

THE SALE OF GOODS ACT, 1930

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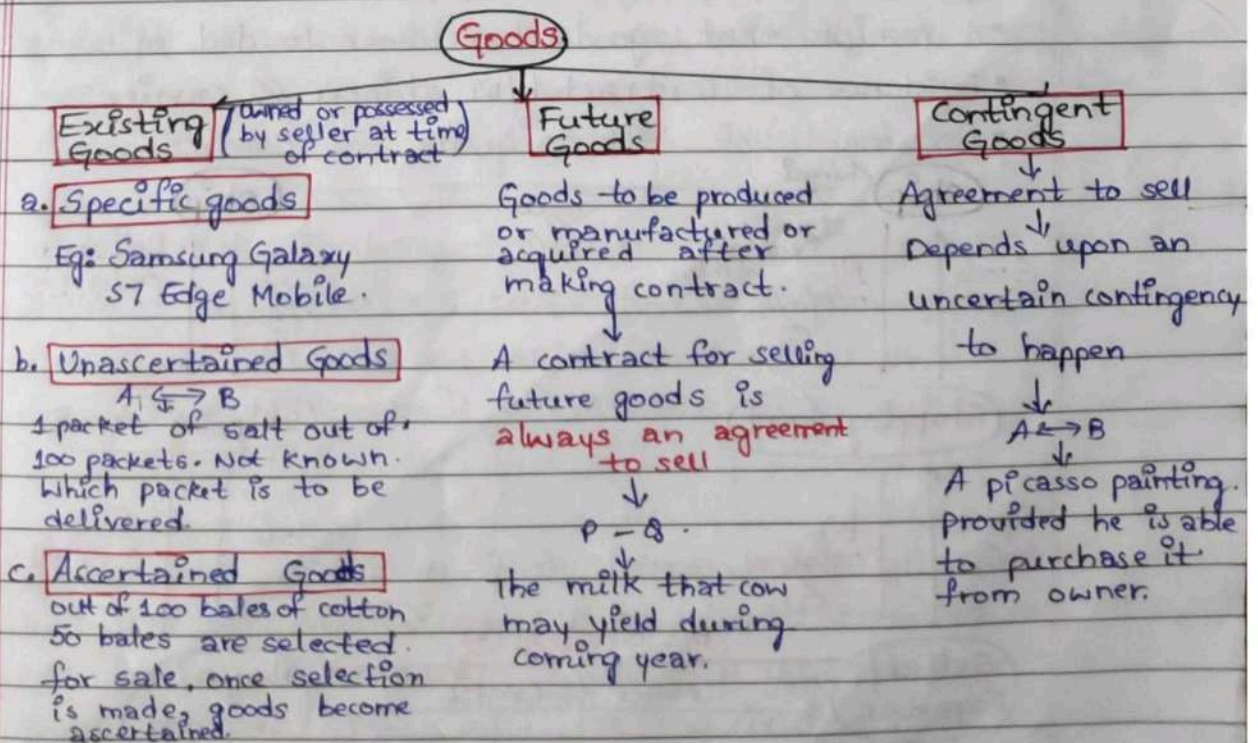
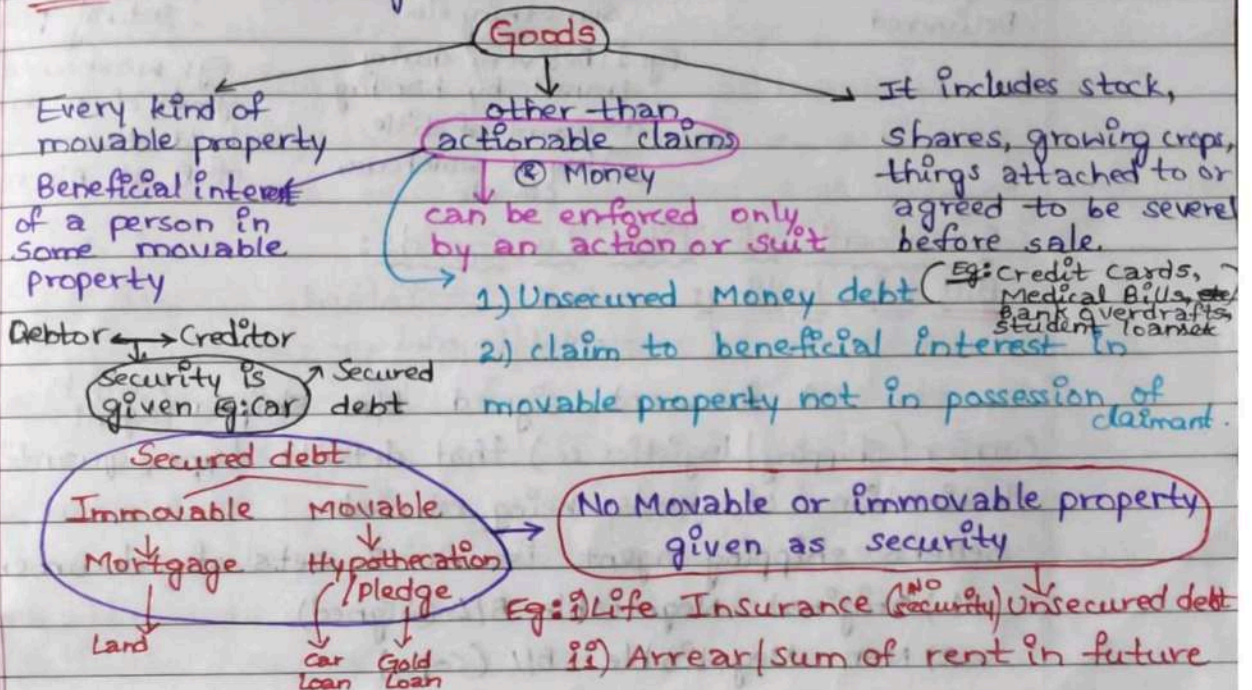
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Unit 1: Formation of Contract of Sale

