

# CREATION OF AGENCY

## 1.0 INTRODUCTION

Agency is a relationship created when one person cannot act by himself and has to appoint someone else to act for him. Agency is also a relationship between a Principal and an agent in which the Principal confers his or her rights on the agent to act on Principal's behalf.<sup>1</sup> Law of Agency is governed by Part X, Contract Acts 1950.<sup>2</sup>

The concept of agency can be explained using this example. sometimes it is not possible for a person to perform all tasks entrusted to him or her. For example, when a housewife has to look after a few kids and at the same time she has to purchase groceries and fetch her kids from school. Unless she gets some assistance from another person, she will not be able to perform all the duties smoothly. Assistance from another person in law will give rise to the creation of an agency law

As agency is a relationship between a Principal and his Agent, section 135 of Contract Acts 1950 defines Agent as person employed to do any act for another or to represent another in dealings with third persons. Whilst Principal is defined as a person to whom such act is done, or who, so represented, is called the Principal.

The example is A appointed B to be his agent to buy goods from C. A will be known as the Principal, B is the agent while C is the third party.

Agency relationship creates two contracts enforceable by law. Firstly, a contract of agency between Principal and Agent and secondly, a contract of sale between Principal and Third party.

In a contract of agency, consideration is not important.<sup>3</sup> Under Section 136 and 137 of Contract Acts 1950, capacity to be a Principal and Agent are as the capacity to contract which is of majority age and sound mind. If Principal appoints a minor to be his agent, Principal cannot claim if any loss incurred under Agent's action. The contract between them is void contract.

## **2.0 CREATION**

Generally, an agency may be created in the following ways:

- By express appointment by the Principal
- By implied appointment by the Principal
- By ratification by the Principal
- By necessity
- By estoppels

### **2.1 Agency by Express Appointment by the Principal**

Section 139 stated that the authority of an agent may be expressed or implied which indicates creation can be through expressed in oral or writing or implied from words of conduct of both parties.<sup>4</sup> Section 140 clearly states that an authority is said to be express when it is given by words spoken or written.

### **2.2 Agency by Implied Appointment by the Principal**

#### **2.2.1 When a person by his words or conduct holds out another person as having authority to act for him.**

If a person allows another to order goods on his behalf and habitually pays for them, an agency may be implied. In such a case, he will be bound by the contracts as if he has expressly authorized.

#### **2.2.2 Agency relationship between husband and wife**

A wife can pledge her husband's credit. A wife can use his husband's name to buy goods on credit if the goods is a necessity and suitable for their standard of living.

The presumption that a wife is the Agent to her husband can be rebutted if the husband can prove:

- He expressly forbids his wife to pledge his credit.
- He expressly warned the tradesman no to supply his wife with goods on credit.
- His wife was sufficiently provided with the goods.
- His wife was given sufficient allowance to buy good without pledging husband's credit.

- The order was unreasonable with her husband's income even though it was a necessity

In the case of *Miss Gray Ltd v Earl Cathcart*<sup>5</sup> state that the wife made a debt of 215 pounds using her husband's name. When the shop owner demands for payment, the husband argued had a sufficient allowance. It was held that the husband is not bound to pay the wife's debt. The presumption was said to be rebuttable by the issue of an express warning to traders, by the fact that the wife was already adequately supplied or had sufficient allowance.<sup>6</sup> If the husband can prove any of this, he need not pay for the goods. The wife will be personally liable.

### **2.2.3 By the Partnership Act 1961**

Partners are each other's Agents when contracting in the course of the partnership business. In the case of *Chan Yin Tee v William Jacks and co*,<sup>7</sup> Chan and Yong (minor), were registered as partners. At a meeting with a representative of the respondent company, the Chan held himself out to be Yong's partner. Goods were supplied to Yong but were not paid for. The respondent company obtained judgment against Chan and Yong. Chan appeal to federal court which held that since Chan had held Yong out of his agent who had the authority to do things on his behalf, Chan was liable for Yong's act as he is Yong's partner.<sup>8</sup>

### **2.3 Agency by Ratification**

An agency by ratification may arise in two situations;

1. An Agent who was appointed exceeded his authority, or
2. A person who had no authority to act but acted as if he has the authority.

Under Section 149 of Contract Acts 1950, it is up to the Principal whether or not to ratify the Agent's action. If the ratifies or approves, agency by ratification may arise. When the Principal accepts and confirms, the contract is known as ratification.

Section 150 of Contract Acts 1950 provides that ratification may be made by express or implied. Ratification will bind the Principal with the contract made by the agent at the moment of ratification.

However, there are conditions need to be fulfilled before the Principal ratifies.<sup>9</sup> The conditions are:

- i. The act must be unauthorized or Agent has exceeded his authority,
- ii. The unauthorized act must be recognized by the law (must not an unlawful act),
- iii. The Agent must expressly act as an Agent for the Principal at the time of contract. When the Agent use his own name and does not disclose that he is an Agent for a Principal, he would be personally liable.
- iv. The Principal must be in existence and have contractual capacity at the time when the Agent made the contract. If the Principal is a minor, he cannot ratify a contract as he does not contractual capacity unless in a certain types of contract i.e. Contract for Necessities.
- v. The Principal must have knowledge about the material facts of the contract in order to ratify it.
- vi. The Principal if he chooses to ratify must ratify the whole contract, not only the part at is beneficial to him.
- vii. Ratification must be made within reasonable time.
- viii. Ratification must not injure to third party

In the case of *Keighley Maxted and co. v Durant*,<sup>10</sup> an agent was authorized by the appellant (Principal) to buy wheat at a certain price. The agent exceeded his authority and bought it at a higher price. However, the agent contracted in his own name. It was held that the Principal was not liable for the act of an agent who did not profess to be an agent when he entered into the contract.

