

# SALES OF GOODS ACT. , 1930

## Definition :-

Seller → Section 2(13).  
means a persons  
who sells  
or  
agrees to sell. } Goods.  
Natural  
Artificial.

Buyer → Section 2(1)  
means a person  
who buys  
or  
agrees to buy } Goods.

Goods → Section 2(7).  
means every kind of MOVABLE PROPERTY

### Includes.

Stocks, shares, growing crops, grass and things attached to earth or forming <sup>part</sup> of land which are agreed to be severed before sale or under contract of sale.

### Other than

Actionable claims and money.

## SALE AND AGREEMENT TO SELL (SEC-4) (1)

Contract of Sale of Goods is a contract

(i) Seller transfers (Sale)

OR

(ii) Agrees to transfer. (Agreement to sell)

→ To the ~~buy~~ buyer for A PRICE

} Property  
(ownership) → in goods.

## \* CONTINGENT GOODS {Section 6 (2)}

Acquisition of which by seller

**DEPENDS UPON UNCERTAINTY**

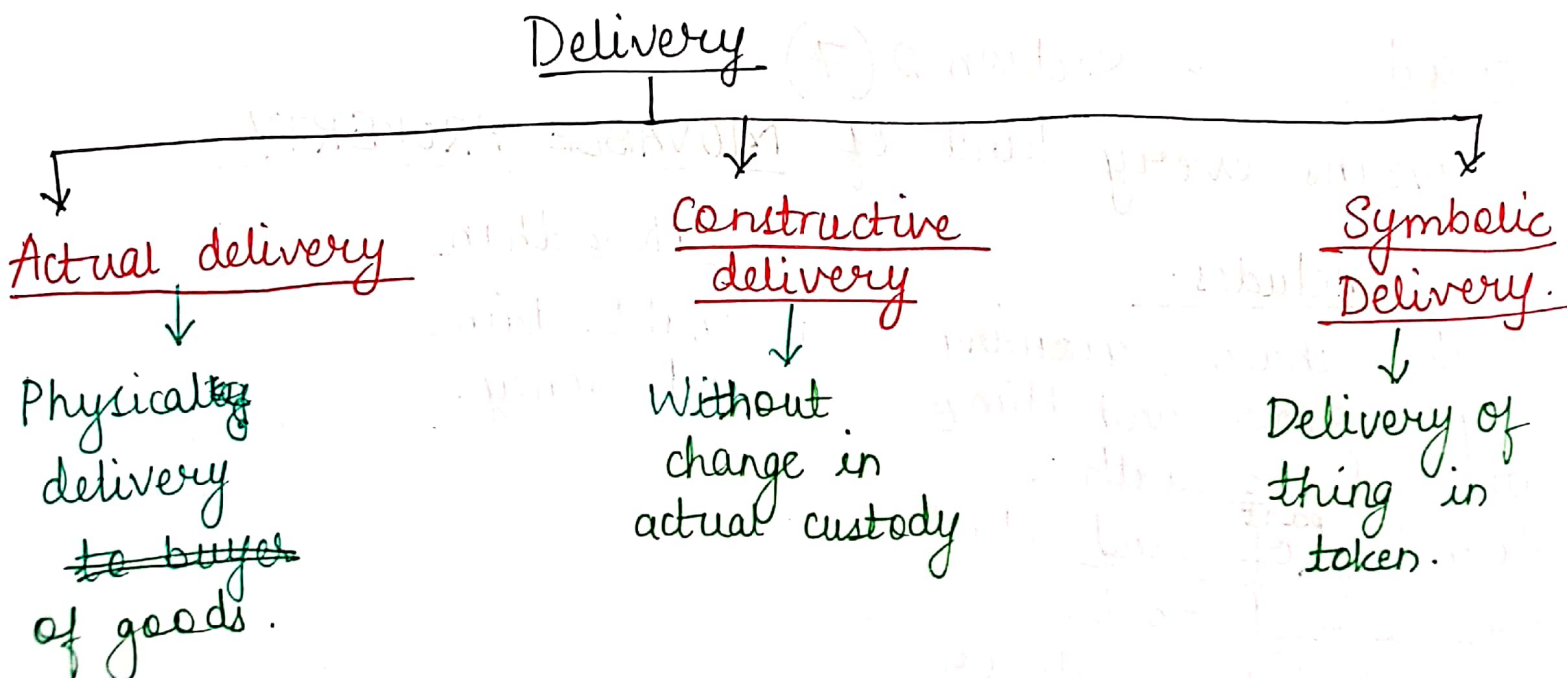
**CONTINGENCY** (uncertain event).

are called contingent goods.

