

UNIT-VIII
CHAPTER
21

THE SALE OF GOODS ACT 1930

INTRODUCTION

The sale of goods act is a kind of Indian Contract Act. It came into existence on 1st July 1930. It is a Mercantile Law. It is a contract whereby the seller transfers or agrees to transfer the title(Ownership) in the goods to the buyer for consideration. This contract is applicable to all the states of India except Jammu and Kashmir. Prior to this act it was governed by Chapter 7 of the Indian Contract Act 1872. The name Indian had been removed from the act with effect from 23rd September 1963 hence the act had been turned to Sale of Goods Act 1930. This chapter deals with the provisions of this act.

I. CHOOSE THE CORRECT ANSWERS

1. **Sale of Goods Act was passed in the year**
a) 1940 b) 1997
c) 1930 d) 1960
2. **Which of the below constitutes the essential element of contract of sale?**
a) Two parties b) Transfer of property
c) Price d) All of the above
3. **Which of the below is not a good?**
a) Stocks b) Dividend due
c) Crops d) Water
4. **In case of the sale, the _____ has the right to sell**
a) Buyer b) Seller
c) Hirer d) Consignee
5. **The property in the goods means the**
a) Possession of goods
b) Custody of goods
c) Ownership of goods
d) Both (a) and (b)
6. **Specific goods denote goods identified upon the time of _____ of sale.**
a) Agreement b) Contract
c) Order d) Obligation
7. **In which of the following types, the ownership is immediately transferred to buyer?**
a) When goods are ascertained

- b) When goods are appropriate
- c) Delivery to the carrier
- d) Sale or return basis

8. _____ **is a stipulation which is collateral to main purpose of contract:**
a) Warranty b) Condition
c) Right d) Agreement
9. **Unpaid seller can exercise his right of lien over goods, where he is possession of the goods as**
a) Owner of goods b) Agent of buyer
c) Bailer for buyer d) All of these
10. **The unpaid seller can exercise his right of stoppage of goods in transit where the buyer**
a) Becomes insolvent b) Refuses to pay price
c) Payment of price d) Both (b) and (c)

ANSWERS

1	c)	2	d)	3	b)	4	b)	5	c)
6	b)	7	c)	8	a)	9	d)	10	a)

II. VERY SHORT ANSWER QUESTIONS:

1. **What is a contract of sale of goods?**
❖ Contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property (ownership) of the goods to the buyer for a price.

- ❖ The term 'ownership' is of utmost importance in the sale of goods.

2. List down the essential elements of a contract of sale.

Following essential elements are necessary for a contract of sale.

1. Two Parties:
2. Transfer of Property:
3. Goods:
4. Price:
5. Includes both 'Sale' and 'Agreement to Sell':

3. What is meant by goods?

- ❖ Goods are materials that satisfy human wants and provide utility
- ❖ A good may be a consumable item that is useful to people.
- ❖ The term goods includes every kind of movable property, stocks and shares, growing crops, goodwill, trademarks, copy rights, patent rights etc.

4. What is a Contingent Goods?

- ❖ Contingent goods are the goods, the acquisition of which by the seller depends upon a contingency (an event which may or may not happen).
- ❖ Contingent goods are a part of future goods.
- ❖ Eg. 'A' agrees to sell a particular painting work, provided he gets from 'C'.
- ❖ In this case, the painting work represents contingent goods

5. What do you understand by warranty?

- ❖ Warranty represents a stipulation which is collateral to the main purpose of the contract. It is of secondary importance to the contract.
- ❖ The violation of warranty entitles the affected party to claim damages or compensation from the other party.

III. SHORT ANSWER QUESTIONS:

1. Explain the meaning of Agreement to sell.

- ❖ If the property takes place at a future date or fulfillment of certain conditions, it is called as "an agreement to sell".
- ❖ It is a legal document that outlines the terms of a transaction.

- ❖ It is an important document in the process of sale and purchase of property.
- ❖ This agreement contains the terms and conditions agreed upon between the parties, and bind them.
- ❖ It is a basic document on which a conveyance deed is drafted.

