CHAPTER IV PERFORMANCE OF THE CONTRACT

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31. Duties of seller and buyer

The seller shall deliver the goods, and the buyer shall accept and pay for them, according to the contract.

Section 31 of the Sale of Goods Act, 1930 sets out the basic obligations of each party to a contract of sale. The seller's main duty is to deliver the goods, meaning to voluntarily transfer possession of them to the buyer (s. 2(2)); delivery may be actual, symbolic (such as handing over the keys of a warehouse) or constructive (s. 33). The buyer's corresponding duties are to accept the goods and to pay the price. Both sets of duties must be performed "in accordance with the terms of the contract", so the goods delivered must match the contract as to description, quality, quantity, time and place, and the buyer must accept and pay in the manner agreed. Unless otherwise agreed, delivery and payment are concurrent conditions: the seller must be ready and willing to deliver in exchange for the price, and the buyer must be ready and willing to pay in exchange for possession (s. 32). Failure of either party gives the other remedies under the Act: if the seller does not deliver, the buyer may sue for damages for non-delivery (s. 57); if the buyer wrongfully refuses to accept or pay, the seller may sue for damages for non-acceptance (s. 56) or, in certain cases, for the price (s. 55). For example, J

contracts to supply 200 chairs of a stated design to K's restaurant on 1 November for ₹1 lakh, payable on delivery. J must deliver 200 chairs of that design at the agreed place on that date, and K must accept them and pay ₹1 lakh. If J delivers only 150 chairs, or chairs of a different design, J has not delivered according to the contract, and K may reject them (s. 37). If J delivers correctly but K refuses to take them or to pay, K is in breach, and J may claim damages for non-acceptance.

32. Payment and delivery are concurrent conditions

Delivery of the goods and payment of the price shall take place at the same time.

Section 32 of the Sale of Goods Act, 1930 lays down that, unless the parties agree otherwise, the seller's duty to deliver and the buyer's duty to pay (s. 31) are concurrent conditions: each must be performed in exchange for the other, and neither party is bound to perform first. The seller must be ready and willing to hand over possession of the goods against the price, and the buyer must be ready and willing to pay the price against possession. The section requires readiness and willingness, not actual performance by one side first; a party who wishes to enforce the contract, or to hold the other in breach, must show that he himself was ready and willing to perform his part. The rule protects both sides: the seller need not part with the goods without being paid, and so may keep them under his lien (s. 47), while the buyer need not pay until the goods are available to him. It is only a default rule and yields to a contrary agreement, for instance a sale on credit, where delivery comes first and payment later, or a sale requiring advance payment, where payment comes first. For example, J agrees to sell 10 bags of fertiliser to K for ₹15,000, with nothing said about the order of payment and delivery. J cannot insist that K pay before the bags are made available, and K cannot demand the bags without offering the price; each must be ready to perform when the other is. If K comes to J's shop with the money and J refuses to hand over the bags, J is in breach and K may sue for non-delivery (s. 57). If J has the bags ready but K refuses to pay, J may keep them and sue K for damages for non-acceptance (s. 56). But if the parties had agreed that K would pay one month after delivery, J would have to deliver first and could not withhold the bags merely because the price was unpaid.

33. Delivery

Delivery of goods shall be made by any act which the parties agree to treat as delivery, or which puts the goods in the possession of the buyer or of a person authorised to hold them for the buyer.

Section 33 of the Sale of Goods Act, 1930 explains how the seller may carry out delivery, which s. 2(2) defines as the voluntary transfer of possession from one person to another. The provision is flexible and allows delivery in two ways. First, the parties may agree on what will count as delivery, and doing that agreed act is delivery even if the goods are not physically handed over. Second, any act that in fact places the goods in the possession of the buyer, or of someone authorised to hold them on the buyer's behalf, such as the buyer's agent, servant or carrier, is delivery. This covers the three recognised forms of delivery: actual delivery, where the goods are physically handed over; symbolic delivery, where the means of control is handed over, such as the keys of a warehouse or a document of title like a railway receipt or bill of lading; and constructive delivery, where a person in possession of the goods acknowledges that he now holds them on behalf of the buyer, without any physical change of possession. Delivery is distinct from transfer of ownership: property may pass before or without delivery (s. 19), and the seller's duty to deliver under s. 31 is performed by any of these methods. For example, J sells 200 bags of wheat stored in a warehouse to K. J may deliver them by physically handing them over to K's truck driver (actual delivery to an authorised person), by handing K the keys of the warehouse room where the bags are kept (symbolic delivery), or by getting the warehouse keeper to acknowledge to K that he now holds the bags for K (constructive delivery). Equally, if J and K had agreed that handing over the warehouse receipt would be treated as delivery, doing so would be delivery under s. 33.

