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| <b>Course Name</b> | <b>LL.B 2<sup>nd</sup> sem</b> |
| <b>Subject</b>     | <b>Special Contract Law</b>    |
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| <b>Concept</b>     | <b>Performance of Contract</b> |

## **Performance of Contract of Sale**

**(Sec.31- Sec. 40)**

There are many rules and definitions governing the law on sales in sections 31 to 40 of the Sale of Goods Act, 1930. In this article, we will be looking at various definitions and duties of buyers, sellers, and third parties (wherever applicable).

### **Definition of Delivery**

According to Section 2 (2) of the Sale of Goods Act, 1930, delivery means voluntary transfer of possession of goods from one person to another. Hence, if a person takes possession of goods by unfair means, then there is no delivery of goods. Having understood delivery, let's look at the law on sales

### **Law on Sales**

#### ***1] The Duty of the Buyer and Seller (Section 31)***

It is the duty of the seller to deliver the goods and the buyer to pay for them and accept them, as per the terms of the contract and the law on sales.

#### ***2] Concurrency of Payment and Delivery (Section 32)***

The delivery of goods and payment of the price are concurrent conditions as per the law on sales unless the parties agree otherwise. So, the seller has to be willing to give possession of the goods to the buyer in exchange for the price. On the other hand, the buyer has to be ready to pay the price in exchange for possession of the goods.

### **Rules Pertaining to the Delivery of Goods**

The Sale of Goods Act, 1930 prescribes the following rules regarding delivery of goods:

#### **a. Delivery (Section 33)**

The delivery of goods can be made either by putting the goods in the possession of the buyer or any person authorized by him to hold them on his behalf or by doing anything else that the parties agree to.

### **b. Effect of part-delivery (Section 34)**

If a part-delivery of the goods is made in progress of the delivery of the whole, then it has the same effect for the purpose of passing the property in such goods as the delivery of the whole. However, a part-delivery with an intention of severing it from the whole does not operate as a delivery of the remainder.

### **c. Buyer to apply for delivery (Section 35)**

A seller is not bound to deliver the goods until the buyer applies for delivery unless the parties have agreed to other terms in the contract.

### **d. Place of delivery [Section 36 (1)]**

When a sale contract is made, the parties might agree to certain terms for delivery, express or implied. Depending on the agreement, the buyer might take possession of the goods from the seller or the seller might send them to the buyer.

If no such terms are specified in the contract, then as per law on sales

- The goods sold are delivered at the place at which they are at the time of the sale
- The goods to be sold are delivered at the place at which they are at the time of the agreement to sell. However, if the goods are not in existence at such time, then they are delivered to the place where they are manufactured or produced.

### **e. Time of Delivery [Section 36 (2)]**

Consider a contract of sale where the seller agrees to send the goods to the buyer, but not time of delivery is specified. In such cases, the seller is expected to deliver the goods within a reasonable time.

### **f. Goods in possession of a third party [Section 36 (3)]**

If at the time of sale, the goods are in possession of a third party. Then there is no delivery unless the third party acknowledges to the buyer that the goods are being held on his behalf. It is important to note that nothing in this section shall affect the operation of the issue or transfer of any document of title to the goods.

### **g. Time for tender of delivery [Section 36 (4)]**

It is important that the demand or tender of delivery is made at a reasonable hour. If not, then it is rendered ineffectual. The reasonable hour will depend on the case.

#### **h. Expenses for delivery [Section 36 (5)]**

The seller will bear all expenses pertaining to putting the goods in a deliverable state unless the parties agree to some other terms in the contract.

#### **i. Delivery of wrong quantity (Section 37)**

- Sub-section 1 – If the seller delivers a lesser quantity of goods as compared to the contracted quantity, then the buyer may reject the delivery. If he accepts it, then he shall pay for them at the contracted rate.
- Sub-section 2 – If the seller delivers a larger quantity of goods as compared to the contracted quantity, then the buyer may accept the quantity included in the contract and reject the rest. The buyer can also reject the entire delivery. If he wants to accept the increased quantity, then he needs to pay at the contract rate.
- Sub-section 3 – If the seller delivers a mix of goods where some part of the goods are mentioned in the contract and some are not, then the buyer may accept the goods which are in accordance with the contract and reject the rest. He may also reject the entire delivery.
- Sub-section 4 – The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

#### **j. Installment deliveries (Section 38)**

The buyer does not have to accept delivery in installments unless he has agreed to do so in the contract. If such an agreement exists, then the parties are required to determine the rights and liabilities and payments themselves.

#### **k. Delivery to carrier [Section 36 (1)]**

The delivery of goods to the carrier for transmission to the buyer is prima facie deemed to be ‘delivery to the buyer’ unless contrary terms exist in the contract.

#### **l. Deterioration during transit (Section 40)**

If the goods are to be delivered at a distant place, then the liability of deterioration incidental to the course of the transit lies with the buyer even though the seller agrees to deliver at his own risk.

#### **m. Buyers right to examine the goods (Section 41)**

If the buyer did not get a chance to examine the goods, then he is entitled to a reasonable opportunity of examining them. The buyer has the right to ascertain that the goods delivered to him are in conformity with the contract. The seller is bound to honor the buyer’s request for a reasonable opportunity of examining the goods unless the contrary is specified in the contract.

### Acceptance of Delivery of Goods (Section 42)

A buyer is deemed to have accepted the delivery of goods when:

- He informs the seller that he has accepted the goods; or
- Does something to the goods which is inconsistent with the ownership of the seller; or
- Retains the goods beyond a reasonable time, without informing the seller that he has rejected them.

### **Return of Rejected Goods (Section 43)**

If a buyer, within his right, refuses to accept the delivery of goods, then he is not bound to return the rejected goods to the seller. He needs to inform the seller of his refusal though. This is true unless the parties agree to other terms in the contract.

### **Refusing Delivery of Goods (Section 44)**

If the seller is willing to deliver the goods and requests the buyer to take delivery, but the buyer fails to do so within a reasonable time after receiving the request, then he is liable to the seller for any loss occasioned by his refusal to take delivery. He is also liable to pay a reasonable charge for the care and custody of goods.