## **2.4 Agency by Necessity**

A person can become an Agent by necessity without formal appointment by Principal in emergency case. This is known as agency of necessity as stated in Section 142 of Contract Acts 1950. However some kind of contractual relationship must already exist between them.

Agency by necessity may be created if the following three conditions are met.

1. There must be a real and actual emergency.
2. The Agent's action is necessary to prevent loss to the Principal.
3. It is impossible for the Agent to communicate and get further instruction from the Principal.
4. The Agent of necessity must act in good faith and his action must be reasonable in the circumstances.

In the case of *Prager v Blatspiel, Stamp and Heacock*,<sup>11</sup> during the First World War the plaintiff who was from Romania contracted to buy a number of furs from defendant who was from London. The plaintiff paid for the skins but owing to the war the agent couldn't dispatch the skins to him. The skins increased in value and the agent sold them under agency of necessity. The court held that there was no agency of necessity. The skins were not likely to drop in value and could be preserved by proper storage.<sup>12</sup>

## **2.5 Agency by Estoppels**

Section 190 of Contract Acts 1950 provides that it arises when a person who is without authority or when he is not formally appointed, act as an Agent. But, the Principal is aware of it but does not deny the, authority of the person. The Principal, by his word or conduct allows third party to believe that the person is his Agent. Therefore, he will be estopped from denying the agents authority.

For example, A tells C in the presence of B that A is B's agent and B does not contradict this statement. B later cannot deny that A is his agent if C sells goods to A, believing him to be B's agent and later claims for the price.

In the case of *Freeman and Lockyer v Buckhurst Park Properties*,<sup>13</sup> there were 4 directors in a company. One of them, A contracted on behalf of the company with T, a third party without any authority. The other directors knew about the contract but does not inform T that A actually had no authority to act on behalf of the company. Thus T is induced to believe that A had authority to enter into a contract on behalf of the company. It was held that the company is estopped from denying that A is the company's agent and had authority on behalf of the company.

### **3.0 RIGHT AND DUTIES OF AN AGENT AND PRINCIPAL**

In general, agency created by an agreement between Principal and Agent. Like other contract, the terms apply as agreed expressly between parties and included in the contract document. If the contract does not expressly provide rights and obligations of parties to the contract, the rights and obligations as provided in Section 164 to 178 of Contract Acts 1950 applies.

#### **3.1 Duties of an Agent to his Principal**

##### **3.1.1 To obey the Principal's instruction**

According to Section 164 of Contract Acts 1950, an agent is bound to conduct the business of his Principal according to the directions given by the Principal according to the directions given by the Principal. If the agent acts otherwise, if any loss be sustained, he must make it good to his Principal, and if any profit accrues, he must account for it.<sup>14</sup>

Failure to do so will result in breach of contract and the agent will be liable for any loss suffered by the Principal. However, an Agent is under no duty to obey instructions of his Principal if the instructions are unlawful.

In the case of *Turpin v Bilton*,<sup>15</sup> the agent has been instructed by the Principal to get the insurance for his vessel. However, the agent failed to do so. The vessel lost and as a result the Principal bore some loss. It was held that the agent is liable for breach of duty due to his failure to obey the Principal's instructions. Thus the agent is liable to pay compensation.

##### **3.1.2 To exercise care and diligence in carrying out his work and to use such skill as he possesses**

Based on section 165, an agent is bound to conduct business of the agency with as much skill as is generally possessed by person engaged in similar business. In the case of *Keppel v Wheeler*,<sup>16</sup> the Defendant (agent) was employed by the Plaintiff (Principal) to sell his house. The first offer was accepted by the Plaintiff with a condition. A few days later a higher offer (second offer) was made by X but this was not communicated to Plaintiff. The court held that the Defendant is liable to pay the differences between first offer and second offer.

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### **3.1.3 To render a proper account when required**

Based on section 166, an agent is bound to render proper account to his Principal on demand. Duty of the agent to account for all monies that accepted on behalf of the Principal It should not be mixed up with the agent's property.

### **3.1.4 To pay to the Principal all sums received on his behalf**

Based on section 171, whatever amount received on behalf of the Principal, must paid to the Principal and also according to section 171, subject to the deduction specified in section 170, the agent is bound to pay his Principal all sum received on his account.

### **3.1.5 To communicate with the Principal during emergency**

Under section 167, it is the duty of an agent, in cases of difficulty to use all reasonable diligence in communicating with his Principal. Exception is given in emergency case if Agent fails to communicate, he may use his own discretion to safeguard the interest of his Principal. Under the section of 142, an agent has authority in an emergency, to do all such acts for the purpose of protecting his Principal from loss.