34. Effect of part delivery

A delivery of part of the goods made in the course of delivering the whole shall operate as delivery of the whole; a delivery of part made with the intention of separating it from the whole shall not operate as delivery of the rest.

Section 34 of the Sale of Goods Act, 1930 deals with the effect of delivering only part of the goods sold, and makes the answer depend on the intention with which the part delivery is made. If the part is handed over as a step in delivering the whole lot, as part of one continuous process, the law treats it as delivery of all the goods, so the consequences that follow delivery attach to the entire lot. If, however, the part is handed over with the intention of separating it from the rest, it counts as delivery of that part alone, and the remaining goods are not treated as delivered. The provision matters mainly for the seller's rights against the goods: delivery to the buyer ends the seller's lien (s. 47), and s. 48 accordingly provides that an unpaid seller who has made part delivery may keep his lien on the remainder, unless the part delivery was made in circumstances showing an agreement to give up the lien. Similarly, partial delivery of goods in transit affects the right of stoppage in transit over the remainder (s. 51(7)). For example, J sells 100 bales of cotton, lying in his warehouse, to K on credit. If J begins handing over the bales to K's transporter, intending to deliver the entire lot, and 40 bales have been loaded when J learns that K has become insolvent, the delivery of those 40 bales, being in progress of delivery of the whole, is treated as delivery of all 100, and J may have lost his lien over the remaining 60. But if J delivered only 40 bales, intending to keep the other 60 back until K paid, that part delivery was made with an intention of severing it from the whole, so the remaining 60 bales are not treated as delivered, and J, as an unpaid seller, may still retain them under his lien.

35. Buyer to apply for delivery

The buyer must apply for delivery before the seller is bound to deliver the goods.

Section 35 of the Sale of Goods Act, 1930 lays down that, unless the contract says otherwise, the seller's duty to deliver (s. 31) is not triggered until the buyer asks for the goods. The seller is therefore not in breach merely because the goods have not been delivered; the buyer must first demand delivery, and only a failure or refusal to deliver after such a demand gives the buyer a claim for non-delivery. The rule reflects the general position that the seller need only keep the goods ready at the place of delivery, which, unless otherwise agreed, is the seller's place of business, or, for specific goods, the place where they are when the contract is made (s.

36(1)). The words "apart from any express contract" make the rule subject to agreement: if the contract requires the seller to deliver on a fixed date or to send the goods to the buyer, the seller must do so without waiting for a demand. The buyer, in turn, cannot delay indefinitely: where the seller is ready and willing to deliver and requests the buyer to take delivery, a buyer who fails to do so within a reasonable time is liable for any loss caused and a reasonable charge for the care and custody of the goods (s. 44). For example, J buys 10 cartons of tiles from K's warehouse and pays the price, but nothing is said about delivery. K is not bound to transport the tiles to J or to deliver them on his own initiative; he need only keep them ready, and J must go to or contact K and ask for them. If J applies and K refuses to release the tiles, K is in breach. But if the contract had said "K shall deliver the tiles at J's site on 5 October", K would be bound to deliver on that date without any application by J.

36. Rules as to delivery

36.1 Goods shall be delivered as the contract provides, and, in the absence of such a contract, at the place where they are at the time of the sale or agreement to sell, or, if not then in existence, where they are manufactured or produced.

Section 36(1) of the Sale of Goods Act, 1930 deals with two related questions: who must move the goods, and where delivery takes place. The first part makes the contract decisive: whether the buyer must come and take possession, or the seller must send the goods to the buyer, depends on what the parties have agreed, either expressly or by implication from their dealings, trade usage or the circumstances. The second part lays down a default rule for place of delivery when the contract is silent. If the contract is a sale, that is, property has already passed, the goods are to be delivered where they are at the time of the sale. If it is an agreement to sell, the goods are to be delivered where they are at the time of the agreement; and if the goods did not yet exist then (future goods), where they are manufactured or produced. The effect of the default rule is that, unless otherwise agreed, the seller's duty is to make the goods available at that place, and it is for the buyer to collect them. This is consistent with s. 31, under which the seller must deliver and the buyer must accept and pay, and s. 33, under which delivery may be made by anything that puts the goods in the buyer's

possession. For example, J, a Patna buyer, contracts to buy 200 cartons of biscuits from K's factory in Hajipur, and the contract says nothing about delivery. The cartons are to be made after the agreement. Under s. 36(1), delivery is due at K's Hajipur factory, where the goods are produced, and J must arrange to collect them; K is not bound to transport them to Patna. But if the contract had stated "delivery at buyer's shop, Patna", or K had always delivered to J's shop in their past dealings, that express or implied term would govern, and K would have to send the goods to J.

