

Introduction

The performance of contract of sale means the performance of respective duties of the seller and buyer as per the terms of the contract. The parties to a contract should include the terms in their contract regarding time, place of delivery, modes of delivery, payment of price, etc. If the contract is silent in this regard, the rules contained in the Sale of Goods Act apply. [Sec. 31]

Delivery of Goods

Delivery means 'a voluntary transfer of possession from one person to another.' [Sec. 2(2)]

EXAMPLE

B steals A's mobile. It is no delivery though possession is transferred.

Modes of Delivery

Delivery of goods may be made in any of the following ways:

1. Actual Delivery

When the goods are physically handed over by the seller or his agent to the buyer or his agent, the delivery is called actual delivery.

EXAMPLE

A sells a car to B. A hands over the car to B. It is an actual delivery.

2. Symbolic Delivery

When a bulk of the goods is sold, it is not possible to give actual delivery of the goods. In such a case, control of goods is transferred by symbolic delivery. The documents of title to the goods i.e. railway receipt or bill of lading are provided to the buyer.

EXAMPLE

A sells to B certain goods which are stored in a locked godown. A hands over the key of the godown to B. It is a symbolic delivery.

3. Constructive Delivery

Delivery is said to be constructive where a person who is in possession of the goods, acknowledges to hold the goods on behalf of the buyer.

EXAMPLE

X sells to Y cement lying in Z's godown. X orders Z to transfer the cement

to Y. Z transfers the cement in his books to Y. This is a constructive delivery.

Delivery of Goods

The rules regarding delivery of goods are as follows:

1. Duty of Seller and Buyer

It is duty of the seller to deliver the goods and of the buyer to accept and pay for the goods according to the terms of contract of sale. [Sec. 31]

EXAMPLE

A sells a cycle to B for Rs. 4000. It is the duty of A to deliver the cycle to B. B is responsible to pay the price to A.

2. Delivery and Payment

Unless otherwise agreed, the seller must be ready to deliver the goods to the buyer in exchange for the price and the buyer must be ready to pay the price in exchange for possession of goods simultaneously. [Sec. 32]

EXAMPLE

A sells sugar to B for Rs. 20,000. A shall deliver the sugar when B is ready to pay the price. B shall pay when A delivers the sugar.

3. Mode of Delivery

Delivery of goods sold may be made by any of the ways on which the parties agree. It may be actual, symbolic or constructive. [Sec. 33]

EXAMPLE

A sells cement to B and permits him to take it from A's godown. The removal of cement from A's godown is a delivery.

4. Effect of Part Delivery

When the part delivery is made in progress of the whole delivery, it is treated as delivery of the whole. The ownership in the whole of the goods passes to the buyer. But when the part delivery is made with the intention of separating it from the whole, it is not treated as delivery of the whole. The ownership of the whole quantity does not transfer to the buyer. [Sec. 34]

EXAMPLES

- a. A sells 100 bales of cotton to B and gets the price. B takes delivery of 50 bales. It will be treated as the delivery of whole.
- b. S sold 5 bales of cotton to B. B received 1 bale and paid for it but refused to accept the remaining 4 bales. Held, it was a part delivery. (Mitchell Reid Co. vs. Balder Dass)

5. Demand of Delivery

Apart from any express contract, the seller is not bound to deliver the goods to the buyer unless the buyer applies for delivery. [Sec. 35]

EXAMPLE

A sells a car to B. A is not bound to deliver the car unless B requests for delivery.

6. Place of Delivery

The goods must be delivered at the place specified by the contract. If no place of delivery is mentioned in the contract, the following rules will apply:

- a. In case of sale, the goods must be delivered at the place where they are at the time of the sale.
- b. In case of agreement to sell, the goods must be delivered at the place where they are at the time of the agreement to sell.
- c. In the case of future goods, the goods must be delivered at the place where they are manufactured or produced. [Sec. 36(1)]

EXAMPLE

A contracts B to supply bricks at 22 Mall Road. A is bound to supply at 22 Mall Road where parties made the contract.