### **3.1.6 In the absence of instructions from the Principal, to act accordingly**

Section 164 stated that it is according to the custom that prevail in doing business of the same kind. For example, B, a broker in whose business it is not the custom to sell on credit, sell goods of A on credit to C, whose credit at the time was very high. C, before payment becomes insolvent. B must make good the loss to A.

### **3.1.7 Agent cannot delegate his authority to other person**

The relation between Principal and agent is a personal one and the agent cannot employ another person to do his duty.<sup>17</sup> However, there are exceptions:

- i. When the Principal approves or consents to the delegation of the authority
- ii. Where it is presumed from the conduct of the parties that the Agent would have power to delegate his authority
- iii. In case of emergency.
- iv. Where the act to be done is purely ministerial or clerical.

### **3.1.8 Right of Principal when agent deals, on his own account, in business of agency without Principal's consent**

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his Principal and acquainting him with all material circumstance which have come to his own knowledge on the subject, the Principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of that agent have been disadvantageous to him.

In the case of *Wong Mun Wai v. Wong Tham Fatt & Anor*,<sup>18</sup> the court found that the defendant failed in his duty as he sold the Principal's share of land below the market value and he sold the land to his own wife. The agent (Defendant) is under duty to act in good faith and cannot use his position as agent to gain profit at the Plaintiff's expense.

In another case, *Tan Kiong Hwa v Andrew S.H. Chong*,<sup>19</sup> the Plaintiff (Principal) bought a flat from a company. The Defendant (agent) was the managing director. The Plaintiff authorized the Defendant as his agent to sell the flat for \$45000. the defendant sold the flat for 54000 and the extra \$ 9000 was credited into company's account. The court held that the Plaintiff entitled to claim the extra \$9000 as the Defendant had breached his duty as an agent.

### **3.1.9 Principal's right to benefit gained by agent dealing on his own account in business of agency**

Under section 169, if an agent, without the knowledge of his Principal, deals in the business of the agency on his own account instead of an account of his Principal, the Principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

### **3.1.10 Agent's right to retainer out of sums received on Principal's account**

Under section 170, an agent may retain, out of any sums received on account of the Principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.



### **3.1.11 Agent not entitled to remuneration for business misconducted**

Under section 173, an agent who is guilty of misconduct in the business of agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

### **3.1.12 Agent is not allowed to disclose his Principal's secret**

In the case of L.S Harris Trustee Ltd. v Power Packing Services (Hermit Road) Ltd,<sup>20</sup> The defendant asked Plaintiff to prepare an insurance claim for his warehouse. Defendant submitted to Plaintiff a few confidential documents about the insurance policy. Defendant also asked Plaintiff to keep this a secret from his customer. However, Plaintiff disclosed the secret to Defendant's customers. It was held that Defendant have rights to terminate contract with Plaintiff on the ground that Plaintiff have made reach of trust.

## **3.2 Duties of a Principal to His Agent**

### **3.2.1 To pay the Agent commission and other remuneration agreed**

The commission should be paid upon the completion of all contractual duties of the agent. Based on the section 172 of Contract Act, it is the payment for the performance of any act due to agent until the completion of the act.

### **3.2.2 Not to willfully prevent the Agent from earning his commissions**

The Principal must not refuse to accept the contract made by the agent.<sup>21</sup> The Principal cannot hire another Agent to compete with the first Agent. However, if it is agreed that the Principal himself may sell the properly and a sale completed by him, he is not bound to pay commission to his Agent.

### **3.2.3 To indemnify for acts done in the exercise of his authority**

An agent is entitled to be indemnified by the Principal against all losses and liabilities incurred by him in the performance of his duty. However, if there is fraud, or the Agent acts beyond hid duty or he is negligent, he is entitled to be indemnified. Also where the Agent causes injury to the third party in execution of his duty while carrying out his duty in good faith, the Principal is required to indemnify the Agent against consequences of the act. Further, the Principal must reimburse the Agent of any legitimate expenses.

## **4.0 TYPES OF AGENT**

### **4.1 According to extent of authority**

The agent according to extent of authority is universal agent which is a general agent with extensive power. He can do all acts which a principal may personally do. Besides that, a general agent is an agent who is employed to act on behalf of principal in particular goods or trade. Other than that is special agent which is an agent with limited power to do specific act for specific purpose.

### **4.2 According to nature of works performed**

Del credere agent is an agent who undertakes that a third party will perform his obligations. If third party fails to perform, the agent will be held liable. While factor is a commercial agent who is entrusted with the goods of the principal for sale. He sells the goods in his own name without disclosing the principal's identity. Broker is an agent who make contracts between his principal and third parties for commission. Other than that, an auctioneer is an agent who is employed to sell goods at auctions. Last but not least is the banker who can be either an agent for customer or an employee as agent for banks.

## **5.0 AGENT'S AUTHORITY**

### **5.1 Actual Authority**

Actual authority is an authority conferred expressly upon the Agent either by oral or written agreement. It may also be implied from the following :

1. Express authority given by the Principal
2. Custom and trade usage
3. Circumstances of the case
4. Conduct of the parties

### **5.2 Apparent/Ostensible Authority**

Apparent authority is established when a person without actual authority acts as an Agent and contracts with a third party in the Principal's knowledge.<sup>22</sup> The Principal is aware of it but does not

stop him. Later, the Principal is precluded from denying the agents authority. The principle would be liable for the contract with the third party.