36.2 A seller bound to send the goods to the buyer shall send them within a reasonable time where no time is fixed.

Section 36(2) of the Sale of Goods Act, 1930 deals with a contract under which the seller must send the goods to the buyer but the parties have not fixed when. The law does not leave the seller free to send them whenever he pleases; it implies a duty to send them within a reasonable time. What is reasonable is a question of fact (s. 63), judged by the nature of the goods, the distance and mode of transport, trade practice, the purpose for which the buyer needs the goods known to the seller, and the other circumstances of the case. Perishable or seasonal goods, for instance, call for quicker dispatch than durable ones. If the seller fails to send the goods within a reasonable time, he is in breach of contract, and the buyer may claim damages for non-delivery (s. 57) and, in appropriate cases, may treat the contract as repudiated. The provision operates only where the contract obliges the seller to send the goods; where the buyer is to collect them, the place of delivery is ordinarily the seller's place of business (s. 36(1)). For example, J, a Patna trader, orders 200 umbrellas from K, a Kolkata wholesaler, in early June, with K to dispatch them by rail, but no date is fixed. Given that umbrellas are seasonal goods needed for the monsoon, a reasonable time would be a matter of days or a week or two. If K sends them in late September, after the rains are over, he has not sent them within a reasonable time, and J may refuse the late delivery or claim damages for the loss suffered.

36.3 Goods in the possession of a third person shall be treated as delivered to the buyer only when that third person acknowledges to the buyer that he holds them on the buyer's behalf.

Section 36(3) of the Sale of Goods Act, 1930 deals with delivery where, at the time of sale, the goods are held not by the seller but by someone else, such as a warehouse keeper, carrier or agent. Delivery means the voluntary transfer of possession from one person to another (s. 2(2)), and here the seller cannot hand over physical possession himself. The law therefore requires the third person to acknowledge to the buyer that he now holds the goods for the buyer instead of the seller. This acknowledgment, known as attornment, converts the third person into the buyer's bailee and completes delivery. An agreement between seller and buyer alone, or a notice from the seller to the third person, is not enough; the acknowledgment must be made by the third person to the buyer. Until it is made, the goods remain in the seller's constructive possession, so there is no delivery for purposes such as the seller's lien or the buyer's taking possession. The proviso preserves a separate route: where the goods are covered by a document of title, such as a bill of lading, dock-warrant, warehouse-keeper's certificate or delivery order (s. 2(4)), the issue or transfer of that document operates according to its own legal effect, and the section does not require an attornment in addition. For example, J stores 200 bales of cotton in K's warehouse and sells them to L. Even after the sale, there is no delivery to L until K, the warehouse keeper, informs L that he now holds the bales on L's behalf; if K refuses or has not yet done so, L cannot claim that the goods have been delivered to him. But if the bales were covered by a warehouse receipt that J endorsed and handed to L, the transfer of that document of title would take effect according to its own legal character, without depending on K's acknowledgment under this section.

36.4 Demand or tender of delivery shall be made at a reasonable hour.

This is Section 36(4) of the Sale of Goods Act, 1930, one of the rules on delivery. It applies to both sides of the contract: a seller who tenders (offers) delivery of the goods to the buyer, and a buyer who demands delivery from the seller, must do so at a reasonable hour. If the demand or tender is made at an unreasonable hour, the law allows it to be treated as ineffectual, meaning it has no legal effect. So a seller who tenders delivery at an unreasonable hour cannot claim to have performed or offered to perform his obligation, and cannot treat the buyer's failure to accept as a breach. Likewise, a buyer who demands delivery at such an hour cannot hold the

seller in default for not handing over the goods. The provision does not fix any particular hours; what is reasonable is a question of fact, decided on the facts of each case, taking into account the nature of the goods, the place of delivery, the usual business hours and trade practice. For example, a wholesale vegetable market that opens at 4 a.m. may make an early-morning delivery reasonable, while the same hour would be unreasonable for delivering furniture to a residential flat. For example, J contracts to deliver 100 cartons of books to K's bookshop on 10 March. J's truck arrives at the shop at 11 p.m., long after the shop has closed, and J claims that K refused to accept delivery. Since the tender was made at an unreasonable hour, it may be treated as ineffectual: J has not validly tendered delivery and cannot sue K for non-acceptance on that basis. Had J arrived during the shop's normal business hours and K refused the books without cause, the tender would have been valid, and K would be liable for wrongful refusal.