7. Time of Delivery

When time for delivery of goods is specified in the contract, the goods must be delivered within agreed time. But when no time is fixed in the contract, the goods must be delivered within a reasonable time. The reasonable time depends upon the circumstance of each case. [Sec. 36(2)]

EXAMPLE

A promises to sell and deliver the wheat to B within 5 days. A is bound to supply the wheat within 5 days otherwise he is guilty of breach of contract.

8. Possession by Third Party

When goods at the time of sale are in the possession of a third person there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. [Sec. 36(3)]

EXAMPLE

A stored his goods in B's godown. A sells goods to X and gives him a receipt to take delivery from B. B gives the goods to X. This is delivery of goods to buyer.

9. Expenses of Delivery

Unless otherwise agreed, the expenses of putting the goods into deliverable state shall be borne by the seller. [Sec. 36(5)]

EXAMPLE

D sells a computer to B. D will bear the expenses of packing the computer.

10. Wrong Delivery

A seller is responsible to deliver goods to the buyer in accordance with terms of the contract. In case of wrong delivery, the buyer can reject the goods. It may be either short delivery, excess delivery or mixed delivery. [Sec. 37]

EXAMPLE

A buys 40 bottles of Pepsi from B. B sends 30 bottles A may reject the whole or accept 30 and ask for the rest.

11. Installment Deliveries

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery of goods in instalments. [Sec. 38]

EXAMPLE

S bought from R, 25 tons of pepper by March/April shipment. R supplied 20 tons in March and 5 tons in September. Held, S is not bound to accept in installments. (Reuter vs. Sala)

12. Delivery to Carrier

When the seller delivers the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer. [Sec. 39]

EXAMPLE

C sells a T.V. to B. C hands over the T.V. to the carrier to be delivered to B. It means the delivery has been made to B.

13. Delivery at Distant Place

When the seller of goods agrees to deliver at his own risk at a place other than that where they are when sold, the buyer shall nevertheless, unless otherwise agreed, take any risk of deterioration in goods necessarily incident to the course of transit. The risk for extraordinary or unusual deterioration shall be borne by the seller. [Sec. 40]

EXAMPLE

C delivers iron to B from Karachi to Sialkot in normal conditions. The iron gets rusted. B cannot reject it.

14. Examining the Goods

When the seller delivers the goods to the buyer, he is bound to give a reasonable opportunity to the buyer to examine the goods for the purpose of ascertaining whether they are in accordance with the contract [Sec. 41]

EXAMPLE

C supplies bricks to B. C is bound to give some time to B to check whether the bricks are according to the contract.

15. Acceptance of Delivery

The buyer is deemed to have accepted the goods in the following circumstances: [Sec. 42]

- a. When he informs the seller that he has accepted the goods.
- b. When he does any act, in relation to the goods, which shows that he has accepted them.
- c. When, after the lapse of a reasonable time, he retains the goods without intimating the seller that he has rejected them.

EXAMPLES

- a. A sells and delivers wheat to B. B informs A that he has accepted the goods.
- b. A buys rice from B and takes delivery from B. A does not reject. It means that A has accepted the rice after a reasonable time.

16. Rejection of Goods

When goods are delivered to the buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller. He should only inform the seller about his rejection. [Sec. 43]

EXAMPLE

C supplies wrong goods to B. B rejects the goods and does not return.

17. Refusal to take Delivery

When the seller is ready to deliver the goods and requests the buyer to take delivery, and buyer does not take delivery of goods within reasonable time, the buyer is liable to the seller for any loss arising due to the refusal. [Sec. 44]

EXAMPLE

C sells and delivers a car to S. S refuses to take delivery. C sells the car to X and suffers a loss. C is entitled to claim damages from S. (Charter vs. Sullivan)