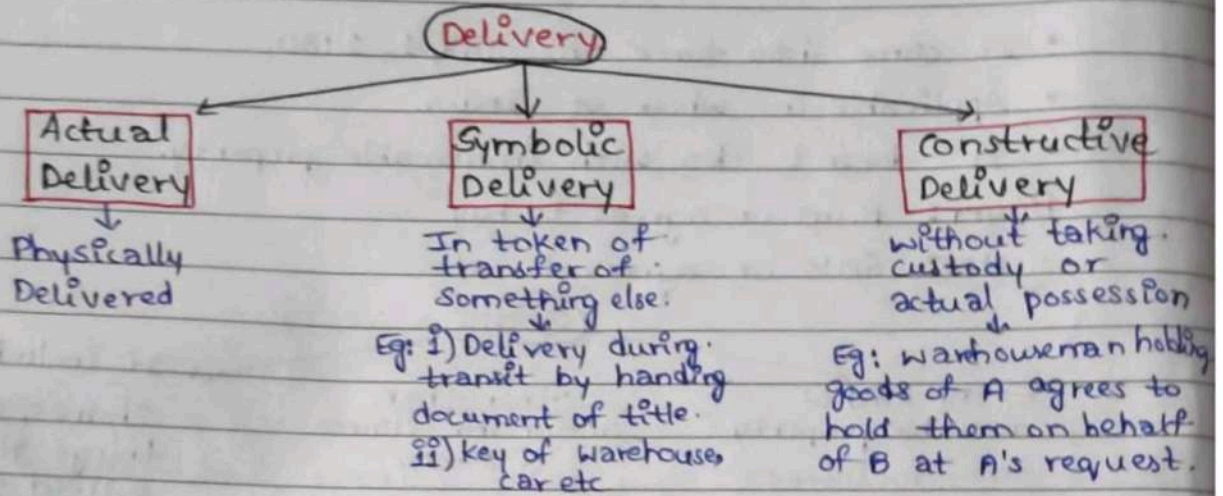
- It came into force on July 1, 1930.
- Applicable in whole of India.
- It doesn't deal with immovable property.

Buyer: Buys or agrees to buy

Seller: Sells or agrees to sell



Delivery → Voluntary transfer of Possession



Document of Title to Goods:

Bill of Lading: - Sea - Inland
- Multimodal

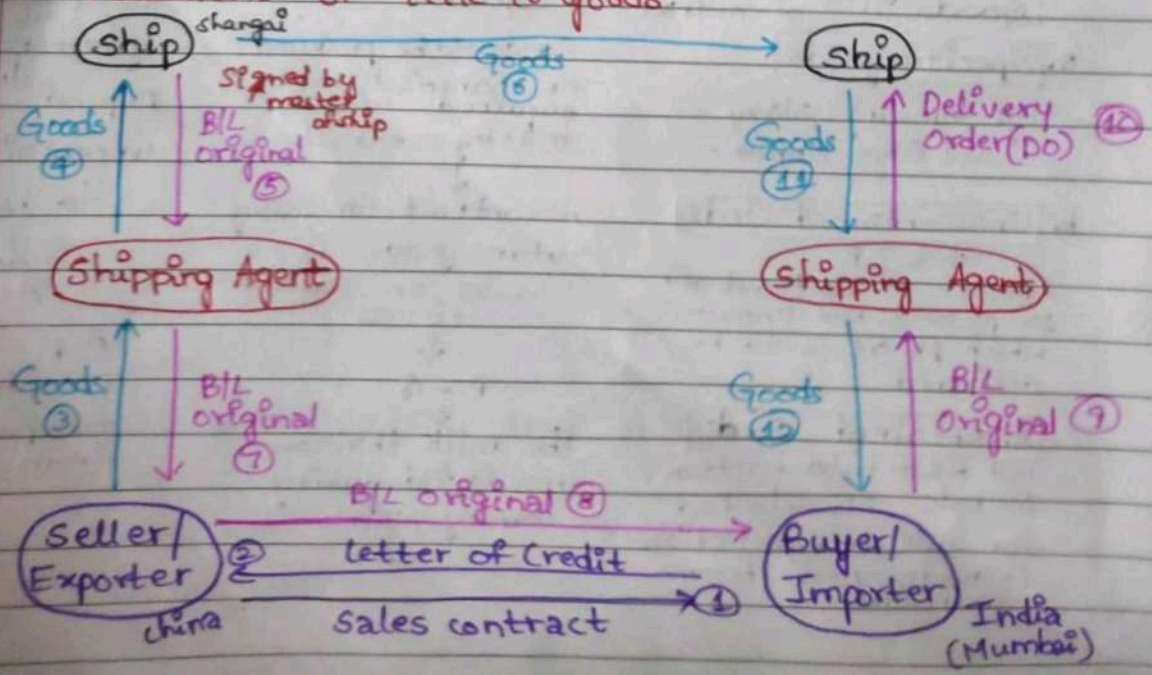
A document signed b/w shipper (seller's agent) and carrier (shipping/logistics co.) that details type, quantity & destination of goods being carried.

Seller's shipping agent issues 2 sets of documents

- 1) Original Negotiable B/L (Signed)
- 2) Non-Negotiable B/L (Copy)

B/L serves 3 main functions:

- A receipt that goods have been loaded.
- Evidence of contract b/w shipper & carrier
- Document of title to goods.



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An enclosed area of water in a port for loading, unloading and repair of ships.

Dock Warrant: It is a document which is virtually a certificate from dock company issued by owner of dock that certain goods which are described there in are in their possession which they agree to deliver to any person specified by owner.

Warehouse Keeper's Certificate: It is a document issued by warehouse keeper certifying that he holds certain goods described in certificate and awaits instructions for their disposal to person to whom certificate is addressed.

An area like a wide wall built near edge of sea or river where ships can be tied and goods can be taken off them.

Wharfinger's Certificate:

Wharfinger - Keeper/owner of wharf. He takes custody of and is responsible for goods delivered to wharf.