36.5 The seller shall bear the expenses of putting the goods into a deliverable state.

This is Section 36(5) of the Sale of Goods Act, 1930, one of the rules as to delivery. Goods are in a "deliverable state" when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them (s. 2(3)). Making the goods ready for delivery is part of the seller's duty to deliver goods according to the contract (s. 31), so the law places its cost on the seller. This covers not only the main cost of preparing the goods, such as cleaning, repairing, assembling, weighing, measuring, sorting or packing them, but also expenses incidental to it, such as labour charges or the cost of separating the goods from the seller's other stock. The rule is a default one: the words "unless otherwise agreed" allow the parties to shift these expenses, wholly or partly, to the buyer by their contract. It concerns only the cost of making the goods ready, and not the cost of transporting them to the buyer, which depends on the agreed place of delivery (s. 36(1)). For example, J agrees to sell 200 quintals of wheat to K, and the wheat has to be cleaned, weighed and filled into bags before K is bound to take it. The cost of cleaning, weighing and bagging, including the labourers' wages and the price of the bags, must be borne by J. But if the contract provides that "the buyer shall bear the cost of bagging", K must pay for the bags and the

bagging, while J still bears the other expenses of putting the wheat into a deliverable state.

37. Delivery of wrong quantity

37.1 Where the seller delivers less than the contracted quantity, the buyer may reject the goods; if the buyer accepts them, he shall pay for them at the contract rate.

Section 37(1) of the Sale of Goods Act, 1930 deals with short delivery. The seller's duty is to deliver exactly the quantity contracted for, and delivering less is a failure to perform the contract as agreed. The buyer is therefore given a choice. He may reject the whole short delivery, since he bargained for the full quantity and a smaller quantity may not serve his purpose. Alternatively, he may accept the goods delivered, but if he does so, he must pay for them at the rate fixed in the contract, not the full contract price and not a lower rate of his own choosing. Acceptance of the short quantity does not waive the seller's breach as to the undelivered balance: the buyer may still claim damages for non-delivery of the balance (s. 57). The rule is subject to any usage of trade, special agreement or course of dealing between the parties (s. 37(4)), so, for instance, a trade practice allowing a small margin of tolerance in quantity would be respected. For example, J contracts to buy 1,000 kg of basmati rice from K at ₹100 per kg, a total of ₹1,00,000, and K delivers only 700 kg. J may refuse the entire 700 kg. If J decides to keep it, he must pay 700 × ₹100 = ₹70,000, and may also sue K for damages if he has to buy the missing 300 kg elsewhere at a higher price.

37.2 Where the seller delivers more goods than contracted, the buyer may accept the contract quantity and reject the excess, or reject the whole; and if he accepts the whole, he shall pay for it at the contract rate.

Section 37(2) of the Sale of Goods Act, 1930 deals with delivery of an excess quantity. The seller's duty is to deliver goods in accordance with the contract (s. 31), and this includes the agreed quantity; delivering more is as much a departure from the contract as delivering less. The buyer is therefore given three options. First, he may accept the quantity he contracted for and reject the surplus, in which case he pays only for the contracted goods. Second, he may reject the entire delivery, since the seller has not tendered

what was agreed; the buyer is not obliged to sort out the correct quantity himself. Third, he may accept the entire delivery, but then he must pay for the extra goods at the same rate as fixed in the contract, and cannot pay less for the surplus or demand it free. The choice lies with the buyer, not the seller, and these rules are subject to any usage of trade, special agreement or course of dealing between the parties (s. 37(4)), for instance a trade practice that allows a small margin of excess. For example, J contracts to buy 100 bags of wheat from K at ₹2,000 per bag, but K delivers 120 bags. J may keep 100 bags, return 20 and pay ₹2,00,000; or reject all 120 bags; or keep all 120 bags and pay ₹2,40,000 at the contract rate. J cannot keep all 120 bags and pay only ₹2,00,000, nor can K insist that J take and pay for the extra 20 bags.

37.3 The buyer may accept the goods that conform to the contract and reject the rest, or reject the whole, where the seller delivers them mixed with goods of a different description.

This is Section 37(3) of the Sale of Goods Act, 1930, which deals with delivery of the wrong quantity or mix of goods. It applies where the seller delivers the goods he contracted to sell but mixes them with other goods of a different description that are not part of the contract. Since the seller's duty is to deliver goods in accordance with the contract (s. 31), such a mixed delivery is a defective performance, and the buyer is given a choice. He may accept the goods that match the contract and reject the others, in which case he pays only for the goods he accepts at the contract rate; or he may reject the entire delivery, because he is not bound to sort out the correct goods from the wrong ones. The buyer's rights under this provision are subject to any usage of trade, special agreement or course of dealing between the parties (s. 37(4)). For example, J orders 100 bags of basmati rice from K. K sends 100 bags of basmati rice together with 30 bags of ordinary non-basmati rice, which J never ordered. J may keep the 100 bags of basmati rice, pay for them and return the 30 bags of ordinary rice, or he may reject the whole consignment of 130 bags and treat the delivery as not made in accordance with the contract.