2. Discuss in detail about existing goods.

- ❖ Existing goods are those owned or possessed by the seller at the time of contract of sale.
- ❖ Goods possessed even refer to sale by agents or by pledgers.
- ❖ Existing goods may be either:

I. Specific Goods:

- Specific goods denote goods identified and agreed upon at the time of contract of sale.
- For eg. If a buyer selects a particular variety of saree after examining several other sarees, the selected one denoted specific goods.

II. Ascertained Goods:

- The term 'ascertained goods' is also used as similar in meaning to specific.
- But this term may even refer to goods which become ascertained subsequent to the formation of the contract.

III. Unascertained or generic goods

- These are goods which are not identified and agreed upon at the time of contract of sale.
- For eg. A wants to buy a car from a showroom where different models at different prices have been displayed. All these displayed models represent unascertained goods.

3. Discuss the implied conditions and warranties in sale of goods contract.

Meaning: The term implied conditions means conditions which can be inferred from or guessed from the context of the contract. Following are the implied conditions:

1. Conditions as to title:

- In the case of sale, seller has a right to sell the goods.

- The buyer can assume that the seller has a right to sell the goods. `
- R' purchased a motorcar from 'D' and used it for 4 months.
- Later after six months, true owner came and proved that he is a true owner.
- In case, 'R' has to return the car to the true owner and claim the full price paid by him from 'D'.

2. Conditions as to Description:

- In a contract of sale by description, there is an implied condition that goods supplied should agree with the descriptions made by the seller.
- eg. 'A' has bought machinery from 'B' who described it to be just one year old.
- After buying the machinery and using it for month, 'A' came to know that it is very old machinery.
- In this case, 'A' can return the machinery to 'B' on the ground that machinery is not as per the description i.e. not recent one.

3. Sale by sample:

- Where goods are sold by showing samples by the seller eg. Food grains, cloth, medicine, chemicals etc., the bulk of goods supplied by the seller should be similar to the sample shown by the seller.
- In other words, where the goods supplied do not match with the samples; the buyer can very well return the goods subject to the following conditions:
 - ❖ The bulk of the goods must correspond with the sample in quality
 - ❖ The buyer should have a reasonable opportunity of comparing the bulk with the sample and
 - ❖ The good must be free from any defect rendering them unsalable.

4. Conditions as to quality or fitness:

- There is no implied condition as to the quality or fitness for any particular purpose of goods.
- But goods must be fit for a particular purpose if
 - (i) The buyer has made known to the seller the particular purpose for which he needs the goods

- (ii) The buyer relies on the seller's skill or judgment and
- (iii) The goods are of a description which is in course of the seller's business to supply.

5. Conditions as to merchantability:

- If goods are bought by description and the seller is a dealer in goods of that description, the implied condition is that goods must be of merchantable quality.
- It only means that the goods must be saleable in the market under that denomination.

Implied warranties

(1) Quiet possession:

- There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- If the buyer's possession is disturbed by a person having a superior right to that of the seller, the buyer is entitled to claim the damages. eg. 'X' sold a second hand radio to 'Y' who spends rs.100 on the repairs of the radio.
- This radio was seized by the police as it was a stolen one.
- 'Y' filed a suit against 'X' for the recovery of damages for breach of warranty of quiet possession including the cost of repair. `
- 'Y' won the case.
- In other words, he was held entitled to recover the damages.

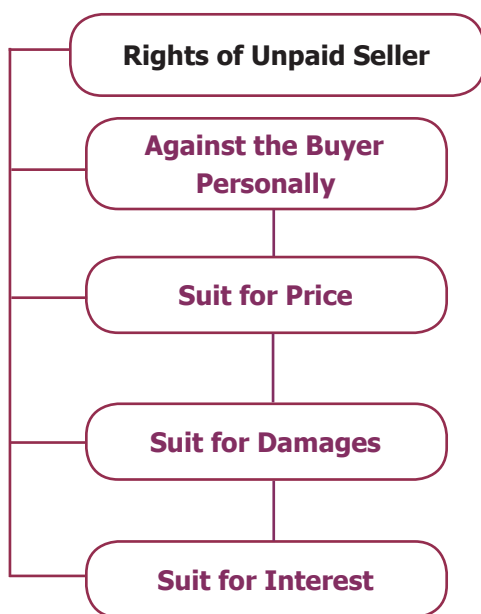
(ii) Free from any encumbrances:

- The goods bought must not have been subject to any charge or right in favour of a third party.
- If the buyer's possession is disturbed by reason of the existence of any encumbrance, he is entitled to claim damages for breach of warranty.
- eg. 'X' borrowed rs.50,000 from 'Y' and hypothecated his autorickshaw with 'Y' as security.
- Later on, 'X' sold the autorickshaw to 'Z' who bought it in good faith. In this case, 'Z' can claim damages from 'X' because his possession is disturbed by 'Y' having an encumbrance on the auto.