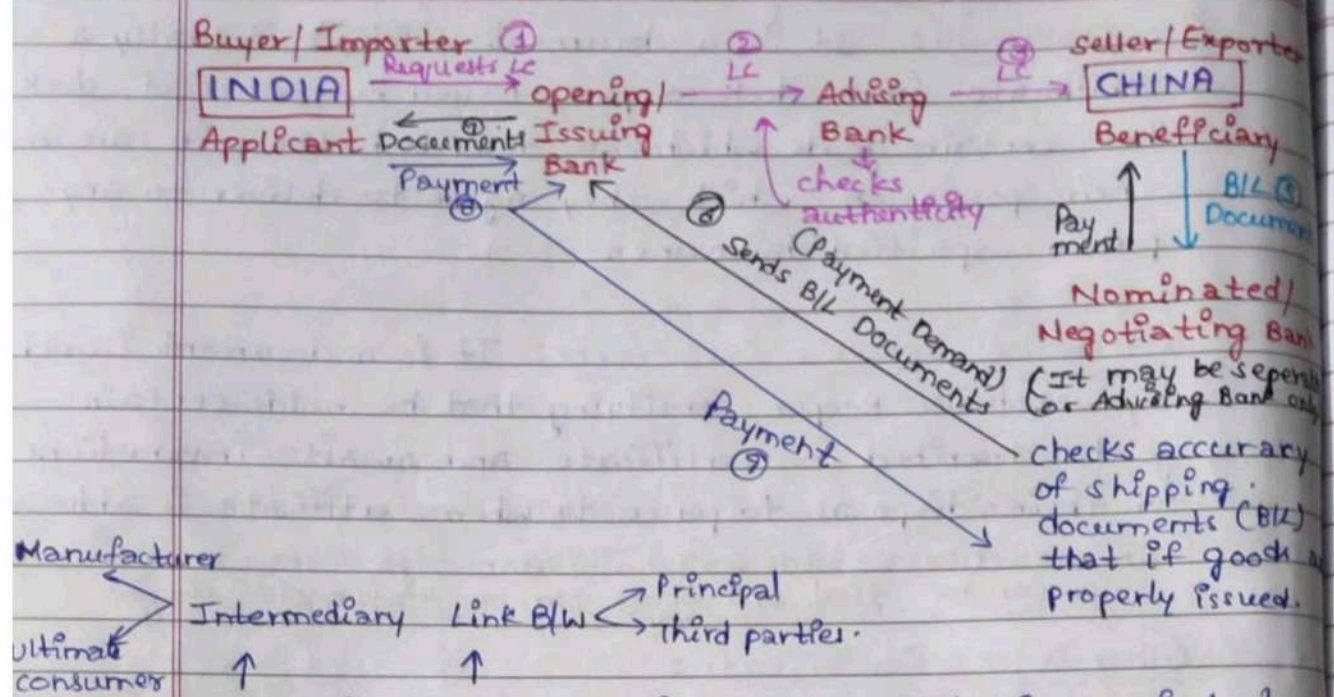
Wharfinger's certificate is an acknowledgement of receipt of goods at wharf issued by wharfinger. It has legal value similar to that of warehouse receipt.

Railway Receipt: It is a receipt issued by one of the officials of railways, when goods are sent by rail. This receipt is proof that railway official has received goods mentioned in receipt on a particular date for sending them to desired destination.

Multimodal Transport Document: A document issued or signed by carrier indicating carriage by more than one means of transportation.

Eg: (Pune - Mumbai + Mumbai - US)
(Road - lorry) (Air - flight)

Letter of Credit: A letter from bank guaranteeing that a buyer's payment to a seller will be received on time and for correct amount. If buyer is unable to make payment, the bank will be required to cover full or remaining amt of purchase.



Mercantile Agent: He is a person who is appointed by those in business to act on their behalf or to represent them in dealing with other persons.

The person on whose behalf he acts as an agent is known as 'Principal'. Eg: Brokers, auctioneers.

He doesn't do business for himself, but only represents his principal in all business dealings.

He is entitled to a commission from his principal as monetary consideration for his services.

Hire Purchase:

- Originated in UK.
- A transaction in which goods are let on hire with an option to hirer to purchase them with following ^{specific terms}:
 - i) Payment to be made in installments.
 - ii) Possession is delivered to hirer at time of contract.
 - iii) Ownership passes to buyer when last installment is paid.
 - iv) Each installment is treated as hire charge so that if default is made in payment of any installment seller is entitled to take away goods & hirer is not required to pay any further installment falling due after return.

Bailment:

- The word Bailment is derived from french word 'Ballier' which means to deliver.
- It implies a sort of relationship in which personal property of one person, temporarily goes into possession of another person for some specific purpose, while ownership is with another person. When purpose is accomplished, property is returned to Bailor.

Bailor: Person delivering goods

Bailee: Person to whom goods are delivered.

Document of title to Goods Vs. Documents showing Title

Document of Title to Goods	Document showing Title
<ul style="list-style-type: none"> • It means document which represents ownership of goods which can be transferred by mere delivery or which doesn't involve any specific procedure except handing over/signing back of document to change ownership of goods. • <u>Eg</u>: 1) Bill of Lading. 2) Dock Warrant etc. 	<ul style="list-style-type: none"> • It means document which represents ownership of goods which cannot be transferred by mere delivery. There is other procedure involved to change ownership. • <u>Eg</u>: 1) Handing over RC doesn't mean change in ownership. 2) share certificate doesn't allow bearer to transfer the share. He needs to execute transfer deed.

Unit 2: Conditions And Warranties

Condition

Essential to main purpose of contract

Repudiate contract or claim damages or both

It may be treated as breach of warranty

Warranty

collateral to main purpose of contract

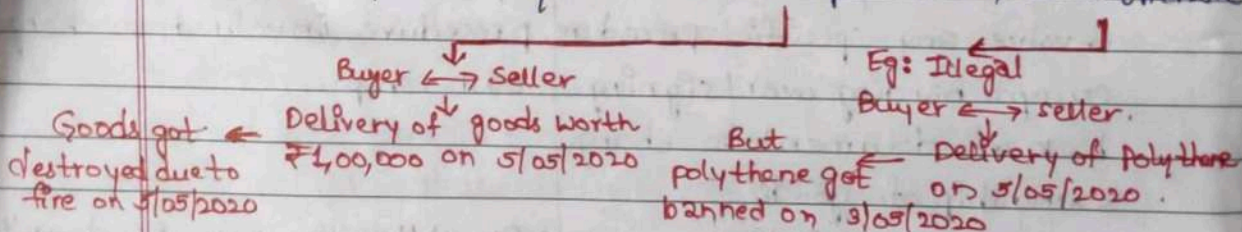
claim only damages

It can't be treated as breach of condition

In case of breach

WHEN CONDITION TO BE TREATED AS WARRANTY:

