. If unpaid seller wants to exercise right of lien, he has to fulfill the following conditions.

- He must be unpaid seller
- There should be no credit terms in the Contract of Sale.
- After completion of credit period, right of lien can be exercised.
- The unpaid seller should have obtained those goods lawfully.
- Amount must be due on those goods only against which right of lien is decided.

Right of stoppage in transit

Unpaid Seller has right to stop the goods in the transit itself. To exercise this right the following conditions are to be fulfilled.

- He must be unpaid seller.
- Buyer must be insolvent.
- There should be no credit terms in the Contract of Sale. After expiry of Credit period, this right can be exercised.
- Amount must be due on those goods only against which this right is desired.

At times the transport company may refuse to deliver the goods to buyer due to any reason. Then the goods are said to be in transit. At times, the buyer may retain the goods at the transport company. Then the goods are said to be not in transit.

Right to re-sale

The unpaid seller can re-sell the goods for non-payment of price by buyer. He can exercise this right when the goods are of perishable nature while doing so it is beneficiary to the seller to give a notice to buyer with regard to resale. If such notice is given seller can claim loss. If any on resale from the buyer. On the other hand if there is profit on resale the former buyer cannot claim that profit. If notice is not given the seller has to face adverse consequence. If there is any loss on re-sale, that loss cannot be recovered from buyer. But in case of profit, seller has responsibility to pay that amount of profit to buyer.

Rights of Unpaid Seller against Buyer

At times it becomes inevitable choice to exercise rights on buyer for non-payment of price. The unpaid seller can file suits against the buyer as explained below.

- ***Right to sue for price***

It is fundamental right of buyer to file a suit for recovery of unpaid price. In the case of sale. Suit will be made for price balance, but not for compensation.

- ***Right to sue to interest***

If the buyer makes unreasonable delay for making payment, the seller has right to claim interest also.

- ***Right to sue for compensation***

When an agreement to sell is breached, the seller can see only for compensation for the breach of Contract. Under such circumstances he cannot sue for price.

- ***Right to Sue for anticipatory breach***

When an agreement to sell is breached by buyer before date of performance. It is called anticipatory breach. Then also seller can sue for compensation.