(iii) Warranty in the case of dangerous goods:

- Where the seller knows that the goods he is selling dangerous or likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller should warn the buyer of the probable danger, otherwise he will be liable to compensate the buyer in case of any injury.
- Eg. 'C' bought from 'A' a tin of disinfectant powder.
- 'A' knew that the lid of the tin was defective and that if it was opened without special care, it might be dangerous.
- Yet 'A' did not warn 'C'. 'C' opened the tin in the usual way whereupon the powder flew into her eyes, causing injury.
- Held that 'A' was liable in damage to 'C' as he should have warned 'C' of the probable danger.

4. Discuss in detail the rights of an unpaid seller against the buyer personally.

**Unpaid seller-meaning**

- ❖ A seller is deemed to be an unpaid seller (a) when the whole of the price has not been paid or (b) a bill of exchange or other negotiable instrument given to him has been dishonored.
- ❖ A seller who has received only a part of the price is also an unpaid seller.
- ❖ Seller includes not only actual seller but also an agent of a seller but also an agent of a seller or a consignee.

II. Right of an Unpaid Seller against the Buyer Personally

(i) Suite for price:

- Where the ownership in the goods has passed to the buyer and the buyer refuses to pay for the goods, the seller can file case against the buyer for the price.

(ii) Suite for Damage for Non-acceptance:

- Where the buyer wrongfully refuses to accept the goods, the seller can sue him for damages for non-acceptance of the goods.

(iii) Suite for Cancellation of the Contract before the Due Date:

- Where the buyer cancels contract before the date of delivery, the seller may either treat the contract as continuing or wait till the due date or he can file a case against buyer immediately.

(iv) Suite for Interest:

- Where there is a specific agreement between buyer and seller regarding charging interest on the price, the seller can recover interest from the buyer from the due date contract till the date of payment of purchase price.
- If there is no specific agreement, the seller can charge interest from such day as he may notify to the buyer.

IV. LONG ANSWER QUESTIONS:

1. Explain in detail the elements of contract of sale.

Following essential elements are necessary for a contract of sale.

1. Two Parties:

- A contract of sale involves two parties the seller and the buyer.
- The buyer and the seller should be two different persons.
- On the dissolution of partnership when the surplus assets including goods were distributed among the partners, the court held that it was not a sale attracting sales tax.
- The partners were themselves joint owners of the goods and they could not be both sellers and buyers.

- When the goods of a person are sold in execution of a decree, he himself may buy the goods to retain their ownership.

2. Transfer of Property:

- To constitute sale, the seller must transfer or agree to transfer the ownership in the good to the buyer.
- A mere transfer of possession does not amount to sale.

3. Goods:

- The subject matter of contract of sale must of goods.
- It excludes money, actionable claims and immovable property.
- The term 'goods' includes every kind of movable property, stocks and shares, growing crops etc.
- Goodwill, trademarks, copy rights, patent rights etc., are all also regarded as goods.

4. Price:

- The monetary consideration for the goods sold is called price.
- If goods are exchanged for goods, it is only barter and not a sale.
- If goods are sold partly for goods and partly for money, the contract is one of sale.

5. Includes both 'Sale' and 'Agreement to Sell':

- The term contract of sale includes both sale and agreement to sell.
- If the property ingoods is transferred immediately to the buyer it is called a sale.
- On the other hand, if the transfer of property takes place at a future date or on fulfillment of certain conditions, it is called 'an agreement to sell'.

