CHAPTER II FORMATION OF THE CONTRACT

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4. Sale and agreement to sell

4.1 A contract of sale of goods shall be a contract by which the seller transfers, or agrees to transfer, the property in goods to the buyer for a price, and such a contract may be made between one part-owner and another.

Section 4(1) of the Sale of Goods Act, 1930 defines the contract of sale of goods and sets out its essential elements. There must be two parties, a seller and a buyer (s. 2(1) and (13)); the subject matter must be goods, meaning movable property other than actionable claims and money (s. 2(7)); the consideration must be a price, meaning money (s. 2(10)), so that an exchange of goods for goods is barter, not sale; and the object must be the transfer of property, meaning ownership (s. 2(11)), not merely possession, so that a hire or pledge is not a sale. The words "transfers or agrees to transfer" show that the term "contract of sale" covers two forms: a sale,

where ownership passes at once, and an agreement to sell, where ownership is to pass at a future time or on the fulfilment of a condition (s. 4(3)). The second sentence clarifies that a person who owns goods jointly with another may sell his share to that co-owner, so that the buyer becomes sole owner. For example, J and K jointly own a delivery van in equal shares. J agrees to transfer his half-share to K for ₹3 lakh. This is a valid contract of sale between part-owners, and when property in J's share passes, K becomes the sole owner of the van. If, instead, J had agreed to give his share to K in exchange for K's motorcycle, there would be no price in money, and the transaction would be a barter, not a sale under s. 4(1).

4.2 A contract of sale may be made either absolute or conditional.

Section 4(2) of the Sale of Goods Act, 1930 recognises that parties may make a contract of sale in either of two forms. An absolute contract is one that is unconditional: the transfer of ownership and the parties' obligations do not depend on any uncertain event, so where property passes at once it is a sale. A conditional contract is one in which the transfer of ownership, or the performance of the contract, depends on the fulfilment of some condition, such as payment of the full price, approval of the goods by the buyer, or the goods reaching a certain standard. Under s. 4(3), where property is to pass at a future time or on fulfilment of a condition, the contract is an agreement to sell, and under s. 4(4) it becomes a sale when that time elapses or that condition is fulfilled. The distinction matters because, until the condition is satisfied, the seller remains owner and generally bears the risk (s. 26), and the buyer's remedy for non-performance is a claim for damages rather than a claim to the goods as owner. For example, if J sells his bicycle to K for ₹10,000 and K pays and takes it away, the contract is absolute and K becomes owner at once. But if J agrees to sell the bicycle to K on the condition that it passes a mechanic's inspection, the contract is conditional: ownership passes to K only when the bicycle passes that inspection, and until then it remains J's.

4.3 A contract of sale shall be a sale where property in the goods passes to the buyer at once, and an agreement to sell where it is to pass at a future time or on the fulfilment of a condition.

Section 4(3) of the Sale of Goods Act, 1930 divides every contract of sale into two kinds according to when ownership is transferred. If the contract itself transfers ownership to the buyer, it is a sale: an executed contract, under which the buyer becomes owner immediately, even if payment or delivery comes later. If ownership is to pass only later, either on a future date or when some condition is met (such as payment of the price, the goods being made ready, or the goods coming into existence), it is an agreement to sell: an executory contract, which is only a promise to transfer ownership. Under s. 4(4), an agreement to sell becomes a sale when that time arrives or the condition is fulfilled. The distinction has practical consequences. Since risk generally follows ownership (s. 26), in a sale loss of the goods falls on the buyer, while in an agreement to sell it falls on the seller. In a sale, if the buyer fails to pay, the seller can sue for the price (s. 55); in an agreement to sell, the seller can generally sue only for damages for non-acceptance (s. 56). And if the seller becomes insolvent, a buyer under a sale can claim the goods as owner, while a buyer under an agreement to sell has only a claim for refund or damages. For example, J buys a specific laptop from K's shop for ₹60,000, agreeing to pay and collect it tomorrow. Since ownership passes immediately, this is a sale, and if the laptop is stolen from the shop overnight without K's fault, the loss is J's. But if J and K agree that the laptop will become J's only after J pays the price next week, the contract is an agreement to sell; the laptop remains K's, at K's risk, until J pays, at which point the agreement to sell becomes a sale.

4.4 An agreement to sell shall become a sale when the agreed time elapses or the agreed conditions are fulfilled.

This is Section 4(4) of the Sale of Goods Act, 1930. A contract of sale is either a sale or an agreement to sell (s. 4(1)). Under s. 4(3), where property in the goods passes to the buyer at once, it is a sale; where it is to pass at a future time or on fulfilment of some condition, it is an agreement to sell. Section 4(4) provides that an agreement to sell is not a permanent state: it automatically turns into a sale when the agreed time arrives or the agreed condition is met, without any fresh contract. At that moment ownership passes to the buyer. The change matters because, in general, risk passes with ownership (s. 26). The seller's remedies also change: under a sale, the seller may usually sue for the price (s. 55), whereas under an unperformed

agreement to sell, the seller generally has only a claim for damages for non-acceptance (s. 56). Similarly, under a sale the buyer, as owner, may claim the goods themselves, whereas under an agreement to sell the buyer has only a personal claim against the seller. For example, J agrees on 1 March to sell his car to K for ₹4 lakh, and they agree that ownership will pass on 1 April. Until 1 April, it is an agreement to sell, and J remains owner. On 1 April the agreement becomes a sale and K becomes owner automatically. Likewise, if J agrees to sell the car on condition that he first gets it repainted, the agreement becomes a sale as soon as the repainting is done; if the car is destroyed by accident before that, the loss is J's, as the agreement had not yet become a sale.

