CHAPTER VII MISCELLANEOUS

62. Exclusion of implied terms and conditions

63. Reasonable time a question of fact

64. Auction sale

64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted

66. Savings

62. Exclusion of implied terms and conditions

Any right, duty or liability implied by law in a contract of sale may be excluded or varied by express agreement, by the course of dealing between the parties, or by a usage binding on both of them.

Section 62 of the Sale of Goods Act, 1930 recognises that many terms of a contract of sale are not written by the parties but are read into it by the Act itself, such as the implied conditions and warranties as to title, description, merchantable quality, fitness for purpose and correspondence with sample (ss. 14 to 17), and the default rules on delivery, place of delivery and payment (ss. 31 to 44). These implied terms exist only to fill gaps where the parties have been silent, so s. 62 allows the parties to exclude or alter them in three ways. First, by express agreement, for instance an exclusion clause stating that goods are sold "as is" without any warranty. Second, by the course of dealing, where the parties' consistent past practice in earlier transactions shows that a particular implied term was not meant to apply between them. Third, by trade usage, but only if the usage binds both parties, that is, it is well known, certain, reasonable and applies to the trade in which both deal. The provision reflects freedom of contract, though courts construe exclusion clauses strictly against the party relying on them, and in consumer transactions such clauses may be struck down as unfair contract terms under the Consumer Protection Act, 2019 (s. 2(46)). For example, J sells a second-hand generator to K, and their written contract states that it is sold "as is, where is, with all faults, and without any condition or warranty as to quality or fitness." If the generator later fails to work, K cannot rely on the implied condition of merchantable quality under s. 16(2), because the parties have expressly excluded it. Similarly, if in all their previous dealings K always collected goods from J's warehouse and paid on collection, that course of dealing may vary the default rules on

delivery and payment in their new contract even though the new contract is silent on these points.

63. Reasonable time a question of fact

What is a reasonable time shall be decided as a question of fact.

Section 63 of the Sale of Goods Act, 1930 applies wherever the Act refers to a "reasonable time", for instance, the time within which a buyer must return goods taken on approval or sale or return (s. 24(b)), the time within which a seller must deliver where no time is fixed (s. 36(2)), the time after which a buyer who keeps the goods without rejecting them is deemed to have accepted them (s. 42), and the time within which a buyer must pay after notice before an unpaid seller may resell (s. 54(2)). The Act does not lay down any fixed period for these purposes. Instead, s. 63 directs that what is reasonable must be decided on the facts of each case, taking into account matters such as the nature of the goods (perishable or durable), the purpose for which they were bought, trade custom, the market conditions, and the conduct of the parties. Since it is a question of fact, it is determined from the evidence, and a period reasonable in one case may be unreasonable in another. For example, J sends a crate of fresh mangoes and a steel almirah to K on sale-or-return terms, without fixing any time for return. If K keeps the mangoes for two weeks, that would ordinarily exceed a reasonable time, since mangoes spoil within days, and K would be treated as having bought them under s. 24(b). But keeping the almirah for the same two weeks may well be within a reasonable time, since it is durable and K may need time to see whether it suits his room; K could still return it.

64. Auction sale

A sale by auction shall be concluded on the fall of the hammer, and the seller shall not bid or procure bids at it unless that right is expressly reserved.

Section 64 of the Sale of Goods Act, 1930 sets out the rules governing sales by public auction, aimed at ensuring certainty and fair competition among bidders. First, where goods are offered in lots, each lot is presumed to be a separate contract of sale, so the buyer of one lot is not bound to buy others, and a defect in one lot does not affect the sale of another (s. 64(1)). Second,

a bid is only an offer, and the auctioneer's announcement of completion, by the fall of the hammer or in another customary way, is the acceptance; until then the sale is incomplete and any bidder may withdraw his bid (s. 64(2)). Third, the seller, or any one person on his behalf, may bid only if the right to do so has been expressly reserved (s. 64(3)). Where no such right has been notified, it is unlawful for the seller to bid, to employ someone to bid, or for the auctioneer knowingly to accept such a bid, and the buyer may treat a sale made in breach of this rule as fraudulent (s. 64(4)). Fourth, the seller may fix a reserved or upset price, below which the goods will not be sold (s. 64(5)). Finally, if the seller uses pretended or sham bidding (also called "puffing") to push up the price, the sale is voidable at the buyer's option (s. 64(6)). These rules protect genuine bidders from being made to pay an artificially inflated price. For example, J auctions his furniture in five lots without announcing any right to bid on his own behalf. At the auction of lot 3, a dining table, K bids ₹20,000, but before the hammer falls he withdraws his bid, which he is entitled to do because the sale is not yet complete. L then bids ₹25,000, while J's friend M, secretly instructed by J, keeps bidding against L until L finally buys the table at ₹40,000 on the fall of the hammer. Since J had not reserved a right to bid and used a pretended bidder to raise the price, L may avoid the sale of the table and treat it as fraudulent; the sale of the other lots to other buyers is unaffected, as each lot is a separate contract. Had J announced beforehand a reserve price of ₹30,000, he could lawfully have refused to sell below that amount, but he still could not have used a sham bidder unless he had expressly reserved a right to bid.