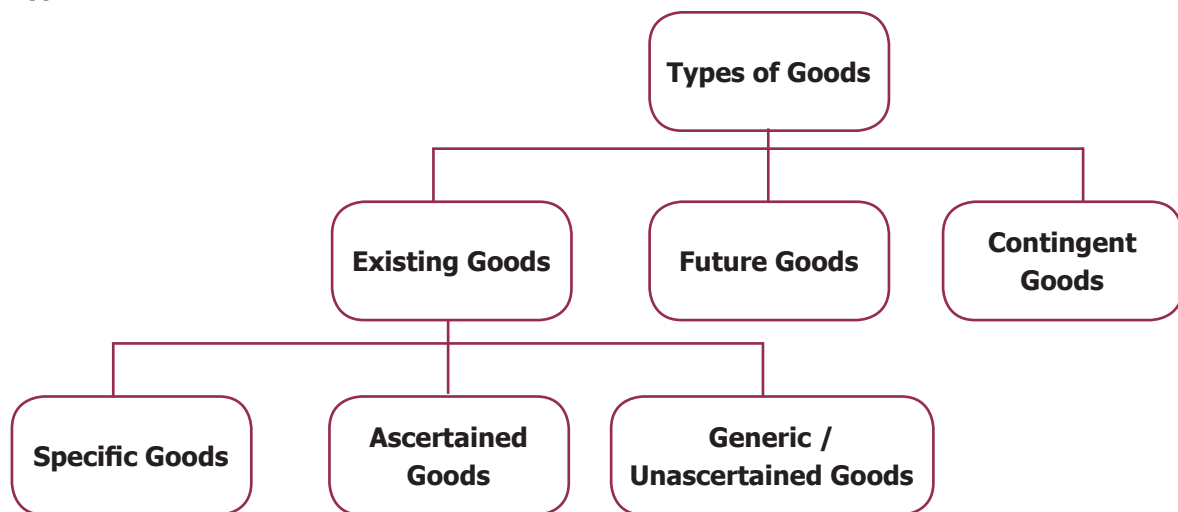
2. Distinguish between sale and agreement to sell.

SI.No.	Particular	Sale	Agreement to sell
1.	Ownership Transference	The property (ownership or title) in the goods passes from the seller to the buyer immediately so that the seller is no more owner.	The property (ownership or title) in the goods has to pass at a future time or after the fulfillment of certain conditions specified in the contract.
2.	Risk of Loss	Where the goods sold under the contract of sale are destroyed, the loss falls squarely on the buyer as the ownership in the goods has already passed on to the latter. Even though the goods are in the possession of seller.	Where the goods under the contract of sale are destroyed, the loss falls squarely on the seller as the ownership is still vested with the seller even though the goods is with the buyer.
3.	Consequences of violating the contract	Where the buyer fails to pay the price, the seller cannot seize the goods. The seller can only file a case against the buyer for violating the contract.	Where the buyer violates the contract, the seller can repossess the goods from the former. He can sue for damages for violation of the contract.
4.	Nature of contract	It is an executed contract i.e. completed contract	It is an executor contract, i.e. contract yet to be performed by the party to the contract.

5.	Insolvency of the buyer	In a sale, if a buyer becomes insolvent before he pays for the goods even though the goods sold are under the possession of the seller, the latter has to return them to the Official Receiver or Assignee as the ownership of goods has already been transferred to the buyer. The seller can claim only rateable dividend. The seller has to inevitable part with the possession of the goods under his custody.	If the buyer becomes insolvent before the payment of the price, the seller can retain the goods if they are under his possession or even he can repossess the goods even if the possession of the goods is transferred to the buyer. In other words, the seller is not bound to lose possession of the goods.
6.	Insolvency of the seller	If the seller become insolvent before delivering the goods to the buyer, the buyer can claim the delivery of the goods from the Official Receiver or Assignee as the ownership is already passed on to the buyer.	The buyer cannot do so. Further if the buyer has already paid the price of the goods or made any advance, he can claim only rateable dividend and not the goods because the ownership in the goods is not yet passed to him.

3. Classify goods under the Sale of Goods Act.

Types of Goods:



1. Existing Goods:

- ❖ Existing goods are those owned or possessed by the seller at the time of contract of sale.
- ❖ Goods possessed even refer to sale by agents or by pledgers.
- ❖ Existing goods may be either
 - (i) Specific Goods
 - (ii) Ascertained Goods
 - (iii) Generic or Unascertained Goods

I. Specific Goods:

- ❖ Specific goods denote goods identified and agreed upon at the time of contract of sale.