5. Contract of sale how made

5.1 A contract of sale shall be made by an offer to buy or sell goods for a price and the acceptance of that offer.

Section 5(1) of the Sale of Goods Act, 1930 states how a contract of sale comes into existence and gives the parties freedom over the timing of delivery and payment. Like any other contract, a sale requires an offer by one party, either to sell or to buy, and an unconditional acceptance by the other; the general rules on offer, acceptance and valid contracts in the Indian Contract Act, 1872 continue to apply, as they are not inconsistent with this Act (s. 3). The offer must relate to goods, meaning movable property other than actionable claims and money (s. 2(7)), and must be for a price, meaning consideration in money (s. 2(10)); an exchange of goods for other goods is barter, not sale. Once the offer is accepted, the contract is complete, and the parties may then arrange performance as they wish: delivery and payment may both be immediate (as in an ordinary shop purchase), either may be immediate and the other postponed, both may be postponed to a future date, or either or both may be made in instalments. The timing of delivery or payment does not affect the existence of the contract; it only fixes how the contract is to be performed. For example, J offers to sell his laptop to K for ₹30,000, and K accepts, agreeing to pay ₹10,000 now and the balance in two monthly instalments, with J handing over the laptop at once. A valid contract of sale is made on K's acceptance, even though the price is to be paid in instalments. Equally, if K had accepted on the terms that the laptop would be delivered next week and paid for on delivery, the

contract would still be complete on acceptance, with both delivery and payment simply postponed.

5.2 A contract of sale may be made in any form — in writing, orally, partly in writing and partly orally, or by conduct.

Section 5(2) of the Sale of Goods Act, 1930 makes clear that no particular form is required for a contract for the sale of goods. Once there is an offer to buy or sell goods for a price and its acceptance (s. 5(1)), the contract is valid whether the terms are set down in a written document, agreed by spoken words, settled partly in writing and partly orally, or inferred from what the parties do without any words at all. A contract implied from conduct arises where the parties' actions clearly show that they have agreed to buy and sell, even though neither has expressly said so. This reflects the practical reality that most everyday sales take place without formal documents. The only limit is the opening phrase "subject to the provisions of any law for the time being in force": if some other law requires a particular kind of sale to be in writing, registered or made in a special form, that requirement must be complied with, and s. 5(2) does not override it. For example, when R asks a shopkeeper for two kilos of onions, the shopkeeper weighs them and names the price, and R pays and takes them, there is a valid oral contract of sale. When S picks a packet of biscuits from a supermarket shelf, places it at the billing counter and pays the displayed price without a word being said, a contract of sale is implied from conduct. And when a company sends a written purchase order for machinery and the supplier accepts it over the telephone, the contract is partly in writing and partly oral, and is equally binding.

6. Existing or future goods

6.1 A contract of sale may be made for existing goods owned or possessed by the seller, or for future goods.

Section 6(1) of the Sale of Goods Act, 1930 identifies the kinds of goods that can be the subject of a contract of sale. The first kind is existing goods, which are in existence when the contract is made and are either owned by the seller (as with a shopkeeper selling his own stock) or possessed by the seller without ownership (as with an agent or pledgee authorised to sell goods belonging to someone else). The second kind is future goods, defined

in s. 2(6) as goods to be manufactured, produced or acquired by the seller after the contract is made, such as crops yet to be grown, articles yet to be made, or goods the seller has yet to buy. The provision makes clear that a valid contract can be made even for goods the seller does not yet have. However, since the seller cannot pass ownership of something not yet in existence or not yet his, a contract that purports to sell future goods immediately operates only as an agreement to sell (s. 6(3)), and ownership passes only when the goods come into existence, are acquired by the seller, and are appropriated to the contract (s. 23). For example, J, a furniture dealer, sells K a dining table already in his showroom; this is a sale of existing goods owned by the seller. If J also agrees to supply K with a wardrobe that J's carpenter will make next month, that is a contract for future goods: it is valid, but K becomes owner of the wardrobe only after it is made and set aside for him. Likewise, a farmer may validly contract in June to sell the wheat he will harvest in March, as that wheat is future goods to be produced.

6.2 A contract may be made for the sale of goods whose acquisition by the seller depends on a contingency that may or may not happen.

Section 6(2) of the Sale of Goods Act, 1930 recognises contingent goods, a class of future goods (s. 6(1)), which the seller does not yet own or possess and whose acquisition depends on an uncertain event. The seller may validly contract to sell such goods even though it is not certain that he will ever obtain them. Because the goods do not yet belong to the seller, the contract cannot transfer ownership at once; under s. 6(3), even where the seller purports to make a present sale of future goods, the contract operates only as an agreement to sell. The contract is thus a contingent contract within the meaning of s. 31 of the Indian Contract Act, 1872: it becomes enforceable only if the contingency happens, and if the event becomes impossible, the contract becomes void (s. 32 of that Act), so the seller is not liable for non-delivery. For example, J agrees to sell to K a specific rare antique clock that J expects to buy at an upcoming auction, if his bid succeeds. The contract is valid as an agreement to sell contingent goods. If J wins the auction and acquires the clock, he must deliver it to K, and failing to do so would be a breach. But if another bidder buys the clock, the

contingency has failed, the contract becomes void, and J is not liable to K for non-delivery.