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## \* Delivery [Sec 2(2)]

- Voluntary transfer of possession.
- From one person to another.



## \* Document Of Title To Goods : [Section 2(4)]

Includes :-

- ① Bill of lading
- ② Dock - Warrant
- ③ Warehouse Keeper's Certificate
- ④ Wharfingers Certificate
- ⑤ Railway Receipt
- ⑥ Multimodal transport document
- ⑦ Warrant or order

(Not exhaustive, its an inclusive definition).

For the delivery of goods and any documents used (other).

In the ordinary course of business

As a proof of possession or control of goods or authorising or purporting to authorise

By endorsement or by delivery.

\* The possessor of the documents to

Transfer  
OR  
Receive

goods

represented in document.

\* Essential elements which must exist in the contract of sale of goods :-

- 1) Two Parties → Bilateral contract.
- 2) Subject Matter.
- 3) Price.
- 4) Transfer of property.
- 5) Absolute or conditional.
- 6) All other essential elements.

\* Differ between Sale & Agreement to Sale.

	Sale	Agreement to Sale.
1) Transfer of property		
2) Name of Contract.		
3) Remedies for breach.		

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\* SALE V. HIRE PURCHASE



Governed by Hire Purchase Act, 1972.

MEANS

Agreement

Goods let on hire and  
Hirer has an OPTION ON  
TO PURCHASE

INCLUDES

- (a) POSSESSION OF GOODS  
DELIVERED
- (b) Property in goods passed  
on payment of last  
installment.
- (c) Right to terminate  
agreement ~~at~~ ANYTIME  
before property is passed

	SALE	HIRE PURCHASE.
① Time of passing of property.	Immediately	Upon payment of last installment.
② Position of party.	Buyer	Hirer.
③ Termination.	Buyer cannot terminate the contract.	Hirer cannot <del>not</del> terminate contract anytime before passing of property.
④ Burden of risk of insolvency of buyer.	Seller	Owner can take back the goods.
⑤ Transfer of title.	Buyer can transfer the title.	Hirer cannot transfer the title until payment of last installment.
⑥ Resale.	Buyer can resale.	Hirer cannot resale.

## Sale V. Bailment

### Bailment

Delivery of goods for some specific purpose <sup>possession</sup> <sup>on completion of specific purpose</sup>

On condition

Same goods are to be returned to Bailor <sup>who gives delivery</sup> → Bailee <sup>who takes delivery</sup>  
'OR'  
 are to be disposed off according to direction of bailor.

Basis	Sale	Bailment
Transfer of property	Immediately	Only possession is transferred.
Return of goods.	Buyer cannot return the goods.	Bailee has to return the goods.
Consideration	Money consideration	Money consideration (Not Gratuitous) or (Gratuitous).

## \* Sale v. Contract for Work & Labour

↓  
[Goods are not sold]

Only doing of some work of labour

## \* Contract of Sale. How made? (Sec 5).

Any of the following modes

- ① Offer → 

→ Buy	→ goods.
→ Sell	→ By one person

  
and  
Acceptance of same → by other person.

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- ② Immediate delivery of goods.
- ③ Immediate payment of price & delivery at future date.
- ④ Immediate delivery and Immediate Payment.
- ⑤ Installment → 

→ Delivery
→ and
→ Payment.
- ⑥ Both in future date.



\* Goods perishing before making of contract (Sec 7)

Contract of SOG.

**SPECIFIC GOODS**

Contract → Void

If goods WITHOUT KNOWLEDGE OF  
SELLER

- ① physical damage
- ② commercial value down
- ③ stale.

At the time of contract of

**Perished** or so damaged

As to No longer to answer their description.

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\* Goods perishing before sale but after agreement to sell [Sec 8]

When there is an **agreement to sell**

Specific Goods.

and

Subsequently goods without ~~knowledge~~ any fault

— buyer

or

— seller → perish or become so damaged

↓ ownership

before risk passes to buyer

**Agreement** → **Avoided** → declared void

- \* Ascertainment of Price [Section 9] → fixing the price/calculating/determining.
- ① Fixed by the contract.
  - ② Agreed to be fixed in a manner provided by the contract.  
OR  
eg. third party valuation, majority decision, auction.
  - ③ Determined by course of dealing between the parties.