- The buyer may waive the condition
Effects: * can't repudiate contract → Surrender * claim only damages
- when buyer elects to treat breach of condition as breach of warranty
Effect: * Can't repudiate contract * claim only damages
- where contract is non-severable (like part delivery or whole goods)
* If buyer has accepted a part of goods or whole goods he can't repudiate contract in case of non-severable goods
- where fulfillment of any condition or warranty is excused by law by reason of impossibility of otherwise



Implied Conditions

Condition as to title

Eg: 'A' purchased tractor from 'B' who had no title to it. After 2 months true owner spotted tractor @ demanded it from 'A'. 'A' was bound to handover tractor to true owner @ sue 'B' for recovery of purchase price

sale by description

Eg: A ship was contracted to be sold as "copper fastened vessel" but it was only partly copper fastened. Here buyer can reject goods or if he took goods he can claim damages.

Sale by Sample

a) Bulk shall correspond with sample in quality

b) Buyer shall have reasonable opportunity to compare bulk with sample.

Eg: In case of sale by sample of 2 parcels of wheat, seller allowed inspection of smaller one but not larger one. Here buyer is entitled to refuse to take any parcel of wheat

c) The goods shall be free from any defect rendering them unmerchantable. This is applicable with defect which can't be discovered by ordinary examination.

Eg: A company sold certain shoes made of special sole by samples for French Army. It was found that shoes contain paper not discoverable by ordinary inspection. **Refund + Damages**

Sale by Sample as well as description

Eg: You tasted many flavours of ice-cream @ decided to order chocolate ice-cream. It is sample. You also told to add specific toppings. It is description. But u got delivery without toppings. You can repudiate contract.

Condition as to Merchantability

Eg: A person orders motor horns from a manufacturer @ horns supplied are scratched or damaged due to bad packing. Buyer can reject them.

Condition as to quality or fitness

Here he made known the purpose of purchase

Eg: A bought set of false teeth from B a dentist. But set was not fit for A's mouth. A rejected set of teeth @ claimed refund

Condition as to wholesomeness

In case of eatables and provisions

Buyer relied on patent name

Eg: A went to B's shop @ asked for a 'VSHA' sewing machine. B gave the same. A relied on trade name of machine rather than on skill @ judgement of seller.

Eg: A supplied F with milk. Milk contained typhoid germs. F's wife consumed milk @ died. A was liable to pay damages.

Goods were not fit for human consumption

Implied Warranties

Hypothecation, Pledge,
charge, Mortgage

Undisturbed Possession

Eg: A buys laptop from B. After purchase A spends some money on repairs & uses it for some time.

After, it was known that it was stolen & given back to rightful owner.

B is liable for damages + Repair charges

Non-Existence of Encumbrances

Eg: A pledges his car with C for a loan of 15000 & promises to give its possession next day. A then sells car immediately to B who purchased it on good faith. B may either ask A to clear loan himself pay money & then file suit against A for recovery of money with interest.

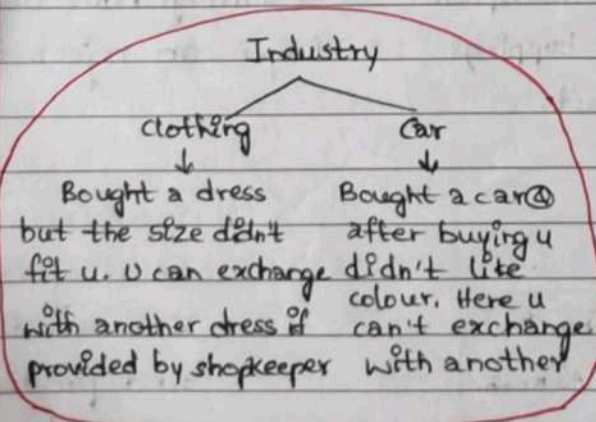
Quality or Fitness by usage of trade

Eg: A drug was sold through an auction & according to usage of trade, it was to disclose any sea damage otherwise it will be taken as breach of warranty if no such disclosure is made.

Disclosure of dangerous nature of goods

Eg: X purchased a tin of disinfectant powder from Y. Y knows that cap of tin is defective & if opened by novice without special care it may spill & result in partial burning & other damages. But didn't inform X abt it & X opened bottle & got injured. X can claim damages as Y should have duly warned of probable danger.

Novice: A person new to & inexperienced in a job or situation



Here u can exchange depending upon practices in the industry.

CAVEAT EMPTOR:

→ It is a doctrine which protects seller

• LET THE BUYER BEWARE

- There is no implied warranty or condition as to fitness or quality of an particular purpose of goods under contract of sale.

When goods are displayed by seller in open market → Duty of Buyer → To make proper selection or choice of goods

↓
Seller not liable if goods turn out to be defective

EXCEPTIONS

↓
Fitness as to quality or use

↓
1) Priest Vs. Last → Hot water Bottle

2) Bombay Burma Trading Corporation Ltd

vs Aga Muhammad → Timber for railway Sleepers

↓
Patent or Brand Name

↓
Description

↓
Sample

↓
Sample as well as description

↓
Merchantable Quality

↓
Trade Usage

↓
Seller actively conceals a defect

Applicable only when ↓ defect can't be identified by ordinary or reasonable examination

↓
Misrepresentation or fraud by seller.

Unit - 3: Transfer of Ownership And Delivery of Goods

* A contract of sale of goods involves transfer of ownership in three stages.

Passing of Property → ownership
Delivery of Goods
Passing of Risk

- Based on first impression
- It is something that has been

proved or assumed to be true unless there is evidence presented to contrary

IMPORTANCE OF TIME OF TRANSFER

• Risk prima facie passes with the property

• If goods are lost or damaged, the burden of loss will be borne by person who is owner at time when goods are lost or damaged.

What if goods are damaged by third party?

It is only the owner who can take action.

When claim/suit for price arises to seller?

only when property is passed to buyer.