6.3 A contract purporting to effect a present sale of future goods shall operate only as an agreement to sell.

Section 6(3) of the Sale of Goods Act, 1930 deals with contracts in which the seller claims to sell, here and now, goods that do not yet exist or that the seller does not yet own. Future goods are goods to be manufactured, produced or acquired by the seller after the contract is made (s. 2(6)). Since the seller cannot transfer ownership of something that does not yet exist or is not yet his, the law does not treat such a contract as a completed sale, whatever words the parties use. It treats it instead as an agreement to sell (s. 4(3)), under which ownership will pass only later, once the goods come into existence or into the seller's hands and the conditions for transfer are met, typically on their appropriation to the contract (s. 23). Until then the buyer does not own the goods and bears no risk of their loss, and if the seller fails to deliver, the buyer's remedy is a claim for damages for breach, not a claim to the goods as owner. For example, a farmer agrees in March to "hereby sell" to a trader the entire wheat crop he will harvest from his field in April. Although the contract is worded as a present sale, the crop does not yet exist, so the contract is only an agreement to sell. Ownership of the wheat passes to the trader only after it is harvested and appropriated to the contract; if the crop is destroyed by hail before harvest, the trader owns nothing, and his remedy depends on the contract terms rather than on any right of ownership.

7. Goods perishing before making of contract:

A contract for the sale of specific goods shall be void if, at the time it was made and without the seller's knowledge, the goods had perished or become so damaged as no longer to answer to their description.

Section 7 of the Sale of Goods Act, 1930 deals with the case where the goods that form the subject matter of the contract have ceased to exist, in law, before the contract is made, though neither party knows it. It applies only to specific goods, meaning goods identified and agreed upon at the time of the contract (s. 2(14)), because only then can it be said that the very goods contracted for have perished; a contract for unascertained goods can

still be performed from other stock. Three conditions must be met: the goods must be specific; they must have perished, or been so damaged that they are no longer the kind of goods described in the contract, at the time the contract was made; and the seller must not have known this. "Perished" covers not only physical destruction but also a change in the goods' character, such as grain rotting or fermenting so that it is no longer the grain described, and loss by theft may also be treated as perishing. When these conditions are met, the contract is void from the start, since there was never a subject matter capable of being sold; neither party can sue for performance, and any price paid is recoverable. The rule reflects the general principle that an agreement based on a mutual mistake as to a matter of fact essential to it is void (Indian Contract Act, 1872, s. 20). The rule does not apply where the seller knew of the loss; the contract is then not void under s. 7, and the seller may be liable to the buyer for fraud or misrepresentation. Loss after the contract is made is covered instead by s. 8. For example, J agrees to sell K a particular consignment of 200 cartons of mangoes stored in a cold storage in Patna, and K pays in advance. Unknown to J, a power failure the previous night had caused the entire consignment to rot. Since the specific goods had already perished when the contract was made and J did not know of it, the contract is void; K cannot demand delivery or damages, but can recover the price paid. If, however, J had known of the loss and still sold the mangoes, s. 7 would not apply, and K could hold J liable for fraud.

8. Goods perishing before sale but after agreement to sell:

An agreement to sell specific goods shall be avoided if the goods, without the fault of either party, perish or are damaged beyond their contract description before the risk passes to the buyer.

Section 8 of the Sale of Goods Act, 1930 deals with goods that are destroyed after an agreement to sell is made but before the sale is completed. It applies only where all of these conditions are met: the contract is an agreement to sell (not a completed sale), so property has not yet passed to the buyer; the goods are specific, that is, identified and agreed upon when the contract is made (s. 2(14)); the goods perish, or are so damaged that they no longer match their description in the agreement; neither seller nor buyer is at fault; and the loss occurs before the risk passes to the buyer, which ordinarily happens when property passes (s. 26). Where these conditions

exist, the agreement is avoided: both parties are released from further performance, the seller need not deliver and the buyer need not pay, and any money already paid for goods that are never delivered can be recovered, since the purpose of the contract has failed. The provision is an application of the doctrine of frustration to the sale of goods. It is distinct from s. 7, which renders a contract void where the goods had already perished, without the seller's knowledge, when the contract was made. If the loss is caused by the fault of a party, s. 8 does not apply, and that party is liable for breach. For example, J agrees to sell to K a particular consignment of 200 mangoes kept in J's cold store, with property and risk to pass on delivery next week. Before delivery, an unexpected power failure caused by a storm spoils all the mangoes, without any negligence by J or K. Since the goods were specific, perished without fault, and the risk had not yet passed to K, the agreement is avoided: J need not supply other mangoes, K need not pay, and any advance paid by K must be returned. If, however, the mangoes had spoiled because J carelessly switched off the cold store, J would be liable to K for breach.