Apparent/ostensible authority may arise in two situations:

1. When the Principal by his words or conduct leads another party to believe that the Agent has authority to make contract on behalf of him.

However, there is no apparent authority where the person makes a contract on behalf of a Principal without his knowledge.

2. Where the Agent previously had authority to act but it has been terminated by the Principal without any notice to third party. Third party can claim that the Agent has apparent authority and binds the Principal to the contract

## **6.0 AGENT'S BREACH OF AUTHORITY**

### **6.1 Named Principal**

It is a situation when the Agent contracted as an Agent and the identity of the Principal is disclosed to the third party. Where a Principal is named, a clear agency relationship exists between Agent and Principal. So, Agent incurs no right or liability under the contract. Whatever done by the Agent in the course of business will bind the Principal and he alone can sue and be sued by third party.

However, there are exceptions where the Agent may be liable:

1. If the Agent agrees with third party to accept personal liability.
2. Where the Agent executes a deed and negotiable instrument in his own name.
3. Where the Agent exceeds authority and the Principal does not ratify.
4. Where the custom of trade made the Agent liable.

In these four circumstances, the third party may sue the Agent if there is any breach of contract. For example, in the case of *Chin Yuen Tung v Bep Aketik*,<sup>23</sup> the respondent which is the third party were requested by the Agent to make a valuation report on a piece of land in Sarawak and to send a copy of the report to a New York company which is the Principal. In the previous dealing,

the Respondent was paid by Agent. Now, when the Respondent claimed payment, the Agent refused that they were merely acting as an oversea agent for the New York company. It was held that the Agent should make the payment. The Agent had represented that the terms of payment would be the same as earlier dealings. The agent agrees to accept and make himself personally liable upon the contract.

## **6.2 Disclosed Principal**

It is a situation when an Agent acts as an Agent but the identity of the Principal remains unknown. Third party knows that he is doing business with a Principal through an Agent. Under Section 183 of Contract Acts 1950, Principal is not responsible to the contract. When an Agent made contract for the sale or purchase of goods for a merchant resident abroad, the merchant is making a contract with the Agent. It is because of difficulty to bring action against Principal. So the Agent may have to be personally liable.

An Agent also liable when the Principal's identity is disclosed cannot be sued i.e. a minor or a person of unsound mind.

## **6.3 Undisclosed Principal**

The existence as well as identity of the Principal is not disclosed to third party at the time of the contract. The agent uses his own name in the contract and the third party is under the impression that he is contracting personally with the Agent.

In the event of breach, the third party has the right to sue the Agent or the Principal or both of them. If the Principal discloses his identity before the completion of the contract, the third party may rescind the contract if he can prove that had he known the identity of the Principal or the Agent was acting for somebody else he would not have contracted. In the case of *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka*,<sup>24</sup> the Respondents ordered chemicals and fertilizers for themselves rather than on behalf of a principal. When the appellants sued for the balance of the price, the respondents denied liability on the ground that they were ordered for

another party which is for the Principal. It was held that the respondents were liable as they contracted in such a form to make themselves personally liable.

As party to a valid contract, an undisclosed Principal has the right to enforce the contract against third party even though the third party does not know about the Principal. This is because the contract is made for him as stated under Section 184 (a) of Contract Acts 1950.

However, if the Agent exceeds authority of acting outside authority and the existence of the Principal is not disclosed, the Principal cannot ratify the contract. He has no right and liability under the contract. An Agent, acting for undisclosed Principal may sue on the contract if there is a breach because he can treat it as his own name for the contract.

## **7.0 TERMINATION OF AGENCY**

### **7.1 By the act of the parties**

An agency may be terminated by the acts of either the Principal or the agent. There should be a mutual consent, unilateral revocation by the Principal or unilateral renunciation by the agent. In term of performance by the agent, if an agent is appointed to accomplish a particular task or for a specific purpose, when the task is accomplished by the agent or the specific purpose is attained, the agency will terminate.

While Revocation by Principal stated that the authority of an agent may be revoked at any time by the Principal. However, unilateral revocation otherwise than in accordance with the provisions of the agency agreement may render the Principal liable to the agent for breach of the agency agreement. Any word or conduct of the Principal inconsistent with the continued exercise of authority by the agent may operate as revocation of the agency.

In term of renunciation by agent, an agent is entitled to renounce his power by refusing to act or by notifying the Principal that he will not act for the Principal. Unilateral termination of the agency by the agent before he has fulfilled his obligations to the Principal under the agency agreement will render the agent liable to the Principal for breach of the agency agreement, such as payment of damages for loss suffered by the Principal.<sup>25</sup>

## **7.2 By Operation of Law**

An agency may terminate by operation of law upon the occurrence of some events.

Firstly, the completion of the task by the agent. At times the contract of agency may be found for a particular objective or to do a particular venture. In such a case termination of agency takes place after completion of that venture<sup>26</sup>.