PROPERTY (SPECIFIC OR ASCERTAINED GOODS) PASSES WHEN INTENDED TO PASS (Sec 19):

- 19(1) : There is clear mention of time when parties to contract intend to transfer property. In such cases, property is transferred at time mentioned in contract.
- 19(2) : To understand intention of parties, the terms of the contract, conduct of parties & circumstances of case are considered.
- 19(3) : Sec 20 to 24, contains rules to ascertain intention of properties. This intention is abt time at which property in goods will pass to buyer.

Specific goods in a deliverable state (Sec 20):

* Property passes when contract is made

As soon as offer is accepted

* Property passes immediately ^{even} if payment @ delivery is postponed

Specific goods to be put into a deliverable state (Sec 21):

* When seller has done some action @ put goods into deliverable state and buyer has notice thereof, only then property passes to buyer.

Eg: Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However laptop doesn't have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making delivery. In this case, property transfers to Peter only after shopkeeper has installed OS making laptop ready for delivery.

Specific goods in a deliverable state, but price not ascertained (Sec 22):

* Property passes only after seller has

- Weighed (Provisions, Vegetables etc)
- Measured (Clothes)
- Tested (Electronics)

Eg: Price of vehicle + Price of accessories

or does some ^{other} action or things to ascertain price with reference to goods.

GOODS MUST BE ASCERTAINED (Sec 18):

When property will pass?

Ans: Goods $\begin{cases} \rightarrow \text{Ascertained} \\ \rightarrow \text{Appropriated} \end{cases}$

selection of goods with intention of using them in performance of contract

with ^{mutual} consent of buyer & seller.

Appropriation: The act of setting apart something for its application to a particular usage

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(Sec 23)

For the property to pass following conditions must be satisfied:

- There is a contract for sale of unascertained or future goods
- Goods of description mentioned in contract must be, produced or obtained.
- Goods must be in a deliverable state.
- Goods must be unconditionally appropriated.

(i) seller delivers goods to → Buyer direct or carrier or agent } For transmission of goods to buyer.

ii) Does not reserve the right of disposal (sale).

Appropriation: ① By separating the Qty sold from a lot or other goods and informing buyer.

Eg: A has 100 bags of rice in godown. Out of this he agreed to sell 10 bags to B. A separates 10 bags & informs B.

② By putting goods in suitable receptacles

Eg: Tins, bags etc.

Eg: 20 kgs of sugar out of Bulk were agreed to be sold. 4 kgs of sugar were filled up & taken by buyer. Subsequently the seller filled up 16 kgs and informed buyer. However before buyer could take delivery, they were lost. Held the buyer was responsible as ownership passed to buyer.

Delivery of goods may be

Conditional: Here, ownership doesn't pass to buyer, unless condition is fulfilled. Eg: Bill is accepted or payment is made.

Unconditional: Here the ownership is passed to buyer from seller without any such conditions.

- The appropriation is made by
 - Seller with assent of buyer
 - Buyer with assent of seller

It may happen when goods are in possession of buyer. The consent may be given before or after appropriation by buyer.

Eg: A's 100 bags of wheat are stored in B's godown. A sells 10 bags to B. Since B is in possession of goods, he appropriates 10 bags and informs A. Property passes from A to B as soon as B informs A the act of appropriation.

- Assent
 - Expressed
 - Implied

can be either

- Before
- After

 } Appropriation

Goods sent on approval or "on sale or return" (sec 24):

Property there in passes to buyer-

* when he signifies his approval or acceptance to seller or does any other act adopting transaction.

*

Retains Goods

without notice of rejection

Time fixed:
on expiration of such time

Time not fixed:
on expiration of reasonable time

* Does something to good which is equivalent to accepting goods.

Sale for cash only or return:

Property of goods passes to buyer only when terms are complied with i.e., cash is paid for.

Reservation of right of Disposal (sec 25):

• 25(1): Where there is contract for sale of specific goods or where goods are subsequently appropriated, seller may by terms of contract or appropriation reserve right of disposal until certain conditions are fulfilled.

Notwithstanding delivery \leftarrow ^{Buyer} carrier \leftarrow other bailee property doesn't pass to buyer until conditions are fulfilled.

• 25(2): When goods are shipped or delivered to railway administration for carriage @ by Bill of Lading or Railway receipt, goods are deliverable to order of seller or his agent, then seller will be prima facie deemed to have reserved right of disposal.

• 25(3): Where seller draws a bill on buyer for price @ sends him Bill of Exchange together with Bill of Lading or railway receipt to secure acceptance or payment thereof, the buyer must return Bill of Lading, if he doesn't accept bill. If he wrongfully retains bill, the property in goods doesn't pass to him.

Eg: Auction sale.
Painting got
damaged
by seller

RISK PRIMA FACIE PASSES WITH PROPERTY (Sec 26):

General Rule: Unless otherwise agreed, the goods remain at seller's risk until property therein is transferred to buyer, but when property passed to buyer, the goods are not at buyer's risk whether the delivery has been made or not.

Exceptions:

- 1) Delayed Delivery: May be at fault of Seller or Buyer goods shall be at risk of party in default.
- 2) Special Agreement: Buyer & seller have agreed to some terms.

Eg: Contract of sale

Mumbai → Pune 30 tons of apples are to be sold seller says that since it is long journey as soon as I get goods loaded in vehicle u will face risk in case of any accident or loss of goods in transit.

Though the ownership hasn't passed yet buyer has to bear risk. ownership passes only when payment is made. Here risk passed without ownership.

- 3) Trade Usage: Normally in auction sale, the ownership of goods passes to highest bidder as soon as auctioneer hits it 3rd time.

But if we have a trade practice or rule set that bidder will get ownership only after payment but risk passes before he gets ownership. as exception to sec 26.

No one can give what he has not got

TRANSFER OF TITLE (Sec 27-30):

Sale by person not owner (Sec 27):

**NEMO DAT QUOD
NON HABET**

where goods are sold by a person who is not owner thereof & who doesn't sell them under authority or consent with owner, the buyer acquires no better title than seller had, unless owner of goods by his conduct precluded from denying seller's authority to sell.

Exceptions

Non-owner
can convey
BETTER
TITLE

* Sale by Mercantile agent (Sec 27):

- * He has possession of goods or documents with consent of owner.
- * The sale was made by him when acting in ordinary course of business as a mercantile agent.
- * Buyer had acted in good faith & has at time of contract, no notice of fact that seller had no authority to sell.