9. Ascertainment of price:

9.1 The price shall be fixed by the contract, or in the manner the contract provides, or by the course of dealing between the parties.

Section 9(1) of the Sale of Goods Act, 1930 sets out the ways in which the price, which is the money consideration for a sale of goods (s. 2(10)), may be settled. First, the parties may state the price in the contract itself, as a fixed sum or at a rate such as so much per kilogram. Second, the contract may leave the price to be fixed later by an agreed method, for instance by reference to the market rate on the date of delivery or by the valuation of a named third party (the latter being dealt with further in s. 10). Third, where the parties have traded with each other regularly, the price may be determined by their established course of dealing, so that a new order placed without mentioning price is taken to be at the rate they have customarily used. Because price is an essential element of a sale, the provision ensures that a contract is not void for uncertainty merely because no figure is written into it, so long as the price can be worked out by one of these methods. Where none of them applies, s. 9(2) steps in and requires the buyer to pay a reasonable price, which depends on the facts of each case. For example, a

restaurant owner, J, has for two years bought vegetables from a wholesaler, K, every week, paying the prevailing mandi rate on the day of supply. One week J phones K and orders 200 kg of onions without discussing price. The contract is valid, and the price is determined by their course of dealing, namely the mandi rate on the day of supply. Had they expressly agreed "₹30 per kg", that fixed price would govern; had they agreed that the price would be the rate published by the local mandi board on the delivery date, the price would be fixed in that agreed manner.

9.2 Where the price is not fixed under the contract, the buyer shall pay the seller a reasonable price.

Section 9(2) of the Sale of Goods Act, 1930 fills a gap that arises when the parties have agreed on a sale but have not settled the price. Under s. 9(1), the price may be fixed by the contract itself, left to be fixed in a manner the contract provides, or determined by the course of dealing between the parties. Where none of these methods yields a price, the contract does not fail for uncertainty; instead the law implies an obligation on the buyer to pay a reasonable price. What counts as reasonable is not a fixed formula but a question of fact, decided on the circumstances of each case, such as the market rate at the time and place of sale, the quality and quantity of the goods, any trade usage, and previous dealings between the parties. The rule usually applies where goods have been supplied and accepted without the price being agreed; it cannot be used to override a price the parties have actually fixed, and if the parties intended the price to be agreed later but failed to agree, the question whether a contract exists at all must be considered first. For example, a restaurant owner, J, orders 20 kg of fresh fish from a supplier, K, by phone, and K delivers it without either side mentioning the price or any past rate. J uses the fish but later disputes the bill. Since no price was fixed by the contract, by an agreed method or by past dealing, J must pay a reasonable price, which a court would likely decide by reference to the prevailing wholesale market rate for that fish in the locality on the date of delivery.

10. Agreement to sell at valuation

10.1 An agreement to sell goods at a price to be fixed by a third party's valuation shall be avoided if the third party cannot or does not make

the valuation, but the buyer shall pay a reasonable price for any goods delivered to and appropriated by him.

Section 10(1) of the Sale of Goods Act, 1930 deals with a particular way of fixing the price. Ordinarily the price may be fixed by the contract itself, left to be fixed in an agreed manner, or determined by the course of dealing between the parties (s. 9(1)). Section 10 covers the case where the parties agree that the price will be fixed by the valuation of a named third party, such as an expert valuer. Since the parties have made that person's valuation the only agreed basis for the price, the agreement depends on it being made. If the third party is unable to value the goods (for instance, because of death, illness or lack of expertise) or simply does not do so, there is no price and no means of fixing one, and the agreement comes to an end. Neither party can then enforce it, and the court will not substitute its own valuation. The proviso prevents unjust enrichment: if the goods, or part of them, have already been delivered to the buyer and the buyer has appropriated them (by using, consuming, selling or otherwise treating them as his own), the buyer must pay a reasonable price for them, since he cannot keep the benefit without paying. The provision should be read with s. 10(2), under which, if the third party is prevented from making the valuation through the fault of the seller or the buyer, the party not at fault may sue the other for damages. For example, J agrees to sell his stock of antique furniture to K at a price to be fixed by V, a named antique valuer. Before V inspects the furniture, V dies. The agreement is avoided, and neither J nor K can compel the other to go ahead with the sale. However, if J had already delivered two of the pieces to K, and K had placed them in his showroom and sold one of them, K must pay J a reasonable price for those two pieces.

10.2 A party who prevents the third-party valuer from fixing the price shall be liable in damages to the other party.

Section 10(2) of the Sale of Goods Act, 1930 applies to an agreement to sell goods at a price to be fixed by the valuation of a third party. Under s. 10(1), if that third party cannot or does not make the valuation, the agreement is avoided, because an essential term, the price, is never settled; but if the buyer has already received and appropriated all or part of the goods, he must pay a reasonable price for them. Section 10(2) deals with the case where the valuation fails not by chance but through the fault of the seller or the buyer,

for instance by refusing the valuer access to the goods, withholding necessary documents or otherwise obstructing him. In that case the defaulting party cannot escape the bargain without consequence: the innocent party may sue the party at fault for damages for the loss caused by the failure of the contract. The provision rests on the principle that no one may take advantage of his own wrong. For example, J agrees to sell his stock of antique furniture to K at a price to be fixed by V, an independent valuer. Before V can inspect the furniture, J, having received a better offer elsewhere, locks his warehouse and refuses V entry, so no valuation is made. The agreement cannot proceed because the price was never fixed, but since the failure was due to J's fault, K may sue J for damages, such as the extra amount K must pay to buy similar furniture elsewhere. If instead V had simply fallen ill and been unable to value the goods, with no fault on either side, the agreement would be avoided under s. 10(1) and neither party could claim damages.