Secondly. Expiration of the period fixed for the agency relationship. At times contract of agency may get formed for a particular period. In such a case after expiry of that agreed period, termination of agency takes place. Thirdly, by the death of either the Principal or agent. Whenever Principal or agent come across death or lunacy, agency contract gets terminated<sup>27</sup>.

Fourthly, by the subsequent insanity of either the Principal or agent. Next is by the bankruptcy or insolvency of the Principal according to section 154 of Contracts Act 1950. Last but not least is upon the happening of an event which renders the agency unlawful.

## 8.0 CONCLUSION

It is stated that a law of agency is a relationship created when a person appointed someone else to act for him as he is not able to act by himself. Law of agency is governed by Part X of contract Acts 1950. Parties that involved in the creation of agency is the Principal and Agent, where the agent is the one who will act for the Principal. Creation of agency can be by express or implied appointment or ratification by the Principal, by necessity or by estoppels.

There are right and duties of both of the Principal and Agent. An Agent has to obey the principal's instruction, exercise care and diligence in carrying out his work and to use such skill as he possesses, render a proper account when required, pay to the Principal all sums received on his behalf, and to communicate with the Principal during emergency. Agent is also not entitled to remuneration for business misconducted.

While the duties of a Principal are to pay the Agent commission and other remuneration agreed, not to willfully prevent the Agent from earning his commissions and to indemnify for acts done in the exercise of his authority.

There are various types of agent. But it is specifically divided into two types of agent. The first one is according to extent of authority which may consist of universal agent which is a general agent with extensive power and a general agent who is an agent employed to act on behalf of principal in particular goods or trade. Other than that is special agent which is an agent with limited power to do specific act for specific purpose. Besides that, agents according to nature of works performed which includes Del credere agent, commercial agent, broker, auctioneer and a banker.

Agent authority consist of actual authority and apparent or ostensible authority. There is also a condition where there is a breach of authority by the agent. These can happen in such a way where there is a named Principal, disclosed Principal and undisclosed Principal.

Termination of agency will also happen in the creation of an agency. It will happen either by the act of the parties where it is terminated by the act of either the Principal or the Agent or by operation of law which may happen upon the occurrence of some events such as completion of task or expiration of the period fixed for the agency relationship.

# **SALE OF GOODS ACT**

## **1930**

### **Scope of the Act**

The sale of Goods Act deals with 'Sale of Goods Act, 1930,' contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." 'Contract of sale' is a generic term which includes both a sale as well as an agreement to sell.

### **Essential elements of Contract of sale**

#### **1. Seller and buyer**

There must be a seller as well as a buyer. 'Buyer' means a person who buys or agrees to buy goods [Section 29(10)]. 'Seller' means a person who sells or agrees to sell goods [Section 29(13)].

#### **2. Goods**

There must be some goods. 'Goods' means every kind of movable property other than actionable claims and money includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 2(7)].

#### **3. Transfer of property**

Property means the general property in goods, and not merely a special property [Section 2(11)]. General property in goods means ownership of the goods. Special property in goods means possession of goods. Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

#### **4. Price**

There must be a price. Price here means the money consideration for a sale of goods [Section 2(10)]. When the consideration is only goods, it amounts to a 'barter' and not sale. When there is no consideration, it amounts to gift and not sale.

#### **5. Essential elements of a valid contract**

In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act, 1872 must also be



present since a contract of sale is a special type of a contract.

## **Meaning and types of goods**

### **Meaning of goods[Section**

### **2(7)]**

Goods means every kind of movable property other than actionable claims and money, and includes the following:

- - Stock and share
  - Growing crops, grass and thing attached to or forming part of the land which are agreed to be served before sale or under the Contract of sale.

### **Types of Goods[Section 6]**

#### **1. Existing Goods**

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

##### **a) Specific Goods[Section 2(14)]:**

These are the goods which are identified and agreed upon at the time when a contract of sale is made-For example, specified TV, VCR, Car, Ring.

##### **b) Ascertained Goods:**

Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract. Thus, when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

##### **c) Unascertained Goods:**

These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g. goods in stock or lying in lots.

## **2. Future Goods[Section 2(6)]**

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. There can be an agreement to sell only. There can be no sale in respect of future goods because one cannot sell what he does not possess.

## **3. Contingent Goods [Section 6(2)]**

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

### **Price Of Goods**

#### **Meaning[Section**

#### **2(10)]**

Price means the money consideration for a sale of goods.

### **Modes of determining Price [Section 9(1)]**

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

### **Consequences of not determining the Price in any of the Mode [Section 9(2)]**

Where the price is not determined in accordance with Section 9(1), the buyer must pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. It may be noted that a reasonable price need not be market price.

### **Consequence of not Fixing Price by third party[Section 10(1)]**

The agreement to sell goods becomes void if the following two conditions are fulfilled.

- If such agreement provided that the price is to be fixed by the valuation of a third party,
- If such third party cannot or does not make such valuation.

## **Duty of buyer**

A buyer who has received and appropriated the goods, must pay a reasonable price therefor.

## **Right of party not at fault to sue**

Where such a third party is prevented from making the valuation by fault of the seller or buyer, the party not at fault may maintain a suit for damages against the party in fault.