- ❖ For eg. If a buyer selects a particular variety of saree after examining several other sarees, the selected one denoted specific goods.

II. Ascertained Goods:

- ❖ The term 'ascertained goods' is also used as similar in meaning to specific.
- ❖ But this term may even refer to goods which become ascertained subsequent to the formation of the contract.

III. Unascertained or generic goods

- ❖ These are goods which are not identified and agreed upon at the time of contract of sale.

- ❖ For eg. A wants to buy a car from a showroom where different models at different prices have been displayed. All these displayed models represent unascertained goods.

2. Future Goods:

- ❖ These are goods which a seller does not possess at the time of contract of sale but which will be manufactured or produced or acquired by him after entering into the contract of sale agreement.
- ❖ Eg. 'A' contractor agrees to supply 100 bags of rice to 'B' for giving marriage feast. It is a case of future goods.
- ❖ Similarly where the bus company agrees to buy spare parts from a particular supplier, it is an example of future contract.

- ❖ Future goods represents unascertained goods.

3. Contingent Goods:

- ❖ Contingent goods are the goods, the acquisition of which by the seller depends upon a contingency (an event which may or may not happen).
- ❖ Contingent goods are a part of future goods. Eg. 'A' agrees to sell a particular painting work, provided he gets from 'C'.
- ❖ In this case, the painting work represents contingent goods. Similarly a rice merchant agrees to supply 10 bags of basmathi rice from Pakistan if he gets supplies.
- ❖ In this case, basmathi rice representing contingent goods may or may not be available to the rice merchant.

4. Distinguish between Conditions and Warranty.

SI.No	Basic of Difference	Condition	Warranty
1.	Meaning	It is a stipulation which is essential to the main purpose of the contract of sale.	It is a stipulation which is collateral to the main purpose of the contract.
2.	Significance	Condition is so essential to the contract that the breaking of which cancels out the contract.	It is of subsidiary or inferior character. The violation of warranty will not revoke the contract.
3.	Transfer of Ownership	Ownership on goods cannot be transferred without fulfilling the conditions.	Ownership on goods can be transferred on the buyer without fulfilling the warranty.
4.	Remedy	In case of breach of contract, the affected party can cancel the contract and claim damages.	In case of breach of warranty, the affected party cannot cancel the contract but can claim damages only.
5.	Treatment	Breach of condition may be treated as breach of warranty.	Breach of warranty cannot be treated as breach of condition.

5. Discuss in detail the right of an unpaid seller against the goods.

Meaning of Unpaid Seller :

- ❖ A seller is deemed to be an unpaid seller (a) when the whole of the price has not been paid or (b) a bill of exchange or other negotiable instrument given to him has been dishonored.
- ❖ Seller includes not only actual seller but also an agent of a seller but also an agent of a seller or a consignee.

Rights of an unpaid seller

I. (a). Rights of an unpaid seller against the good

(i) where the property in the goods has passed to the buyer

- Rights of lien: An unpaid seller has a right to retain the goods till he receives the price. But to exercise this lien:

- i. He must be in possession of goods
- ii. The goods must have been sold without any stipulation as to credit or where goods have been sold on credit, the term of credit must have expired.
- iii. It must be remembered that the right of lien depends on actual possession.
- iv. Where an unpaid seller has made a part delivery of the goods, he has lien on the reminder..

b. Right of stoppage in Transit:

- ❖ Where the seller has delivered the goods to a carrier or other bailee for the purpose of transmission to the buyer, but the buyer has not acquired them, then the seller can stop the goods and regain the possession.
- ❖ In other words, goods must be neither with the seller nor with the buyer but should be in the hands of a carrier.
- ❖ Further, the buyer must have become an insolvent.

c. Right of Resale:

The unpaid seller can resell the goods

- (i) Where they are of a perishable nature or
- (ii) After exercising his right of lien or stoppage in transit, even though he has given intimation to the buyer of his intention to resell, buyer has not tendered the price within a reasonable time.
- (iii) Where the seller has expressly reserved the right of resale in the contract itself.