11. Stipulations as to time

Time of payment shall not be of the essence of a contract of sale unless the contract shows a different intention.

Section 11 of the Sale of Goods Act, 1930 deals with whether a time limit in a contract of sale is so important that its breach allows the other party to treat the contract as ended. A stipulation "of the essence" is treated as a condition, whose breach entitles the innocent party to repudiate the contract, while a stipulation not of the essence is treated only as a warranty, whose breach gives a right to damages but not to reject the goods or end the contract (s. 12). The section sets out two rules. First, for time of payment, the law presumes that it is not of the essence: if the buyer pays late, the seller cannot for that reason alone cancel the sale, but may claim the price with interest or damages, and may use the unpaid seller's rights such as lien and, in the circumstances allowed by s. 54, resale. This presumption can be displaced if the contract shows that the parties meant timely payment to be essential, for instance by an express clause that the contract will stand cancelled if payment is not made by a set date. Second, for all other time stipulations, such as the time of delivery, there is no presumption either way: whether time is essential depends on the terms of the contract, read in light of the nature of the goods and the transaction. For example, J agrees to

sell 200 quintals of potatoes to K, with delivery on 1 March and payment by 15 March. If K pays on 25 March, J cannot cancel the sale merely because payment was late, since time of payment is not of the essence, though J may claim interest or damages for the delay. But if the contract had stated "payment by 15 March is of the essence, failing which the seller may cancel", J could treat the contract as at an end after 15 March. As for delivery, if the contract shows that K needed the potatoes by 1 March for a specific seasonal sale, time of delivery would likely be of the essence, and K could refuse late delivery; if nothing in the contract makes the date essential, K could only claim damages for the delay.

12. Condition and warranty:

12.1 A stipulation in a contract of sale relating to the goods shall be either a condition or a warranty.

Section 12(1) of the Sale of Goods Act, 1930 classifies the terms of a contract of sale that concern the goods themselves, such as their quality, description, fitness for purpose or time of delivery, into two categories. A condition is a stipulation essential to the main purpose of the contract, and its breach gives the buyer the right to treat the contract as repudiated, that is, to reject the goods and recover the price (s. 12(2)). A warranty is a stipulation collateral to the main purpose, and its breach gives only a claim for damages, not a right to reject the goods (s. 12(3)). The label the parties use is not decisive: whether a stipulation is a condition or a warranty depends on the construction of the contract in each case, and a term may be a condition even though the contract calls it a warranty (s. 12(4)). The classification matters because it decides the remedy available on breach. The buyer may also choose, or may be compelled, to treat a breach of condition as a breach of warranty, for instance after accepting the goods (s. 13). For example, J orders a tractor from K, stating that it must be able to plough his hilly land, and K assures him that it can. If the tractor cannot plough such land, the stipulation on fitness goes to the root of the contract and is a condition, so J may reject the tractor and recover the price. If, instead, the tractor ploughs well but K's promise of a free set of seat covers is not fulfilled, that stipulation is merely collateral, so it is a warranty, and J must keep the tractor and may only claim damages for the missing covers.

12.2 A stipulation essential to the main purpose of the contract is a condition, and its breach shall entitle the aggrieved party to treat the contract as repudiated.

Section 12(2) of the Sale of Goods Act, 1930 defines a condition by its importance and by the remedy for its breach. A condition is a term that goes to the root of the contract, so that without its fulfilment the aggrieved party would not get substantially what it bargained for. It is contrasted with a warranty, a stipulation collateral to the main purpose, whose breach gives only a claim for damages and not a right to reject the goods and treat the contract as repudiated (s. 12(3)). Whether a stipulation is a condition or a warranty depends on the construction of the contract in each case, and a term may be a condition even though the contract calls it a warranty (s. 12(4)). When a condition is broken, the aggrieved party may reject the goods, refuse further performance and recover any price paid, as well as claim damages. The aggrieved party may, however, choose to waive the condition or treat its breach as a breach of warranty, and in some cases, such as where a buyer has accepted the goods under a non-severable contract, it is obliged to do so (s. 13). Besides express conditions, the Act implies certain conditions, such as the seller's right to sell, correspondence with description or sample, and fitness for purpose or merchantable quality (ss. 14 to 17). For example, a buyer orders a pump from a seller, expressly stating that it must be able to lift water to the third floor of his building, and the seller supplies a pump that can only reach the first floor. The pump's ability to do what the buyer bought it for is essential to the main purpose of the contract, so it is a condition. The buyer may reject the pump, treat the contract as repudiated and recover the price, and may also claim damages for any further loss. But if the only defect was that the pump came with a slightly scratched casing, that would ordinarily be a breach of warranty, giving the buyer a claim for damages only.

