

12. FIVE KHIYARS

The term khiyar refers to the option or right of the buyer and seller to rescind a contract of sale.

There are five khiyars in a sale contract which are as follows:

- a) **Khiyar-e-Shart (Optional Condition):** At the time of sale the buyer or seller can put a condition that he has an option to rescind the sale within a specific 4 days. This option is called Khiyar-e-Shart. Specification of the days is necessary for this Khiyar. Within this period, he has the right to rescind or dissolve the sale without any reason. If the buyer puts the condition, it is called Khiyar-e-Mushtari (option of buyer) and when put by the seller, it is called Khiyar-e-Bai (option of seller). This Khiyar is not transferred to heirs.
- b) **Khiyar-e-Roiyyat (Option of Inspecting Goods):** Where the goods can be returned after inspection. This applies automatically to all contracts. For example, if A buys machinery from B without seeing. However, A has the option to return the machinery after inspection.
- c) **Khiyar-e-Aib (Option of Defect):** Where the goods can be returned if found defective. It is the responsibility of the seller to supply goods free of defect or point out the defect to the buyer. No way is he allowed to cover the defect of the goods where doing so constitutes fraud. In one of the hadiths, the Prophet (Allah bless him and give him peace) has stated, "He is not amongst us who indulges in fraud." Therefore the buyer has the right to return the goods in case of a defect which is considered a defect in the market and which depreciates the value of the goods. For example, A buys batteries from B, however, A has the option to return them to B if the batteries are found to be defective.
- d) **Khiyar-e-Wasf (Option of Quality):** Where the goods are sold by specifying a certain quality by the Seller but which is absent in the goods. For example, A buys a car from B who has specified that a car will have an automatic transmission. However, when A uses the car, he finds the transmission is manual. Therefore, he can return the car to B in the absence of this specific quality.
- e) **Khiyar-e-Ghaban (Option of Price):** Where the seller sells the goods at a price which is far more expensive than the market price. The buyer has the right to return it to the seller. For example, a Parker pen is sold to A by B at a price of Rs.500. However, after the sale, A discovers its market price to be Rs.250, he has the option to return the pen to B.

Iqala (Rescission of Contract): Where parties freely consent to rescind the contract and each party will give back the consideration received by it. Neither the buyer nor the seller has the sole right to rescind the contract after execution of the contract. Often the buyer wants to rescind the contract after buying goods. In this case, it is necessary that he gets the seller's consent. Therefore this mutual agreement between buyer and seller to rescind the contract is called Iqala. In one of the hadiths, the Prophet (Allah bless him and give him peace) has stated, "He who does the Iqala (rescinding of the contract) with a Muslim who is not happy with his transaction, Allah will forgive his sins on the Day

of Judgment.” However, it may be noted that the price of the goods being returned under Iqala will remain unchanged.

Effect on Third Parties: Iqala is treated as a new sale as if a new contract is entered into between the parties rescinding the original contract.