Eg: 'A' entrusted his car to a mercantile agent to receive offers (i) not to sell. 'A' also delivered signed documents to agent. On basis of these documents, agent pretended to buyer that he had authority to sell car. Held that owner was estopped from denying buyer's title.

• sale by one of joint owners (sec 28):

One of several joint owners of goods

has sole possession with permission of co-owner

Property is transferred to buyer

→ Acted in good faith

→ No notice that seller had no authority to sell.

• sale by a person in possession under voidable contract (sec 29):

Seller

obtained possession of goods under contract voidable on ground of coercion, fraud, misrepresentation, undue influence

Here buyer will get BETTER TITLE

↑
No appearance of contract becomes void

If contract hadn't been cancelled (rescinded) until the time of sale. 37(4)

• sale by one who has already sold goods but continues in possession:

* The buyer after purchasing may leave them with seller. If seller resells these goods to another buyer → BETTER TITLE

→ Acted in good faith
→ Had no notice of previous sale.

* Pledge or hypothecation of goods by seller are equally valid.

Eg: 'A' had 50 barrels of tobacco lying in bond in his name at warehouse. The dock warrant was issued to him in his name. He sold them to 'B' who left dock warrant with seller. The buyer didn't take any steps to transfer tobacco in his own name. The seller subsequently pledged goods (i) handed dock warranty to 'C' who acted in good faith. Held that 'C' acquired good title against 'B'.

Eg: 'A' a dealer sold a motor lorry to 'B' who lent it back to him on hire-purchase agreement. 'A' then fraudulently sold lorry to 'C' who had no knowledge of previous transaction. Held that 'A' was in possession of lorry as a hiree (i) not as seller.

Hence subsequent sale to 'C' was not valid.

• sale by an Unpaid seller (54(3)):

↓

Who had exercised his right of lien or stoppage in transit resells goods, the buyer acquires good title against original buyer.

• Sale by buyer in possession after sale or agreement to sell (30(2)):

With consent of seller → obtains possession of goods } He may sell it to a
 → Document of title to goods } third person before passing property.

→ Not applicable for hire purchase agreement.

Such person → Good Title → Good faith
 → NO notice of right of original seller

• Effect of Estoppel: where owner of goods acts in such a manner so as to lead others to believe that person selling goods has authority to sell goods, he will be estopped from denying seller's authority to sell goods.

• Sale under provisions of other Acts:

1) Under Contract Act:

(Sec 169)

(i) Finder of goods under certain circumstances can pass better title.

(ii) A pawnee or pledgee under certain circumstances can pass better title.

(Sec 176)

2) Under Insolvency Law: An official Receiver or assignee can pass better title.

3) Under Companies Act: A liquidator of co may pass better title.

PERFORMANCE OF CONTRACT OF SALE (SEC 31-44):

Rules regarding delivery of Goods:

- Delivery (Sec 33): Effect of putting goods in possession of buyer
- Effect of Part Delivery (Sec 34): Delivery of part of goods has same effect of whole.
- Buyer to apply for delivery (Sec 35): Seller of goods is not bound to deliver until buyer applies for delivery.
- Place of Delivery (Sec 36(1)): Depends on contract

Goods are delivered to place → Not there

1. At time of sale
2. At time of agreement to sell
3. Not in existence at time of sale where they are produced or manufactured

• Time of Delivery (Sec 36(2)): Depends on contract, otherwise reasonable time.

• Goods in possession of third party (Sec 36(3)):

No delivery unless such third person acknowledges to buyer that he holds goods on his behalf

• Time for tender of Delivery (Sec 36(4)): It may be treated as ineffectual unless made at a reasonable hour.

- Expenses for Delivery (Sec 36(5)): Must be borne by seller in absence of contract to contrary.
- Delivery of wrong quantity (Sec 37):
 - 37(1): Buyer may reject, ^{If he accepts goods delivered, he shall} pay for them at contract rate.
 - 37(2): Qty of goods larger than contracted to sell.
 - * May accept goods included in contract & reject rest.
 - * May reject whole goods.
 - * If he accepts whole, he must pay for them in contract rate.
 - 37(3): Goods delivered are mixed with goods of diff. description.
 - * Accept goods which are in accordance to contract & reject rest.
 - * May reject whole.
- Installment deliveries (Sec 38): Unless otherwise agreed, buyer is not bound to accept delivery in installments.
- Delivery to carrier (Sec 39(1)): Subject to terms of contract.
- Deterioration during transit (Sec 40): Where goods are delivered at distant place, the liability for deterioration during transit will fall on buyer, though seller agrees to deliver at his own risk.
- Buyer's right to examine goods (Sec 41): Unless otherwise agreed, buyer who has not previously examined goods will be given a reasonable opportunity to examine goods in order to ascertain them.

Rules Related to Acceptance of Delivery of Goods (Sec 42):

Acceptance is deemed to take place when buyer

- Intimates to seller that he had accepted goods.
- Does any act to goods which is inconsistent with ownership of ^{seller}.
- Retains goods after lapse of reasonable time without intimating ^{seller he had rejected}.

Buyer not bound to return rejected goods (Sec 43):

Unless otherwise agreed, if buyer rejects goods → It is sufficient to intimate seller abt rejection. Not bound to return to seller.

Liability of buyer for neglecting or refusing delivery of goods (Sec 44): When seller is ready and willing to delivery goods & requests buyer to take delivery, buyer doesn't within a reasonable time take delivery of goods.

Buyer's Liability → Liable to seller for any loss due to his neglect & Reasonable charge for care & custody of goods.

Unit-4: Unpaid SellerUnpaid Seller [section 45(1)]:Seller → Deemed to be unpaid seller.(a) Non-Payment → whole price not paid or tendered(b) Dishonour of negotiable instruments

→ Bill of exchange or other negotiable instrument received for conditional payment.

→ Condition → Not fulfilled

Dishonour

otherwise

(Eg: Duplicate notes given as money)

seller to include agent [sec 45(2)]:

• Any person who is in a position of a seller.