64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted:

Unless the contract provides otherwise, any tax on goods imposed, increased, reduced or remitted after the contract is made shall be adjusted in the contract price: the seller may add the new or increased tax to the price, and the buyer may deduct the reduced or remitted tax from it.

Section 64A(1) of the Sale of Goods Act, 1930 deals with changes in taxes on goods (of the kind described in s. 64A(2), such as customs and excise duties and taxes on the sale or purchase of goods) that occur between the making of the contract and its performance. It applies in two situations: first,

where no tax was chargeable when the contract was made and the contract says nothing about payment of tax; and second, where tax was chargeable at that time and the goods were sold "tax-paid", that is, at a price including tax. In either case, the price was fixed on the basis of the tax position at the date of the contract, so the provision shifts the effect of a later change onto the buyer. Under clause (a), if a tax is newly imposed or increased and is actually paid or payable on the goods, the seller may add an equivalent amount to the contract price and may sue to recover it. Under clause (b), if the tax is reduced or remitted so that less or no tax is paid or payable, the buyer may deduct an equivalent amount from the price and cannot be sued for it. The rule yields to the contract: if the parties have agreed otherwise, for example that the price is fixed regardless of any tax changes, their agreement prevails. For example, J agrees to sell 1,000 bags of cement to K at ₹400 per bag, tax-paid, when the tax on cement is ₹40 per bag. Before delivery, the government raises the tax to ₹50 per bag, and J pays the increased tax. J may add ₹10 per bag, that is ₹10,000, to the contract price and recover it from K. If instead the tax had been cut to ₹30 per bag, K could deduct ₹10 per bag from the price, and J could not sue for that amount. But if the contract had said "price fixed at ₹400 per bag irrespective of any change in tax", the parties' different intention would prevail and no addition or deduction would be allowed.

64A.2 Section 64A(1) shall apply to customs and excise duties on goods and to taxes on the sale or purchase of goods.

Section 64A(2) of the Sale of Goods Act, 1930 defines the scope of s. 64A(1). Sub-section (1) provides that, unless the contract shows a different intention, if a tax is imposed, increased, reduced or remitted on goods after a contract of sale is made, the contract price is adjusted accordingly: the seller may add to the price the extra tax actually paid, and the buyer may deduct any reduction or remission (or recover it if already paid). This applies where the contract made no provision for payment of the tax and the tax was not chargeable when the contract was made, or where the goods were sold tax-paid and the tax was chargeable at that time. Sub-section (2) limits this adjustment to two classes of taxes: (a) customs and excise duties on goods, and (b) taxes on the sale or purchase of goods. The purpose is to ensure that a change in these taxes after the contract falls on the party who would

ordinarily bear it, rather than being absorbed by one side merely because the contract was made earlier. Taxes outside these categories, such as income tax or a tax on the seller's business, do not attract the adjustment. For example, J contracts in March to sell 1,000 kg of steel to K at ₹60 per kg, with nothing said about duty. Before delivery, a new excise duty of ₹5 per kg is imposed and J pays it on the steel. Since excise duty falls within s. 64A(2)(a), J may add ₹5,000 to the contract price and recover it from K. Conversely, if an existing sales tax on the goods had been abolished before the sale took effect, so that no tax was paid, K could deduct the amount of that tax from the price. But if the contract expressly said the price was "inclusive of all present and future taxes", that different intention would exclude the adjustment.

66. Savings

66.1 Rights and liabilities accrued, proceedings and remedies relating to them, and acts done before this Act, as well as sale-of-goods enactments not expressly repealed and rules of law consistent with this Act, shall continue unaffected by this Act.