## **Conditions and Warranties**

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulations which may rank as condition and warranty e.g. a mere commendation of his goods by the seller doesn't become a stipulation and gives no right of action to the buyer against the seller as such representations are mere opinion on the part of the seller. But where the seller assumes to assert a fact of which the buyer is ignorant, it will amount to a stipulation forming an essential part of the contract of sale.

### **Meaning of Conditions [Section 12(2)]**

A condition is a stipulation which is essential to the main purpose of the contract. The breach of which gives the aggrieved party a right to terminate the contract.

### **Meaning of Warranty [Section 12(3)]**

A warranty is a stipulation which is collateral to the main purpose of the contract. The breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

### **Conditions to be treated as Warranty [Section 13]**

In the following three cases a breach of a condition is treated as a breach of a warranty:

Where the buyer waives a condition; once the buyer waives a condition, he cannot insist on its fulfillment e.g. accepting defective goods or beyond the stipulated time amount to waiving a condition. Where the buyer elects to treat breach of the condition as a breach of warranty; e.g. where he claims damages instead of repudiating the contract.

Where the contract is not severable and the buyer has accepted the goods or part

thereof, the breach of any condition by the seller can only be treated as breach of warranty. It can not be treated as a ground for rejecting the goods unless otherwise specified in the contract. Thus, where the buyer after purchasing the goods finds that some condition is not fulfilled, he cannot reject the goods. He has to retain the goods entitling him to claim damages.

## **Express and Implied Conditions and Warranties**

In a contract of sale of goods, conditions and warranties may be express or implied.

### **1. Express Conditions and Warranties.**

These are expressly provided in the contract. For example, a buyer desires to buy a Sony TV Model No. 2020. Here, model no. is an express condition. In an advertisement for Khaitan fans, guarantee for 5 years is an express warranty.

### **2. Implied Conditions and Warranties**

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below:

## **Implied Conditions**

### **1. Conditions as to title [Section 14 (a)]**

There is an implied condition on the part of the seller that

In the case of a sale, he has a right to sell the goods, and in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

### **2. Condition in case of sale by description [Section 15]**

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:

- i. Where the buyer has never seen the goods and buys them only on the basis of description given by the seller.
- ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.
- iii. Where the method of packing has been described.

### **3. Condition in case of sale by sample [Section 17]**

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions:

The goods must correspond with the sample in quality. The buyer must have a reasonable opportunity of comparing the bulk with the sample.

The goods must be free from any defect which renders them unmerchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

#### **4. Condition in case of sale by description and sample [Section 15]**

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

#### **5. Condition as to quality or fitness [Section 16(1)]**

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

#### **Exception to this rule:**

There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

1. The particular for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
2. The buyer must have relied upon the seller's skill or judgement.
3. The seller's business must be to sell such goods.

#### **6. Condition as to merchantable quality [Section 16(2)]**

Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression 'merchantable quality' means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

#### **7. Condition as to wholesomeness**

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

#### **8. Conditions implied by custom [Section 16(3)]**

Condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

## **Implied warranties**

### **a) Warranty as to quiet possession [Section 14(b)]**

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The breach of this warranty gives the buyer a right to claim damages from the seller.

### **b) Warranty of freedom from encumbrances [Section 14(c)]**

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. The breach of this warranty gives the buyer a right to claim damages from the seller.

- Warranty as to quality or fitness for a particular purpose annexed by usage of trade [Section 16(3)]
- Warranty to disclose dangerous nature of goods

**In case of goods of dangerous nature the seller fails to do so, the buyer may make him liable for breach of implied warranty.**

## **Transfer of property in goods**

### **Meaning of Passing of Property/Transfer of Property**

Passing of property implies transfer of ownership and not the physical possession of goods. For example, where a principal sends goods to his agent, he merely transfers the physical possession and not the ownership of goods. Here, the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but is not the owner.

### **Significance of Transfer of Property**

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

#### **1. Who shall bear the risk?**

It is the owner who has to bear the risk and not the person who merely has the possession.

#### **2. Who can take action against third party?**

It is the owner who can take action and not the person who merely has the possession.

### **3. Whether a seller can sue for price?**

The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

### **4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of goods from seller?**

The Official Receiver or Assignee can take the possession of goods from seller only if the ownership of goods has been transferred to the buyer.

### **5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer?**

The official receiver or assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

### **Rules relating to Passing of Property/Transfer of Ownership from seller to buyer**

For the purposes of ascertaining the time at which the ownership is transferred from seller to the buyer, the goods have been classified into the following three categories:

#### **a) Specific or ascertained goods**

Specific goods mean goods identified and agreed upon at the time when a contract of sale is made. [Section 2(14)]

#### **b) Unascertained goods**

#### **c) Goods sent 'on approval' or 'on sale on return' basis.**

### **Performance of the Contract**

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

Delivery (Sections 33-39) Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

1. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.

2. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

### **Rules as to delivery**

The following rules apply regarding delivery of goods:

- (a) Delivery should have the effect of putting the buyer in possession.
- (b) The seller must deliver the goods according to the contract.
- (c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
- (d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.
- (e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.
- (f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.
- (g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.
- (h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.
- (i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

### **Acceptance of Goods by the Buyer**

Acceptance of the goods by the buyer takes place when the buyer:

- (a) intimates to the seller that he has accepted the goods; or



(b) retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or

(c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells.