37.4 The rules on delivery of the wrong quantity shall be subject to any usage of trade, special agreement or course of dealing between the parties.

Section 37(1) to (3) set out the buyer's rights where the seller delivers less than, more than, or goods mixed with goods different from those contracted for. Section 37(4) makes these default rules, which yield to three things: a usage of trade, meaning an established custom in the particular trade, such as an accepted margin of variation in quantity; a special agreement, meaning a term agreed by the parties themselves, such as a clause allowing delivery "5% more or less"; and a course of dealing, meaning a consistent practice in the parties' own past transactions. Where any of these applies, it governs the buyer's rights instead of s. 37(1) to (3). For example, L contracts to buy 1,000 tonnes of iron ore from M, and M delivers 980 tonnes. Under s. 37(1), L could reject the entire delivery. But if the contract provides for delivery of "1,000 tonnes, 5% more or less at seller's option", or if a recognised usage in the ore trade allows such a margin, the delivery of 980 tonnes is proper performance, and L cannot reject it; L is bound to accept it and pay for 980 tonnes at the contract rate.

38. Installments deliveries

38.1 The buyer shall not be bound to accept delivery of goods in instalments.

Section 38(1) of the Sale of Goods Act, 1930 lays down that, as a general rule, the seller must deliver the whole quantity of goods contracted for at one time, and cannot compel the buyer to take delivery in parts. The buyer has bargained for the full quantity, and part delivery may be of no use to the buyer, may add to handling or transport costs, or may leave the buyer uncertain whether the rest will ever arrive. The buyer may therefore refuse a part delivery tendered by the seller. This fits with s. 37(1), under which, where the seller delivers less than the quantity contracted for, the buyer may reject the goods, or accept them and pay at the contract rate. The rule gives way where the parties have agreed otherwise, expressly or by implication from their dealings or trade usage; once delivery by instalments is agreed, the buyer must accept each instalment as it falls due, and s. 38(2) then governs the effect of a breach in respect of one or more instalments. For example, J contracts to buy 1,000 bags of cement from K for a building project, and nothing is said about instalments. K sends 400 bags, saying the balance will follow in a few weeks. J is not bound to accept the 400 bags, and may reject them and insist on delivery of the entire 1,000 bags. But if

the contract had provided for delivery in five monthly lots of 200 bags each, J would be bound to accept each lot as it was delivered.

38.2 In a contract for delivery by separately paid instalments, a breach as to one or more instalments shall be treated either as a repudiation of the whole contract or as a severable breach, according to the terms of the contract and the circumstances of the case.

Section 38(2) of the Sale of Goods Act, 1930 deals with instalment contracts, where goods are to be delivered in stated instalments and each instalment is to be paid for separately. The breach may be by the seller, who fails to deliver or delivers defective goods in one or more instalments, or by the buyer, who neglects or refuses to take delivery of or pay for one or more instalments. The provision does not lay down a fixed result; whether the breach entitles the innocent party to treat the entire contract as ended depends on the terms of the contract and the circumstances of each case. If the breach is treated as a repudiation of the whole contract, the innocent party may refuse further performance and claim damages. If it is only a severable breach, the contract continues: the innocent party must go on performing the remaining instalments and may claim compensation only for the instalment affected. For example, J contracts to supply 1,000 tonnes of steel rods to K in ten monthly instalments of 100 tonnes, each to be paid for on delivery. If one instalment out of ten is slightly substandard and J's later supplies are of proper quality, the breach is likely to be severable: K cannot cancel the whole contract, but may reject or claim compensation for that instalment. But if J delivers defective rods in the first three instalments and indicates that his mill cannot produce the required grade, the breach goes to the root of the contract and is likely to be repeated, so K may treat the whole contract as repudiated, refuse further instalments and claim damages.

39. Delivery to carrier of wharfinger

39.1 Where the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier for transmission to the buyer, or to a wharfinger for safe custody, shall be deemed delivery to the buyer.