Section 66(1) of the Sale of Goods Act, 1930 is a savings clause. The Act came into force on 1 July 1930 and replaced Chapter VII (ss. 76 to 123) of the Indian Contract Act, 1872, which had earlier governed the sale of goods. Section 66(1) ensures that this change of law does not disturb the past or displace other law needlessly. Clauses (a) to (c) protect the past: any right, title, interest, obligation or liability already acquired, accrued or incurred before the Act began, any legal proceeding or remedy concerning it, and anything done or suffered before that date, continue to be governed by the old law. The new Act therefore operates prospectively and does not reopen completed transactions or pending cases. Clause (d) keeps alive any other enactment on the sale of goods unless this Act expressly repeals it, so there is no implied repeal of other statutes. Clause (e) preserves general rules of law, such as principles of equity, estoppel or mercantile usage, so long as they do not conflict with the Act; where they do conflict, the Act prevails. This fits with s. 3, which keeps the unrepealed provisions of the Indian Contract Act applicable to contracts of sale insofar as they are consistent with the Act. For example, suppose A sold goods to B in March 1930 and a dispute arose over whether ownership had passed, with a suit filed in May

1930. Even though the Sale of Goods Act came into force in July 1930 while the suit was pending, clauses (a) and (b) ensure that B's rights and the suit continue to be decided under the Indian Contract Act as it stood when the contract was made. Similarly, a court deciding a sale dispute today may apply the general principle of estoppel, since that rule of law is not inconsistent with the Act and is saved by clause (e).

66.2 The rules of insolvency relating to contracts for the sale of goods shall apply to such contracts notwithstanding anything in the Sale of Goods Act.

Section 66(2) of the Sale of Goods Act, 1930 is a saving clause: it preserves the separate body of insolvency law and gives it priority over the Act wherever the two overlap. The Sale of Goods Act settles questions between seller and buyer, such as when property passes and what rights an unpaid seller has. But when either party becomes insolvent, the interests of that party's other creditors are also involved, and those are governed by insolvency law, which for individuals includes the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, and, where applicable, the Insolvency and Bankruptcy Code, 2016. These rules decide, among other things, which property forms part of the insolvent's estate available to creditors, how creditors rank, and which earlier transactions can be set aside, for instance as a fraudulent preference or a transfer made to defeat creditors. By virtue of s. 66(2), where these rules conflict with the Act, the insolvency rules prevail. The Act itself works alongside insolvency law: an unpaid seller keeps his lien on goods in his possession if the buyer becomes insolvent (s. 47(1)(c)) and may stop goods in transit on learning of the buyer's insolvency (s. 50), and these real rights put him in a better position than an ordinary creditor. For example, T sells and delivers 200 bags of cement to U on credit, so property and possession pass to U, and U is then declared insolvent before paying. The cement now forms part of U's estate, which vests in the official receiver or assignee under insolvency law, and T cannot take it back merely because he is unpaid; he can only prove his claim for the price and share rateably with U's other unsecured creditors. If, however, the cement had still been with T, or in transit to U when T learned of the insolvency, T could exercise his lien or right of stoppage in transit under the Act. And if U, shortly before insolvency, had paid T in preference

to other creditors with intent to prefer him, the insolvency court could set that payment aside under insolvency law, whatever the Sale of Goods Act says about the contract.

66.3 The provisions of the Sale of Goods Act relating to contracts of sale shall not apply to a transaction that, though framed as a sale, is intended to operate as a mortgage, pledge, charge or other security.

Section 66(3) of the Sale of Goods Act, 1930 makes the true nature of a transaction, not its outward form, decide whether the Act applies. A sale transfers ownership of goods to the buyer outright for a price (s. 4). A security transaction is different: goods are given only to secure repayment of a debt, and the debtor is entitled to get them back on repayment. Parties sometimes write a loan up as a "sale" with a right to "repurchase", to make the lender appear the absolute owner. Section 66(3) stops such a document from being treated as a sale. The Act's rules on passing of property, risk, implied conditions and warranties, and the unpaid seller's rights do not apply. Instead, the transaction is governed by the law of the security actually intended: a pledge by ss. 172 to 179 of the Indian Contract Act, 1872, and a mortgage, charge or hypothecation of movables by the general law of security. Courts find the real intention from the whole transaction, including whether the "price" is really a loan, whether there is a right or duty to "buy back" at a higher sum reflecting interest, and whether the "seller" is meant to get the goods back. For example, R needs ₹1 lakh and signs a document "selling" his gold ornaments to S for ₹1 lakh, agreeing to "buy them back" within six months for ₹1.12 lakh, while S holds the ornaments. Though drafted as a sale, the real intention is a loan secured on the ornaments, so the transaction is a pledge. S does not become absolute owner, must return the ornaments when R repays, and if R defaults, S may sell them only after giving R reasonable notice, as s. 176 of the Contract Act requires, and must account for any surplus.