I.(b). Where the Property in the Goods does not pass to the buyer:

II. Right of an Unpaid Seller against the Buyer Personally

- (i) Suite for price:
 - Where the ownership in the goods has passed to the buyer and the buyer refuses to pay for the goods, the seller can file case against the buyer for the price.
- (ii) Suite for Damage for Non-acceptance:
 - Where the buyer wrongfully refuses to accept the goods, the seller can sue him for damages for non-acceptance of the goods.

(iii) Suite for Cancellation of the Contract before the Due Date:

- Where the buyer cancels contract before the date of delivery, the seller may either treat the contract as continuing or wait till the due date or he can file a case against buyer immediately.

(iv) Suite for Interest:

- Where there is a specific agreement between buyer and seller regarding charging interest on the price, the seller can recover interest from the buyer from the due date contract till the date of payment of purchase price.
- If there is no specific agreement, the seller can charge interest from such day as he may notify to the buyer.

ADDITIONAL QUESTIONS:

I. CHOOSE THE CORRECT ANSWERS:

1. The sale of goods act was enforced on _____.
 a) 1st May 1930 b) 1st June 1930
 c) 1st July 1930 d) None
2. The sale of Goods Act, 1930 contains _____.
 a) 66 sections b) 96 sections
 c) 12 sections d) 76 sections
3. The Definitions of the Sale of Goods are defined the section _____ of the Sale of Goods Act.
 a) 3 b) 5 c) 7 d) 2
4. Future goods means goods to be manufactured or produced or acquired by the seller _____.
 a) After making of contract
 b) In future prescribed time
 c) Before making of Contract
 d) all of the above
5. As per section 2(12), of the sale of Goods Act, quality of goods include _____.
 a) Fitness for purpose
 b) Merchantable quality
 c) Freedom from defects
 d) All of the above

- a) State of goods b) Conditions of goods
c) Both (a) and (b) d) None
- 6. The goods identified and agreed upon at the time of contract of sale is made are called _____.**
a) Ordinary Goods b) Specified Goods
c) Both (a) and (b) d) None
- 7. Definition of unpaid seller is provided in section _____ of the sale of goods act, 1930**
a) 45 b) 46
c) 57 d) 67
- 8. Where an unpaid seller has made part delivery of the goods he may exercise his right _____.**
a) Return on the remainder
b) Of lien on the remainder
c) Sale to any other person
d) None
- 9. _____ provision of the sale of goods act deals with suits for price**
a) 50 b) 55 c) 58 d) 47
- 10. Before the enactment of sale of goods act, the provisions regarding sale of goods were contained in:**
a) Indian Contract Act 1872
b) Indian Companies Act 1949
c) Indian Partnership act 1932
d) None
- 11. A contract of sale can be _____.**
a) Absolute only
b) Conditional only
c) Absolute or Conditional
d) None
- 12. In case of breach of condition, the breach gives rise to _____.**
a) Claim for damages
b) Rejection of goods
c) Right to deny the contract
d) Right of indemnification
- 13. In case of absence of transfer of title or registration, the purchases _____.**
- a) Can claim damages for breach of conditions or warranties
b) cannot claim damages for breach of conditions and warranties
c) can claim full price back
d) None of the above.
- 14. The property in goods in a contract for sale of specific or ascertained goods, passes to the buyer when the _____.**
a) Contract is made
b) Parties intend the property in goods to pass
c) Price is paid
d) None of the above
- 15. Under the Sale of Goods Act, 1930 existing goods are classified as _____.**
a) Specified Goods b) Ascertained Goods
c) Unascertained Goods d) All the above
- 16. Assertion (A): Ownership on goods can be transferred on the buyer without fulfilling the warranty.**
Reason(R) : Warranty is a stipulation which is collateral to the main purpose of contract.
Code:
(A) Statement 'A' and statement 'B' both are true
(B) Statement 'A' and statement 'B' both are untrue
(C) Statement 'A' true but statement 'B' is untrue
(D) Statement 'B' is untrue but statement 'A' is true
- 17. Assertion (A): An unpaid seller has a right to retain the goods till he receives the prices.**
Reason(R): The right of lien depends on actual possession.
(A) (A) is true but (R) is false
(B) (A) is false but (R) is true
(C) (A) and (R) are correct and (R) is correct explanation of (A).
(D) Both (A) and (R) are correct, but (R) is not the correct explanation of (A).
- 18. Statement (A): A wants to buy a car from showroom where different models at different prices have been displayed.**
Statement (R): The Car comes under the category of unascertained goods.