12.3 Breach of a warranty shall entitle the buyer to claim damages only, and not to reject the goods or treat the contract as repudiated.

Section 12(3) of the Sale of Goods Act, 1930 defines a warranty as a stipulation collateral, that is, subsidiary, to the main purpose of the contract. It is contrasted with a condition, which is a stipulation essential to the main purpose, the breach of which allows the buyer to reject the goods and treat

the contract as repudiated (s. 12(2)). Because a warranty does not go to the root of the contract, its breach does not defeat the substance of the bargain: the buyer still receives essentially what was contracted for, so the contract stands and the buyer must keep the goods, but may recover compensation for the loss suffered. Under s. 59, the buyer may either set up the breach to reduce or extinguish the price, or sue the seller for damages. Whether a stipulation is a condition or a warranty depends on the construction of the contract in each case, and a stipulation may be a condition even though it is called a warranty (s. 12(4)). Further, a buyer may choose, or in some cases be compelled, to treat a breach of condition as a breach of warranty, for instance after accepting the goods (s. 13). The Act also implies certain warranties, such as the buyer's right to quiet possession and freedom from undisclosed encumbrances (s. 14(b) and (c)). For example, J buys a new car from K, and the contract states that the car is a particular model with a particular engine, and that it comes with a set of floor mats and a spare wheel cover. If the car delivered is of a different model, a condition is broken and J may reject it. But if the car is correct and only the floor mats and spare wheel cover are missing, this is a breach of warranty, since those items are collateral to the main purpose of buying the car: J must keep the car, but may deduct their value from the price or sue K for damages.

12.4 Whether a stipulation is a condition or a warranty shall be determined by the construction of the contract as a whole, and not by the label the parties give it.

Section 12(4) of the Sale of Goods Act, 1930 deals with how to classify the terms (stipulations) of a contract of sale. Under s. 12(2), a condition is a stipulation essential to the main purpose of the contract, and its breach gives the aggrieved party the right to treat the contract as repudiated; under s. 12(3), a warranty is a stipulation collateral to the main purpose, and its breach gives only a right to claim damages, not to reject the goods or end the contract. Section 12(4) directs that this classification is a matter of construing the contract in each case: the court looks at the substance of the term, its importance to the main purpose of the contract, and the intention of the parties as shown by the contract and the surrounding circumstances. The words the parties use are not decisive, so a term called a "warranty" may in law be a condition if it goes to the root of the contract, and the aggrieved

party then gets the wider remedy of rejection. For example, R orders a pump from S for irrigating his fields, and the contract states "S warrants that the pump will lift water from a depth of 100 feet". R's well is 100 feet deep, and S knows this. The pump delivered can lift water only from 40 feet, making it useless for R's purpose. Although the contract calls the term a "warranty", it goes to the very purpose of the purchase, so on construction it is a condition; R may reject the pump and treat the contract as repudiated, instead of being limited to damages. By contrast, a term that the pump would be painted green would remain a warranty, since its breach does not defeat the main purpose, and R could claim only damages.

13. When condition to be treated as warranty

13.1 The buyer may waive a condition to be fulfilled by the seller, or treat its breach as a breach of warranty.

Section 13(1) of the Sale of Goods Act, 1930 gives the buyer a choice of remedy when the seller breaks a condition. Under s. 12, a condition is a stipulation essential to the main purpose of the contract, whose breach entitles the buyer to treat the contract as repudiated, that is, to reject the goods and recover the price; a warranty is a stipulation collateral to that purpose, whose breach gives only a right to damages, not a right to reject the goods. Section 13(1) allows the buyer, instead of repudiating the contract for breach of a condition, either to waive the condition altogether, giving up any claim based on it, or to treat the breach as a breach of warranty, keeping the goods and claiming damages for the loss suffered. The choice belongs to the buyer alone; the seller cannot force the buyer to accept the goods, and cannot escape liability merely because the buyer chooses the lesser remedy. The option exists for the buyer's benefit, since a buyer who needs the goods may prefer to keep them with compensation rather than cancel the whole deal. For example, J orders 100 cotton shirts of a particular brand and quality from K for a festival sale, and supply of that quality is a condition of the contract. K delivers shirts of a slightly inferior quality. J is entitled to reject the shirts and treat the contract as ended, but since the festival is near and no other supply is available, J may instead keep the shirts and claim damages from K for the difference in value, thereby treating the breach of condition as a breach of warranty. Alternatively, J may waive the condition entirely and accept the shirts without any claim.

13.2 Where a contract of sale is not severable and the buyer has accepted the goods or any part of them, a breach of condition by the seller shall be treated only as a breach of warranty.