Eg: → seller's agent

→ Consignor

→ Directly responsible for price

who had himself paid

RIGHTS OF AN UNPAID SELLER (sec 46):When property in goods has passed to buyer [46(1)]: Retaining possession

- lien on goods for price while he is in possession of them.
- stoppage in transit if buyer becomes insolvent. → Regaining possession
- Right of resale.

RIGHTS OF UNPAID SELLER AGAINST GOODS:Seller's Lien (sec 47):When property in goods hasn't passed to buyer [46(2)]:

- Additional to above rights, right of withholding delivery.

RIGHTS OF UNPAID SELLER AGAINST GOODS:Seller's Lien (sec-47): seller retains possession of goods until payment or tender of price in following transactions [47(1)]

- Goods sold → without credit i.e., cash
- Goods sold → with credit → Period Expired.
- Buyer becomes insolvent.

Lien:

a right to keep possession of property belonging to another person until debt owned by that person is discharged

Rules Regarding right of lien [47(2)]:

- Goods must be in possession.
- Possession lost → Right of lien lost.
- Goods delivered to carrier but document of title to goods is in seller's name (condition) → Deemed right of lien (Appropriation)
- i.e. seller reserved right of disposal.

Lien only for price (not for any other exp. Eg: Interest, Godown etc)

Part Delivery (sec-48): Unpaid seller → Made Part Delivery
 He may exercise his right of lien on remainder ^{Right of lien}
 Unless such part delivery has been made on basis of agreement

This order is only for payment of price
 → order of court
 ↑

Decree:
 An official order that has force of law

Termination of Lien (sec-49):

The seller of goods loses his right of lien (49(1))

- When he delivers goods to carrier for purpose of transmission to buyer without reserving right of disposal.
- When buyer or his agent lawfully obtains possession of goods.
- Seller waives right of lien → Express Implied

Lien irrespective of decree [sec 49(2)]:

Right of Lien: → can be exercised even though seller has obtained decree for price of goods.

RIGHT OF STOPPAGE IN TRANSIT (sec 50 to 52):

Right of Stoppage in Transit (sec 50): This right is an extension to right of lien. The right of stoppage in transit means that an unpaid seller has right to stop goods while they are in transit, regain possession and retain them till he receives full price.

This right of stoppage in transit can be exercised when

- seller is unpaid
- He have parted with possession of goods
- The goods are in transit
- The buyer has become insolvent
- The right is subject to provisions of this act.

Duration of Transit (sec 51):

From the time they are delivered to a carrier until the buyer or his agent takes delivery of goods.

When does transit comes to an end?

- When buyer or other bailee obtains delivery.
- Buyer or his agent obtains delivery before goods reach destination. In such cases, transit ends once delivery is obtained.
- Where carrier or other bailee wrongfully refuses to deliver goods to buyer or his agent.
- Where carrier or other bailee informs buyer or his agent that he holds goods as soon as they reach destination, then transit comes to an end.
- Where goods are delivered to carrier hired by buyer, transit comes to an end.

• In some cases, goods are delivered to a ship chartered by buyer. Depending on case, it is determined that ^{it} master is functioning as an agent or carrier of goods.

• If a part-delivery of goods has been made and unpaid seller stops remaining goods in transit, then transit ends for those goods. This is provided that there is no agreement to give up possession of all the goods.

How stoppage in transit is effected (sec 52):

There are two ways of stopping transit of goods.

- 1) The seller takes actual possession of goods.
- 2) If goods are in possession of carrier or other bailee, then seller gives notice of stoppage to him. On receiving notice, the carrier or other bailee must redeliver goods to seller. The seller bears expenses of re-delivery.

Right of Lien Vs. Right of Stoppage in Transit

Basis	Right of Lien	Right of stoppage in Transit
Essence	Retain possession	Regain possession
Who has possession of goods?	The seller.	The carrier or other Bailee. The buyer should not have received the goods.
Insolvency of Buyer	Not a mandatory requirement (Able to pay but does not pay)	This right can be exercised only when the buyer becomes insolvent.
End Vs Commencement	The right comes to an end when the seller delivers the goods to carrier.	This right commences only when seller delivers goods to a carrier.
Mode of Exercising Right	The unpaid seller can exercise this right only when if he keeps possession of goods.	The unpaid seller can exercise this right if he has lost the possession of goods.

Right of stoppage in transit begins when the Right of Lien ends.

Effects of sub-sale or Pledge by buyer (sec 53):

Unless the seller agrees, the right of lien or stoppage is unaffected by buyer selling or pledging the goods. The principle is simple: **the second buyer cannot be in a better position than his seller (first buyer)**. However, if the buyer transfers the documents of title or pledges the goods to a sub-buyer in good faith and for consideration, then the right of stoppage is defeated.

Exceptions:

a. The seller agrees to resale, mortgage or other disposition of goods: If the seller agrees to buyer selling, pledging or disposing of goods in any other way, then he loses his right of lien.

b. Transfer of the document of title of goods by the buyers: When seller transfers the document of title of goods to buyer and buyer further transfers it to another buyer who purchases the goods in good faith and for a price, then: 53(1)

- If the last mentioned transfer is by way of sale, the original seller's right of lien and stoppage is defeated.

- If the last mentioned transfer is by way of a pledge, the original seller's right of lien or stoppage can be executed subject to the rights of pledgee.

However, the pledgee may be required by unpaid seller to use in first instance, other goods or securities of pledger available to him to satisfy his claims.

Effect of stoppage: The contract of sale is not rescinded when seller exercises his right of stoppage in transit. The contract still remains in force and buyer can ask for delivery of goods on payment of price.

Right of re-sale (Sec 54):

The right of resale is a very valuable right for an unpaid seller. If he doesn't have this right, then right of lien and stoppage won't make sense as they only entitle unpaid seller to retain goods until paid by buyer.

An unpaid seller exercises his right of resale under the following conditions:

- Goods are perishable in nature: In such cases, the seller does not have to inform buyer of his intention of resale.
- seller gives a notice to buyer of his intention of resale: After the receipt of such notice, if buyer fails to pay or tender the price within time mentioned in notice or within reasonable time, the seller may resell goods.