If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept the quantity be ordered and reject the rest. If the seller delivers with the goods ordered, goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

### **Instalment Deliveries**

When there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

### **Suits for Breach of Contract**

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

### **Anticipatory Breach**

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

(a) his right of performance on the due date in spite of his prior repudiation; or

(b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

### **Measure of Damages**

The Act does not specifically provide for rules as regards the measure of damages except by stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

### **Unpaid seller and his rights**

Meaning of an Unpaid Seller [Sec 45(1)(2)]

The seller of goods is deemed to be an 'unpaid seller'-

When the whole of the price has not been paid or tendered when a bill of exchange or other negotiable instrument (such as cheque) has been received as conditional payment, and it has been dishonoured [Section 45(1)]. The term 'seller' includes any person who is in the position of a seller (for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for the price) [Section 45(2)].

### **Rights of an Unpaid Seller [Section 46-52, 54-56, 60-61]**

The rights of an unpaid seller can broadly be classified under the following two categories:

Rights against the goods

Rights against the buyer personally

#### **I Rights against the goods where the property in the goods has passed to the buyer**

**a) Right of Lien [Section 47, 48 and 49]**

## Meaning of Right of Lien:

The right of lien means the right to retain the possession of the goods until the full price is received.

Three circumstances under which right of lien can be exercised [Section 47(1)]

1. Where the goods have been sold without any stipulation to credit;

2. Where the goods have been sold on credit, but the term of credit has expired;
3. Where the buyer becomes insolvent.

## Other provisions regarding right of lien [Sections 47(2), 48, 49 (2)]

1. The seller may exercise his right of lien, even if he possesses the goods as agent or bailee for buyer [Section 47(2)]

2. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show agreement to waive the lien [Section 48].
3. The seller may exercise his right of lien even though he has obtained a decree for the price of the goods [Section 49(2)].

## Circumstances under which right of lien in the following cases:

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods [Section 49(1) (a)].
2. When the buyer or his agent lawfully obtains possession of the goods [Section 49(1)(b)]
3. When the seller waives his right of lien [Section 49(1) (c)].
4. When the buyer disposes of the goods by sale or in any other manner with the consent of the seller [Section 53(1)].
5. Where document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods and that person transfers the document by way of sale, to a person who takes the document in good faith and for consideration. [Proviso to Section 53(1)].

## b) Right of Stoppage of Goods in Transit

The right of stoppage of goods means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

Conditions under which right of stoppage in transit can be exercised [Section 50]

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are fulfilled:

1. The seller must have parted with the possession of goods i.e. the goods must not be in the possession of seller.
2. The goods must be in the course of transit.
3. The buyer must have become insolvent.

## c) Right of Resale [Section 46(1) and 54]

An unpaid seller can resell the goods under the following three circumstances: 1. Where the goods are of a perishable nature. 2. Where the seller expressly reserves a right of resale if the buyer commits a default in making payment.

4. Where the unpaid seller who has exercised his right of lien or stoppage in transit gives a notice to the buyer about his intention to resell and the buyer does not pay or tender within a reasonable time.

## **II Rights against the goods where the property in the goods has not passed to the buyer**

### **Right of withholding delivery [Section 46(2)]**

Where the property in the goods has not been passed to the buyer, the unpaid seller, cannot exercise right of lien, but gets a right of withholding the delivery of goods, similar to and co-extensive with lien and stoppage in transit where the property has passed to the buyer.

### **Rights of Unpaid Seller against the Buyer Personally**

The unpaid seller, in addition to his rights against the goods as discussed above, has the following three rights of action against the buyer personally:

1. Suit for price (Sec. 55). Where property in goods has passed to the buyer; or where the sale price is payable 'on a day certain', although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue the buyer for price, irrespective of the delivery of goods. Where the goods have not been delivered, the seller would file a suit for price normally when the goods have been manufactured to some special order and thus are unsaleable otherwise.

2. Suit for damages for non-acceptance (Sec. 56). Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in this case is a suit for damages rather than an action for the full price of the goods.

3. Suit for Interest [Section 61(2)]

In case of breach of the contract on the part of seller, the buyer may sue the seller for interest from the date on which the payment was made.

## **AUCTION SALES (SEC. 64)**

An auction sale is the sale of goods through a bidding process and is covered under the Sale of Goods Act, 1930. The process of sale by auction involves the selling of any goods and property of value, in a public gathering where buyers make a bid for the purchase and the sale is made to the highest bidder. Let us understand in detail an auction sale, parties involved, and their rights and obligations.

Auction of goods to the highest bidder among all buyers present at the time. Auction Sale is an economic system where sellers offer goods for sale, and bidders compete with one another, based on the price or quality of the item being offered. Auction Sales can be conducted either through oral or written bidding methods like Dutch Auction (where bids are sealed), English Auction (traditional), and Online Auction (in which bidders bid via the internet).