Section 13(2) of the Sale of Goods Act, 1930 limits the buyer's remedies once the goods have been accepted. A condition is a stipulation essential to the main purpose of the contract, whose breach ordinarily allows the buyer to reject the goods and treat the contract as repudiated; a warranty is a stipulation collateral to that purpose, whose breach gives only a right to damages (s. 12). Under s. 13(2), however, if the contract is not severable, meaning it is a single, indivisible contract rather than one for separate deliveries each separately paid for, and the buyer has accepted the goods or even part of them, the buyer loses the right to reject and must treat the seller's breach of condition as a breach of warranty. The buyer's remedy is then limited to claiming damages, or setting them off against the price (s. 59). The rule rests on fairness and certainty: after accepting the goods, a buyer should not be able to undo the whole transaction and return the goods. Acceptance takes place when the buyer tells the seller he has accepted the goods, does an act inconsistent with the seller's ownership after delivery, or keeps the goods beyond a reasonable time without rejecting them (s. 42). The rule gives way if the contract, expressly or by implication, allows rejection even after acceptance. For example, J orders from K 100 bags of Grade A basmati rice for ₹3 lakh, to be delivered and paid for in one lot. J receives the bags, uses 30 of them in his restaurant, and then discovers the rice is Grade B, a breach of the condition that goods correspond with their description (s. 15). Because the contract is not severable and J has accepted part of the goods by using them, J cannot reject the remaining 70 bags and cancel the contract; he can only claim damages, such as the difference in value between Grade A and Grade B rice. If the contract had expressly allowed J to reject the goods for wrong grade even after use, he could have rejected them.

13.3 Where the law excuses the fulfilment of a condition or warranty, by reason of impossibility or otherwise, section 13 shall not apply to it.

This is sub-section (3) of Section 13 of the Sale of Goods Act, 1930. Section 13 deals with when a breach of condition may, or must, be treated as a breach of warranty: under s. 13(1) the buyer may waive a condition or

choose to treat its breach as a breach of warranty, and under s. 13(2), where the contract is not severable and the buyer has accepted the goods, a breach of condition can be treated only as a breach of warranty, so the buyer loses the right to reject the goods and is left with a claim for damages. Section 13(3) carves out an exception: these rules operate only where there is an actual breach. If the law itself excuses performance of a condition or warranty, whether because it has become impossible, as under s. 56 of the Indian Contract Act, 1872 (frustration), or because the goods have perished without fault, as under ss. 7 and 8 of the Sale of Goods Act, or for any other legal reason, there is no breach at all. Section 13 then has nothing to operate on: the buyer cannot claim damages as for a breach of warranty, and the parties' rights are governed by the law that excuses performance, usually discharge of the contract and return of any price paid. For example, J contracts to sell K 500 tonnes of rice, with a condition that the rice will be shipped by a named vessel in March. Before March, the government requisitions that vessel, so shipment by it becomes impossible. Performance of the condition is excused by law, so K cannot treat J's failure as a breach of condition or of warranty and claim damages under s. 13; instead, the contract is frustrated, and K may recover any advance paid.

14. Implied undertaking as to title, etc:

The seller shall have the right to sell the goods, shall ensure that the buyer enjoys undisturbed possession of them, and shall deliver them free from any charge or encumbrance not disclosed to the buyer.

Section 14 of the Sale of Goods Act, 1930 reads three promises about title into every contract of sale, unless the circumstances show that the parties intended otherwise. Under clause (a), the seller impliedly undertakes that he has the right to sell the goods (in a sale) or will have that right when property is to pass (in an agreement to sell). This is a condition, a term going to the root of the contract (s. 12(2)), so if the seller has no right to sell, the buyer may reject the goods and recover the full price, even after using them, because he never received the very thing he bargained for: lawful ownership. Under clause (b), the seller impliedly warrants that the buyer will enjoy quiet possession, that is, that no one with a better right will disturb the buyer's use of the goods. Under clause (c), the seller impliedly warrants that the goods are free from any charge or encumbrance, such as a

pledge or hypothecation, in favour of a third party that was not declared to or known by the buyer at the time of the contract. Clauses (b) and (c) are warranties, terms collateral to the main purpose (s. 12(3)), so their breach entitles the buyer only to claim damages, not to reject the goods (s. 12(3), s. 59). For example, P sells a car to Q for ₹4 lakh. If it later turns out that the car was stolen and Q has to hand it over to the true owner, P has broken the implied condition under clause (a), and Q can recover the entire ₹4 lakh, even though he drove the car for several months. If, instead, P owned the car but had hypothecated it to a bank without telling Q, and the bank later seizes it to recover P's loan, P has broken the implied warranties under clauses (b) and (c), and Q may claim damages from P for his loss.

15. Sale by description

Goods sold by description shall correspond with that description.

Section 15 of the Sale of Goods Act, 1930 implies, in every sale of goods by description, a condition that the goods delivered will match the description. A sale is by description where the buyer relies on words describing the goods, such as their kind, variety, quality, size, origin, packing, labelling or specifications, rather than on examining them; this covers goods the buyer has never seen, and also goods seen but sold by reference to a description. Because the term is a condition and not a warranty (s. 12), its breach entitles the buyer to reject the goods and treat the contract as repudiated, though the buyer may choose, or may be compelled by s. 13 (for instance after accepting the goods), to treat it as a breach of warranty and claim damages only. The second limb deals with sales by sample as well as by description: the goods must match both, so it is no defence that the bulk corresponds with the sample if it does not also answer the description. The condition may, however, be excluded or varied by express agreement (s. 62). For example, J orders from K "100 bags of Basmati rice, Grade A". K sends 100 bags of ordinary non-Basmati rice of good quality. The goods do not correspond with the description, so J may reject them and refuse to pay, even though the rice is fit for eating. Similarly, if J had approved a sample that happened to be non-Basmati rice while the contract still described "Basmati rice", delivery of rice matching the sample would not protect K, because the bulk must also correspond with the description.