- (A) (A) is true but (R) is false
 (B) (A) is false but (R) is true
 (C) (A) and (R) are correct and (R) is correct explanation of (A).
 (D) Both (A) and (R) are correct, but (R) is not the correct explanation of (A).

19. Assertion(A): A Bought a machinery from B who described it to be just one year old. But after using it for a month, A came to know that it is very old machinery. Reason(R): In the above contract of sale the implied condition is conditions as to description.

Codes:

- (A) Both (A) and (R) are correct, and (R) is the right explanation of (A).
 (B) Both (A) and (R) are correct, but (R) is not the right explanation of (A).
 (C) Both (A) and (R) are incorrect.
 (D) (R) is correct, but (A) is incorrect.

20. Assertion(A): Mr.X Possess a Watch. Reason(R): Mr.X is the owner of the watch.

Codes:

- (A) Both (A) and (R) are correct, and (R) is the right explanation of (A).
 (B) Both (A) and (R) are correct, but (R) is not the right explanation of (A).
 (C) Both (A) and (R) are incorrect.
 (D) (R) is correct, but (A) is incorrect.

21. Match the following

List I	List II
Generic goods	1. Satellite TV
Specific goods	2. particular good from lot of delivery
Ascertained goods	3.Saree
Club goods	4. Car

- a) 4 b) 3 c) 1 d) 2
 a) 3 b) 4 c) 1 d) 2
 c) 3 b) 2 c) 1 d) 4
 d) 4 b) 3 c) 2 d) 1

22. Match the following

List I	List II
Title	1. No implied condition
Description	2.Implied condition
Quality	3. Seller has the right to sell
Merchantability	4. Seller has made descriptions

- a) 4 b) 3 c) 1 d) 2
 a) 3 b) 4 c) 1 d) 2
 c) 3 b) 2 c) 1 d) 4
 d) 4 b) 3 c) 2 d) 1

23. Match the following

List I	List II
Owning a Car	1. Right of Ownership
Driving a Car	2. Right to use the property
General Property	3. Special property
Special Property	4. General Property

- a) 4 b) 3 c) 1 d) 2
 a) 3 b) 4 c) 1 d) 2
 c) 3 b) 2 c) 1 d) 4
 d) 4 b) 3 c) 2 d) 1

24. Find the odd one out:

- a) Specific goods
 b) Ascertained goods
 c) Unascertained goods
 d) Consumer goods

Reason: except (d) all the above are the types of existing goods.

25. Find the odd one out

- a) Transfer of property
 b) Price
 c) Warranty
 d) Two parties

Reason: Except warranty all the others are elements of contract of sale.

ANSWERS									
1.	c	2.	a	3.	d	4.	a	5.	c
6.	b	7.	a	8.	b	9.	b	10.	a
11.	c	12.	c	13.	b	14.	b	15.	d
16.	a	17.	c	18.	c	19.	a	20.	b
21.	d	22.	b	23.	a	24.	d	25.	c

II. VERY SHORT ANSWER QUESTIONS:

1. What is meant by Unascertained or Generic Goods?

- ❖ These are goods which are not identified and agreed upon at the time of contract of sale
- ❖ E.g A wants to buy a car from showroom where different models at different prices have been displayed.
- ❖ All these displayed models represents unascertained goods.

2. What are Specific Goods?

- ❖ Specific goods denote goods identified and agreed upon at the time of contract of sale.
- ❖ E.g if a buyer selects a particular variety of saree after examining several other sarees, the selected one denotes specific goods.

3. What is meant by Goods sent 'On Approval' or 'Sale or Return' Basis?

- ❖ Those goods in respect of which the buyer has the option of either to return or to retain is known as goods sent on approval or sale or return basis.

4. What is meant by Implied conditions?

The term implied conditions means conditions which can be inferred from or guessed from the context of the contract.

III. SHORT ANSWER QUESTIONS:

1. Write a note on Transfer of Ownership.

- ❖ Transfer of property (Ownership) in goods from seller to the buyer is the main object of a contract of sale.
- ❖ The term property in goods must be distinguished from possession of goods.
- ❖ Property in goods means the ownership of goods while possession of goods refers to the custody of goods or control over the goods.
- ❖ E.g A may possess a watch. He cannot be called as owner because he might have borrowed the watch from his friend or he might have stolen the watch etc.