Section 39(1) of the Sale of Goods Act, 1930 applies where the contract authorises or requires the seller to send the goods to the buyer, rather than

the buyer collecting them. In such a case, the seller's duty to deliver is treated as performed once he hands the goods to a carrier (such as a railway, transport company or shipping line) for carriage to the buyer, or to a wharfinger (the person who keeps a wharf and holds goods there for safe custody). It makes no difference whether the carrier was chosen by the buyer or by the seller. The carrier or wharfinger is treated as holding the goods on the buyer's behalf, so handing over to him counts as handing over to the buyer. The rule is only prima facie: it gives way where the facts show otherwise, most commonly where the seller reserves the right of disposal, for instance by taking the railway receipt or bill of lading in his own name or to his own order until payment (s. 25). The provision works together with s. 23(2), under which such delivery ordinarily also appropriates the goods to the contract, so that property, and with it risk (s. 26), generally passes to the buyer at that point. For example, J, a textile dealer in Surat, contracts to sell 200 sarees to K in Patna and is required to dispatch them. J hands the sarees to a transport company, with a consignment note naming K as consignee, and sends K the note. Delivery is deemed complete when the sarees are handed to the transporter, so if they are stolen in transit without J's fault, the loss falls on K, who must still pay the price and may claim against the carrier. But if J had booked the goods in his own name, intending to release them only after payment, that would show a different intention, and delivery to the carrier would not count as delivery to K.

39.2 The seller shall make a reasonable contract with the carrier or wharfinger on the buyer's behalf, and if he fails to do so and the goods are lost or damaged, the buyer may refuse to treat delivery to the carrier or wharfinger as delivery to himself or may claim damages from the seller.

This is Section 39(2) of the Sale of Goods Act, 1930, which builds on s. 39(1). Under s. 39(1), where the seller, under the contract, sends the goods to the buyer through a carrier (a transporter) or places them with a wharfinger (the keeper of a wharf or dock warehouse) for safe custody, handing them over is treated prima facie as delivery to the buyer, so the goods are then generally at the buyer's risk. Because the buyer bears that risk while the goods are out of the seller's hands, s. 39(2) places a duty on the seller, unless the buyer has authorised otherwise, to make a contract with

the carrier or wharfinger that is reasonable in view of the nature of the goods and the other circumstances, for instance by choosing a suitable mode of carriage, arranging proper packing, refrigeration or handling instructions, or declaring the goods' value so the carrier's liability is not unduly limited. If the seller fails in this duty and the goods are lost or damaged in transit or while with the wharfinger, the buyer has two alternative remedies: he may refuse to treat the handing over to the carrier or wharfinger as delivery to himself, so the loss stays with the seller and the seller cannot demand the price as for goods delivered; or he may accept the delivery and hold the seller liable in damages for the loss caused by the unreasonable contract. For example, J in Patna sells 200 boxes of mangoes to K in Delhi and agrees to send them by rail. Instead of booking them in a refrigerated or ventilated parcel van, as the perishable nature of the goods requires, J books them in an ordinary closed wagon without any handling instructions, and the mangoes rot on the way. Since J did not make a reasonable contract with the carrier, K may refuse to treat the handing over to the railway as delivery to himself and decline to pay the price, or may accept the delivery and sue J for damages for the spoiled mangoes.

39.3 Where goods are sent to the buyer by a route involving sea transit, and it is usual to insure them, the seller shall give the buyer notice enabling him to insure them; if he fails to do so, the goods shall be at the seller's risk during the sea transit.

Section 39(3) of the Sale of Goods Act, 1930 places a duty of notice on a seller who sends goods by sea. Ordinarily, delivery of goods to a carrier for transmission to the buyer is treated, prima facie, as delivery to the buyer (s. 39(1)), and since risk generally follows ownership (s. 26), goods lost in transit are often the buyer's loss. The buyer can protect himself by insuring the goods, but he can do so only if he knows they have been shipped and has enough particulars, such as the name of the ship, the date of shipment, and the nature and quantity of the goods. Section 39(3) therefore requires the seller, where it is usual in the trade to insure goods on such a voyage, to give the buyer such notice as will allow him to take out insurance. If the seller fails to do this, the law shifts the risk: the goods are deemed to be at the seller's risk for the sea part of the journey, even if ownership has already passed to the buyer. The rule applies "unless otherwise agreed", so the

parties may exclude it, for example where the seller has contracted to insure the goods himself (as in a CIF contract), in which case no notice is needed for this purpose. The provision covers only the sea transit; it does not shift the risk for land stages of the journey. For example, S in Kolkata sells 100 bales of jute to B in Chennai and ships them by sea, a voyage on which goods are usually insured. S does not inform B of the shipment or the name of the vessel, so B cannot insure the goods. If the ship sinks and the jute is lost, the goods are deemed to have been at S's risk during the voyage, so S bears the loss and cannot claim the price from B. Had S sent B timely notice of the shipment and vessel details, the risk would have remained with B, who could then have insured the goods.

40. Risk where goods are delivered at distant place

The buyer shall bear the risk of deterioration necessarily incident to transit, even where the seller agrees to deliver the goods at his own risk at a distant place.