In such cases, seller is also entitled to:

- Recover the difference b/w contract price and resale price, if the latter is lower from original buyer as damages.
- If resale price is higher than contract price, then the seller retains or keeps profits.
- Unpaid seller resells goods post exercising his right of lien or stoppage: The subsequent buyer acquires good title to goods even if seller has not given notice of resale to original buyer.
- Resale by seller where right of resale is expressly reserved in a contract of sale: If the contract of sale specifies that seller can resell goods if buyer defaults, then the seller reserves his right of resale. He can claim damages from original buyer even if he doesn't give a notice of resale to him.
- Property in goods has not passed to the buyer: The unpaid seller can exercise his right of withholding delivery of goods. This is similar to right of lien and is called quasi-lien.

RIGHTS OF UNPAID SELLER AGAINST BUYER:

When buyer of goods does not pay his dues to seller, seller becomes unpaid seller. And now seller has certain rights against buyer. Such rights are seller remedies against breach of contract by buyer. Such rights of unpaid seller are additional to rights against the goods he sold.

- Suit for Price (~~Sec 55~~) (Sec 55):

55(1): Under contract of sale if property of goods is already passed but he refuses to pay for goods, the seller becomes unpaid seller and he can sue buyer for wrongfully refusing to pay him his due.

55(2): If sales contract says that price will be paid at a later date irrespective of delivery of goods. And on such a day if buyer wrongfully refuses to pay, the unpaid seller may sue for price although the property has not passed and goods haven't been appropriated to contract.

- Suit for damages for non-acceptance (Sec 56): If buyer wrongfully refuses or neglects to accept and pay for goods, the seller can sue buyer for **damages** caused due to his non-acceptance. Since buyer refused to buy goods without any just cause, the seller may face certain damages. The measure of such damages is decided by Sec 73 of Indian Contract Act, 1872.

- Repudiation of Contract before due date (Sec 60):

When buyer repudiates the contract before date of delivery, such contract is considered as rescinded contract and so seller can sue for damages for breach. This is known as rule of '**Anticipatory Breach of Contract**'.

- Suit for Interest (Sec 61): If there is specific agreement b/w parties the seller can sue for **interest** amount due to him from buyer on such. This is when both parties have specifically agreed on interest rate to be paid from date on which payment becomes due.

But if parties do not have such specific terms, still court may award seller with interest amount due to him at a rate which it sees fit.

REMEDIES OF BUYER AGAINST SELLER:

Breach of contract by seller where he-

- * Fails to deliver goods at time or in prescribed manner.
- * Repudiates contract
- * Deliver non-conforming goods and buyer rejects @ revokes acceptance

• Damages for Non-Delivery (sec 57): Where seller wrongfully refuses or neglects to deliver goods to buyer, the buyer may sue seller for damages for non-delivery.

• Suit for specific performance (sec 58): Where seller commits breach of contract, the buyer can appeal to court for specific performance. The court can order for specific performance only when goods are ascertained or specific.

• Suit for breach of warranty (sec 59): When the seller breaches the warranty of goods or where buyer elects to treat breach of condition as breach of warranty, the buyer cannot simply reject goods on such basis. The buyer has two options in such a case,

* set up against ~~buyer~~ seller the breach of warranty in diminution or extinction of price. (or)

* Sue seller for damages for breach of warranty.

• Repudiation of contract before due date (sec 60): Where either party of contract repudiates contract before date of delivery, the other may either treat contract as ^{still in force} subsisting and wait till date of delivery or treat contract as ^{revoke or cancel} rescinded and sue for damages for breach.

• Suit for Interest: The Act specifically states that nothing in act will affect right of seller or buyer to recover interest or special damages due to him by contract. And if there is no special clause in contract, court comes to rescue of affected party and pays interest at a rate it thinks fit.

AUCTION SALE (sec 64):

An auction sale is a public sale. The goods are sold to all members of public at large who are assembled in one place for the auction. Such interested buyers are bidders.

The price they are offering for goods is bid. And goods will be sold to ~~high~~ bidder with highest bid.

The person carrying out auction sale is auctioneer. He is the agent of seller.

But if an auctioneer wishes to sell his own property as principal he can do so. And he need not disclose this fact, it is not a requirement under law.

Rules of an Auction sale:

- Goods are sold in Lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of separate contract of sale.
- Completion of contract of sale: The sale is complete when auctioneer says it is complete. This can be done actions like - falling of hammer or any such customary action.
- ~~But~~ Until such announcement is made, ^{any} bidder may retract from his bid.
- Right to bid may be reserved: Right to bid may be reserved expressly by seller or on behalf of seller. In such case, seller or any one person on his behalf can bid at auction.
- Sale is not notified by seller: If seller has not notified of his right to bid he may not do so under any circumstances. Then neither seller nor any person on his behalf can bid at the auction. If done it is unlawful.

The auctioneer also cannot accept such bids from seller or any other person on his behalf. And any sale that ^{violates} this rule is to be treated as fraudulent by buyer.

- Reserved Price: An auction sale may be subject to reserve price or an upset price. This means the auctioneer will not sell goods for any price below the said reserved price.
- Pretended Bidding: If seller makes use of pretended bidding, the sale is voidable at the option of buyer.

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SEC 64A)

Where after a contract of sale has been made but before it has been performed, tax revision takes place. Where tax is being imposed, increased, decreased or remitted in respect of any goods without any stipulations to payment of tax, the parties ^{would} ~~must~~ become entitled to readjust price of goods accordingly.

Following taxes are applied on sale or purchase of goods:

- Any duty of customs or excise on goods.
- Any tax on sale or purchase of goods.

Excluded by an agreement to the contrary

Buyer pays increased price if Tax ↑

Buyer may derive benefit if Tax ↓

JUS IN REM: Right against a thing at large (Right against property)

JUS IN PERSONAM: Right against a specific person

EXAMPLES:

1) Mr. X owns 10 acres of land. Here Mr. X is having full liberty to enjoy the land against every member of the public. Likewise every member of public has an obligation that they should not disturb the right of Mr. X. This right of Mr. X is known as Jus in Rem.

2) Mr. A owes an amount of Rs. 10,000 to Mr. B. Here Mr. B has the right to recover this amount from Mr. A and only from Mr. A and not from anybody else. This right of Mr. B is known as Jus in Personam.

A right in rem is available against whole world but a right in personam is available against a particular individual only.