16. Implied conditions as to quality or fitness

The buyer shall bear the risk as to the quality and fitness of the goods he buys (caveat emptor).

Section 16 of the Sale of Goods Act, 1930 states the rule of *caveat emptor* ("let the buyer beware"): ordinarily, the seller gives no implied promise that the goods are of good quality or suitable for the buyer's purpose, so the buyer must examine the goods and use his own judgment, and cannot complain later merely because they turn out unsuitable. The section then lists exceptions, where the law implies such a promise. First, under s. 16(1), if the buyer tells the seller, expressly or by implication, the particular purpose for which he needs the goods, in a way that shows he relies on the seller's skill or judgment, and the seller deals in such goods in the course of business, there is an implied condition that the goods are reasonably fit for that purpose. This does not apply where the buyer orders a specified article by its patent or trade name, since he then relies on the brand and not on the seller. Second, under s. 16(2), where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that they are of merchantable quality, meaning fit to be sold as goods of that description; but if the buyer has examined the goods, there is no implied condition as to defects that the examination ought to have revealed. Third, under s. 16(3), trade usage may attach an implied condition or warranty as to quality or fitness. Fourth, under s. 16(4), an express term in the contract does not exclude these implied terms unless it is inconsistent with them. The rule is also "subject to the provisions of this Act and of any other law", which today includes consumer protection law. Since these are conditions, their breach entitles the buyer to reject the goods, or he may treat the breach as one of warranty and claim damages (ss. 12 and 13). For example, J buys a tin of paint from a hardware shop after choosing it himself from the shelf, without saying what it is for; if the paint proves unsuitable for his outdoor wall, the rule of *caveat emptor* applies and J has no claim. But if J had told the shopkeeper that he needed paint for an exterior wall exposed to heavy rain and asked him to recommend one, and the recommended paint washed off in the first monsoon, J could reject it or claim damages under s. 16(1).

17. Sale by sample

A contract of sale shall be treated as a sale by sample where the contract, expressly or impliedly, so provides.

Section 17(1) of the Sale of Goods Act, 1930 defines when a sale is a "sale by sample": the contract must contain a term, stated in words or implied, that the goods are sold by reference to a sample. Merely showing a sample during negotiations is not enough; the parties must have agreed that the sample will serve as the standard the delivered goods must meet. The term may be express, as where the contract says "as per sample", or implied from the dealings of the parties, the trade usage or the circumstances, as where goods are commonly bought in that trade on the basis of samples the buyer cannot otherwise inspect in bulk. Classifying a contract as a sale by sample matters because it attracts the implied conditions in s. 17(2): that the bulk shall correspond with the sample in quality, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. For example, a textile retailer, J, is shown a swatch of cotton fabric by a mill, K, and orders 500 metres, with the order form stating "quality as per sample submitted". This is a sale by sample by express term. If the fabric delivered is thinner and of a different weave from the swatch, K has breached the implied condition that the bulk will correspond with the sample, and J may reject the goods. By contrast, if K had merely handed J a swatch to look at, but J then ordered by catalogue description alone without referring to the swatch as the standard, the sale would not be a sale by sample, and J's remedy would instead depend on the rules for sale by description (s. 15).

17.2 In a sale by sample, the bulk shall correspond with the sample in quality, the buyer shall have a reasonable opportunity to compare the two, and the goods shall be free from hidden defects making them unmerchantable.

Section 17(2) of the Sale of Goods Act, 1930 applies to a contract for sale by sample, that is, one where the contract expressly or impliedly provides that the goods are sold by reference to a sample (s. 17(1)). In such a sale the buyer agrees on the basis of the sample, usually without seeing the whole lot, so the law reads three conditions into the contract even if the parties say nothing about them. First, the bulk delivered must match the sample in

quality; it is not enough that the goods are of similar kind or are commercially acceptable if they are inferior to the sample. Second, the buyer must be given a reasonable opportunity to compare the bulk with the sample before being bound to accept the goods, which links with the buyer's right of examination under s. 41. Third, the goods must be free from any defect that makes them unmerchantable, that is, unfit for sale under their description in the ordinary course of trade, if that defect would not be revealed by a reasonable examination of the sample. The seller is not protected merely because the bulk matches the sample, since the sample itself may carry a hidden defect; but if the defect could have been found by a reasonable examination of the sample, the buyer cannot complain of it. Because these are conditions, and not mere warranties, a breach entitles the buyer to reject the goods and treat the contract as ended (s. 12(2)), although the buyer may choose to treat the breach as one of warranty and claim damages instead (s. 13(1)). For example, J, a garment maker, orders 1,000 metres of cloth from K after examining a sample. If the cloth delivered is of a lower thread count than the sample, K breaches the first condition. If K refuses to let J open the bales to compare them with the sample before acceptance, K breaches the second. And if the cloth, though matching the sample in appearance, is chemically treated in a way that makes it tear on the first wash, a defect that ordinary handling of the sample would not show, K breaches the third. In each case J may reject the cloth.