Section 40 of the Sale of Goods Act, 1930 deals with the case where the seller undertakes to deliver goods at a place other than where they are at the time of sale, and agrees that they travel at his risk. Ordinarily, such an undertaking places on the seller the risk of loss or damage during the journey, such as theft, accident, fire or mishandling. Section 40 carves out one type of loss from this: deterioration that is *necessarily incident to the course of transit*, meaning the natural and unavoidable decline that the goods would suffer on that journey even with proper care and packing, such as drying, evaporation, ripening, slight leakage or loss of freshness over the time and distance involved. That deterioration remains the buyer's risk, because it arises from the nature of the goods and the journey the buyer bargained for, not from any fault or failure of the seller. The rule applies "unless otherwise agreed", so the parties may place even this risk on the seller by express agreement. It does not cover deterioration caused by the seller's negligence, poor packing, delay, or an unusual event in transit; such loss falls on the seller under his undertaking. For example, J, a fruit merchant in Nagpur, agrees to deliver 100 crates of oranges to K in Patna at J's own risk. The oranges are properly packed and sent by the usual route, but on arrival some have softened and lost weight, as oranges normally do over a journey of that length. That natural deterioration is K's risk, and K

cannot refuse the goods or claim compensation for it. But if the truck overturned on the way and crates were crushed, or the oranges rotted because J packed them badly, that loss would fall on J, since he agreed to deliver at his own risk.

41. Buyer's right of examining the goods

41.1 A buyer shall not be deemed to have accepted goods he has not examined until he has had a reasonable opportunity to examine them.

Section 41(1) of the Sale of Goods Act, 1930 protects a buyer who receives goods without having seen or inspected them earlier. Mere delivery does not amount to acceptance; the buyer must first be given a reasonable chance to check whether the goods match the contract in quantity, quality, description and any sample agreed. What counts as a reasonable opportunity depends on the nature of the goods and the circumstances: a quick look may do for simple goods, while machinery may need to be installed and tested. Until that opportunity is available, the buyer keeps the right to reject goods that do not conform to the contract. Once the buyer has had it, acceptance may follow in the ways described in s. 42, namely by telling the seller he accepts, by doing an act inconsistent with the seller's ownership, or by keeping the goods beyond a reasonable time without telling the seller he rejects them. Section 41(2) supports this right by requiring the seller, unless otherwise agreed, to allow the buyer a reasonable opportunity to examine the goods when asked. For example, J orders 200 cotton shirts of a specified fabric from K's factory without seeing them, and they arrive in sealed cartons. J signs the delivery receipt, but opens the cartons the next day and finds that the shirts are made of synthetic fabric. J has not accepted the goods merely by taking delivery and signing the receipt, because he had no reasonable opportunity to examine them at that point, so he may still reject them as not conforming to the contract. However, if J had opened the cartons, sold part of the shirts to his customers, or kept them for several months without complaint, he would be treated as having accepted them under s. 42.

41.2 The seller tendering delivery shall, on the buyer's request, give the buyer a reasonable opportunity to examine the goods.

Section 41(2) of the Sale of Goods Act, 1930 gives the buyer a right to inspect the goods at the time of delivery to check whether they match the

contract in quantity, quality and description. The duty arises when the seller tenders (offers) delivery and the buyer asks to examine the goods; the seller must then allow examination, and the opportunity must be reasonable, meaning adequate in time, place and manner, having regard to the nature of the goods. The rule applies "unless otherwise agreed", so the parties may exclude or limit it by contract, for instance where the buyer agrees to take goods as they are without inspection. The provision works with s. 41(1), under which a buyer who has not previously examined the goods is not deemed to have accepted them until he has had a reasonable opportunity to examine them, and with s. 42, under which acceptance may be inferred when the buyer intimates acceptance, acts inconsistently with the seller's ownership, or keeps the goods beyond a reasonable time without rejecting them. The right therefore protects the buyer from being treated as having accepted goods before he could discover defects, and preserves his right to reject goods that do not conform. For example, J contracts to buy 200 cartons of "Grade A" basmati rice from K. When K's truck arrives at J's warehouse, J asks to open a few cartons and check the grain before signing the delivery receipt. K must allow J a reasonable opportunity to do so; if K refuses and insists that J sign at once, J is not bound to accept the goods. If on examination the rice proves to be of an inferior grade, J may reject it. But if the contract had stated that the goods were sold "as is, without right of inspection", that agreement would exclude the right under s. 41(2).

42. Acceptance

The buyer shall be deemed to have accepted the goods when he intimates acceptance to the seller, acts inconsistently with the seller's ownership after delivery, or retains the goods beyond a reasonable time without intimating rejection.