### **Different Types of Auction Sales**

- 1. Private Auction:** This is an auction sale where the seller and buyers are known to each other.
- 2. Advertisement Auction:** In this type of auction, the seller publishes a notice in newspapers or online about the product he wishes to sell through auction.
- 3. Sealed Bid Auction:** In this type of auction, potential buyers send their bids to the seller in sealed envelopes. The highest bidder wins the product at the end of the bidding process.
- 4. Live Auction:** This is an auction sale where bidders participate live either by attending physically or participating through phone or the internet.
- 5. Sale in lots:** Auction Sale where the items are sold in lots or batches.
- 6. First Lot Auction:** In this type of auction, each lot is sold to the highest bidder at a time.
- 7. Second Lot Auction:** This type of Auction allows for batching of goods into two parts and then offering these as individual lots to potential buyers interested in acquiring them during an auction sale process.
- 8. Auction Sale of Unsold Lots:** In this kind of Auction, the seller offers only those lots that he has not been able to sell in first or second lot auctions to interested bidders during an auction sale process.

### **Railway Auctions**

Railway scrap collected from wagons, coaches, deserted rails, etc is sold by the railways through auction. Indian railways have completely switched to e-auctions since 2013.

## Real Estate Foreclosure Auctions

Banks can hold a real estate foreclosure auction under the SARFAESI (Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest) Act, 2002. This allows the banks to auction repossessed or foreclosed properties to recover their losses. These properties are seized by the banks after the borrowers fail to make multiple payments towards principal and interest. A property in the early stages of foreclosure by the banks is in pre-foreclosure auction. It is a kind of notice to the borrower that the property will be auctioned if the payment is not made to the lender. This stage is considered the grace period that is given to the borrower before the foreclosure auction.

## Land Auction

In case of a land auction done by the government, the land must be sold through a public auction and the government must give a notification for the same through wide publicity. In the case of government land auctions, there is no upset price except in the case of railway relinquished lands where a minimum or upset price is fixed in consultation with the Railway Administration before the auction.

The difference between first and second lot auctions is that while both allow bidders who have lost interest in one product category to switch over their bidding efforts towards another product category still available on offer through any remaining/unsold lots, they also bring together similar products from different categories for simultaneous availability under one roof which results in better price discovery across all types of products as well as greater choice for potential buyers.

Auction Rules and regulations vary from country to country depending on various factors like customs and practices followed by a particular society. However, it is very important for both sellers and buyers who intend to participate in an Auction Sale to learn about these rules before taking part in such bidding processes so they can make informed decisions when transacting with one another through Auction Sale online or offline channels/platforms.

## Rules of Auction Sales Are

- 1. Sale Completion:** It is one of the most important Auction Sale rules that the seller must complete the sale once a bid has been accepted. In case, he is unable to do so for any reason, he must inform all potential buyers of this before the Auction commences and also refund their money
- 2. Auctioneer:** The Auctioneer conducts the Auction Sale by announcing each product being put up for bidding and calling for bids from interested buyers.
- 3. Reserve Price:** This is the minimum price at which the seller is willing to sell a particular item in an auction sale. If no bidder meets or exceeds this price, then the item goes unsold.
- 4. Bidding Increments:** In most auctions, there are predetermined bidding increments that determine how much a can increase her/his bid amount.

- **5. Auction Closing Time:** The Auction Sale must have a definite ending time so that all interested buyers are aware of when the bidding process will end.

Section 64 of the Sale of Goods Act states the rules applicable in case of an auction sale.

- **Sale of Goods in Lots**

When the auction involves the sale of goods in different lots, each lot of goods are covered under a separate contract of sale.

- **Sale Completion**

An auction sale is deemed to be complete when the auctioneer says so. The same can be done by the fall of the hammer or any other means used to signify the completion of the sale. The bidder can withdraw the bid anytime before the completion of the sale is declared.

- **The Right to Bid Reserved for the Seller**

The seller can reserve his right to bid at the auction but he must expressly reserve this right. He can appoint an agent to bid on his behalf.

- **Notification of the Right to Bid by the Seller**

If the seller has not expressly reserved his right to bid and has not been informed about the same, he or his agent is not authorized to bid at the auction. The auctioneer is not entitled to accept any bids made by the seller or his agent if the buyer has not expressed his intent to do so. Any sale that is in contradiction to this rule will be deemed unlawful and fraudulent by the buyer.

- **Reserve Price**

The goods for sale at the auction may be subject to a reserve price or an upset price. The auctioneer cannot sell goods below this price.

- **Pretend Bidding by the Seller or His Agent**

In case the seller or his agent pretends to bid for the goods purposely to raise the bid price of the goods, the buyer of the goods has the right to treat the sale as void.

- **No Credit Sale**

The property in an auction cannot be sold on credit or as per his will by the auctioneer. The auctioneer can accept a bill of exchange in an auction sale but only if it has been allowed by the seller.

Let us look at different kinds of auctions like real estate foreclosure auctions and government auctions.

- **Bank Auction Properties for Sale**

In case of properties up for sale through a bank option, buyers can submit their bids through a bid form or a tender form. In some cases, competitive bidding is allowed between the buyers by the bank to raise the price of the auction property for sale. If the buyer or the winner of the bank auction does not pay the balance amount within a specified time, then the entire amount paid is forfeited by the bank.