2. Write a note on Implied Warranties in every contract of sale.

The following are the implied warranties :

(i) Quiet Possession:

- ❖ There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- ❖ If the buyer's possession is disturbed by a person having a superior right to that of the seller, the buyer is entitled to claim the damages.
- ❖ eg. 'X' sold a second hand radio to 'Y' who spends Rs. 100 on the repairs of the radio. This radio was seized by the police as it was a stolen one. 'Y' filed a suit against 'X' for the recovery of damages for breach of warranty of quiet possession including the cost of repair. 'Y' won the case. In other words, he was held entitled to recover the damages.

(ii) Free from Any Encumbrances

- ❖ The goods bought must not have been subject to any charge or right in favour of a third party.
- ❖ If the buyer's possession is disturbed by reason of the existence of any encumbrance, he is entitled to claim damages for breach of warranty.
- ❖ eg. 'X' borrowed Rs. 50,000 from 'Y' and hypothecated his autorickshaw with 'Y' as security. Later on, 'X' sold the autorickshaw to 'Z' who bought it in good faith. In this case, 'Z' can claim damages from 'X' because his possession is disturbed by 'Y' having a encumbrance on the auto.

(iii) Warranty in the case of Dangerous Goods

- ❖ Where the seller knows that the goods he is selling are dangerous or likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller should warn the buyer of the probable danger, otherwise he will be liable to compensate the buyer in case of any injury.
- ❖ eg. 'C' bought from 'A' a tin of disinfectant powder. 'A' knew that the lid of the tin was

defective and that if it was opened without special care, it might be dangerous. Yet 'A' did not warn 'C'. 'C' opened the tin in the usual way whereupon the powder flew into her eyes, causing injury. Held that 'A' was liable in damage to 'C' as he should have warned 'C' of the probable danger.

IV. LONG ANSWER QUESTIONS:

1. What are the implied conditions in every contract of sale? (Any 5)

The following are the implied conditions in every contract of sale:

1. Conditions as to Title

- In the case of sale, seller has a right to sell the goods.
- The buyer can assume that the seller has a right to sell the goods.
- eg. 'R' purchased a motorcar from 'D' and used it for 4 months.
- Later after six months, true owner came and proved that he is a true owner.
- In this case, 'R' has to return the car to the true owner and claim the full price paid by him from 'D'.

2. Conditions as to Description

- In a contract of sale by description, there is an implied condition that goods supplied should agree with the descriptions made by the seller.
- eg. 'A' has bought a machinery from 'B' who described it to be just one year old.
- After buying the machinery and using it for a month, 'A' came to know that it is very old machinery.
- In this case, 'A' can return the machinery to 'B' on the ground that machinery is not as per the description i.e. not recent one.

3. Sale by Sample

- Where goods are sold by showing samples by the seller
- eg. Food grains, cloth, medicine, chemicals etc., the bulk of goods supplied by the seller

should be similar to the sample shown by the seller.

- In other words, where the goods supplied do not match with the samples.
- The buyer can very well return the goods subject to the following conditions:
 1. The bulk of the goods must correspond with the sample in quality.
 2. The buyer should have a reasonable opportunity of comparing the bulk with the sample and
 3. The good must be free from any defect rendering them unsalable.

4. Conditions as to Quality or Fitness

- There is no implied condition as to the quality or fitness for any particular purpose of goods.
- But goods must be fit for a particular purpose if
 - (i) The buyer has made known to the seller the particular purpose for which he needs the goods
 - (ii) The buyer relies on the seller's skill or judgement and
 - (iii) The goods are of a description which is in course of the seller's business to supply.
- Eg. 'A' bought set of false teeth from a dentist.
- The set did not fit into A's mouth.
- Held that he could reject the set as the purpose for which it was bought was known to the dentist.

5. Conditions as to Merchantability

- If goods are bought by description and the seller is a dealer in goods of that description, the implied condition is that goods must be of merchantable quality.
- It only means that the goods must be saleable in the market under that denomination.
- "A watch that will not keep time, a pen that will not write and tobacco which will not smoke, cannot be regarded as merchantable under such names."