Section 42 of the Sale of Goods Act, 1930 sets out three ways in which a buyer is treated in law as having accepted goods. The first is express acceptance, where the buyer tells the seller, by words or in writing, that he has accepted the goods. The second is implied acceptance by conduct, where the goods have been delivered and the buyer does something with them that only an owner would do, such as reselling, pledging, consuming or altering them, which is inconsistent with the seller still being owner. The third is acceptance by lapse of time, where the buyer keeps the goods

beyond a reasonable time without informing the seller that he rejects them; what is reasonable depends on the nature of the goods and the circumstances. This provision is read with s. 41, which gives the buyer a reasonable opportunity to examine goods not previously examined, so the buyer is ordinarily not treated as having accepted them before he has had that chance. Acceptance is important because, once the buyer has accepted the goods, he generally loses the right to reject them for breach of a condition and can only claim damages, since the breach is then treated as a breach of warranty (s. 13(1)). The buyer's duty to accept and pay is also tied to this stage (s. 31). For example, J orders 200 cotton shirts from K, which are to be of a certain quality. On delivery, J does not inspect them properly and, within a week, sells 150 shirts to his retail customers. He later finds that the shirts are of inferior quality. By reselling them, J did an act inconsistent with K's ownership and is deemed to have accepted the goods; he cannot now reject the shirts and return them, but can only sue K for damages for the inferior quality. Likewise, if J had simply kept all the shirts in his godown for several months without telling K that he rejected them, he would be deemed to have accepted them by lapse of a reasonable time.

43. Buyer not bound to return rejected goods

A buyer who rightfully refuses delivered goods shall not be bound to return them, but shall intimate his refusal to the seller.

Section 43 of the Sale of Goods Act, 1930 applies where goods have been delivered to the buyer and he rejects them, having the right to do so, for instance because they do not match the contract description or sample, are of the wrong quantity, or are not of merchantable quality. In that situation, the law does not require the buyer to send the goods back at his own cost and effort; it is enough that he informs the seller that he refuses to accept them. The burden then shifts to the seller to collect or otherwise deal with his goods, since the fault in performance was his. Two conditions limit the rule. First, the rejection must be rightful: a buyer who rejects without a valid ground cannot rely on this section. Second, it applies "unless otherwise agreed", so the contract may require the buyer to return rejected goods. After intimating rejection, the buyer holds the goods on the seller's behalf and is generally expected to take reasonable care of them until the seller removes them, though he must not use them as his own, since that could

amount to acceptance (s. 42). For example, J orders 100 cartons of Grade A tea from K, and K delivers Grade C tea to J's warehouse in Patna. J, having the right to reject, writes to K stating that he refuses to accept the goods because they are not of the contracted grade. J is not obliged to transport the cartons back to K's premises; it is K's responsibility to arrange their removal, and J need only keep them with reasonable care in the meantime. But if their contract had expressly stated that any rejected goods must be returned by the buyer, J would have to return them.

44. Liability of buyer for neglecting or refusing delivery of goods

A buyer who fails to take delivery within a reasonable time after the seller's request shall compensate the seller for the resulting loss and pay a reasonable charge for the care and custody of the goods.

Section 44 of the Sale of Goods Act, 1930 protects a seller who has done his part but is kept waiting by the buyer. The buyer becomes liable when three conditions are met: the seller is ready and willing to deliver the goods; the seller requests the buyer to take delivery; and the buyer does not take delivery within a reasonable time after that request, what is reasonable being a question of fact (s. 63). The buyer is then liable for two things: first, any loss caused to the seller by the buyer's neglect or refusal, such as extra storage, handling or transport costs, or deterioration of the goods caused by the delay; and second, a reasonable charge for looking after and keeping the goods, which is payable whether or not the seller suffers any further loss. This liability is in addition to the buyer's duty to pay the price. The proviso keeps the seller's wider remedies intact where the buyer's neglect or refusal amounts to repudiation, that is, where it shows that the buyer does not intend to perform the contract at all. In that case the seller may treat the contract as ended and sue for damages for non-acceptance (s. 56), or, where the conditions of s. 46 are met, exercise his rights as an unpaid seller, including the right of resale (s. 54). For example, S agrees to sell 200 bags of cement to B, to be collected from S's warehouse. S informs B that the cement is ready and asks him to collect it, but B does not come for two months. S is entitled to recover from B a reasonable charge for storing the cement for that period, and any loss caused by the delay, such as the cost of shifting the bags to make space or damage to bags that hardened from long

storage. If B instead writes to S that he will not take the cement at all, that refusal amounts to repudiation, and S may treat the contract as ended, resell the cement, and claim damages for non-acceptance, including any fall in price.