\* Agreement to sell at Valuation [Section 10].

Third party cannot or doesn't } make such valuation → Agreement avoided.  
Third party valuation.

\* What if?

good or any part } <sup>in possession</sup> delivered and appropriated } → by the buyer  
brought in use.

Buyer shall pay reasonable price prevailing in the market.

\* What if?

Third party prevented from valuation?

Party not in fault may maintain a suit for damages if they wish.  
case

# UNIT - 2. Conditions & Warranties

## Stipulation [Requirement]

### Section 12 (1)

#### Condition

Stipulation essential to main purpose of contract

Warranty  
Stipulation collateral to main purpose of contract.  
secondary

#### Effect of Breach (2).

- Right to repudiate the contract.
- Reject goods.
- Refund price.

#### Effect of Breach (3)

- Right to claim for damages
- No right to repudiate contract or reject the goods.

\* When condition to be treated as warranty [Section 13]

① When buyer <sup>surrender</sup> waive the condition (Sub sec. 1).

Effect :- Buyer will lose the right to repudiate, refund and reject.

② When the buyer elect to treat the condition as (sub sec. 1)  
Effect :- Buyer will lose the right to repudiate, refund and reject.



③ When contract is not severable (Sub Section 2).  
Breach of condition → warranty.

④ Nothing shall effect (Sub Section 3).

↓  
Breach of condition  
or warranty

↓  
Excused by impossibility  
or otherwise

\* Expressed & Implied Conditions & Warranties  
[Section 14 to 17]

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### Conditions & Warranties

↓  
Express

Agreed upon and  
expressly provided

Note :- Parties by  
express agreement  
neglect the  
implied condition  
given by law.

↓  
Implied

Presumed by  
law to be  
present



## \* Implied Conditions :-

### ① Conditions as to title :-

Sale → Seller has the right to sell.

Agreement to sell → will have right to sell goods at the time when property is to pass.

### ② Sale by description :-

Goods shall correspond with the description.

Principle = If you contract to sell peas you can't sell beans.

It is essential to know whether the description was essential for identifying goods.

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### Deemed to Sale by Description

① Where class or kind specified.

example :- Banarasi saree, Kolkata Bangles, etc.

② Where goods is described by characteristics

Example :- Iphone Premium & Gold edition.



Note:- 1. If all the following conditions are satisfied then there will be Implied condition for quality or fitness.

- ① Buyer had made known to seller purpose of his purchase
- ② Buyer relied on seller's skill and judgement
- ③ seller's business to supply goods of that description.

Note:- 2. Implied condition for quality or fitness does not apply when goods are brought under Trademark or Patent Name

(vi) Condition as to merchantability [Section 16(2)]

\* Goods sold by description.

\* By seller who deals in goods of that description, [whether he is manufacturer or producer or not]

Implied Condition.

Goods shall be of merchantable quality.

(vii) Condition as to wholesomeness :- healthy  
Eatables & Provisions.

- ① Condition as to merchantability
- ② Goods shall be wholesome.



## \* Implied Warranties

① Warranty as to undisturbed possession :-

Buyer

Have and enjoy quite possession of goods.

② Warranty as to non-existence of encumbrances not declared or known to the buyer.

pledged or charged

③ Warranty as to quality or fitness by usage of trade [Section 16(3)]

↓  
here custom

④ Disclosure of dangerous nature of goods.  
The seller must warn the buyer of the probable damage.



## \* CAVEAT EMPTOR

↓  
"Let the buyer beware"

When seller displays goods in open market

↓  
Duty of buyer

↓  
To make a proper selection  
or choice of goods

\* Seller not liable :-

→ If goods turn out to be defective

\* Seller not bound to disclose :-

→ Seller no way responsible for bad selection of buyer.

Exceptions :-

① Fitness as to quality or use

Priest V. Last

Bombay ~~Burk~~ Burma Trading Corporation

v.  
Aga Muhammad.

② Goods purchased under patent or Brand name

③ Goods sold by description.

④ Goods of merchantable quality.

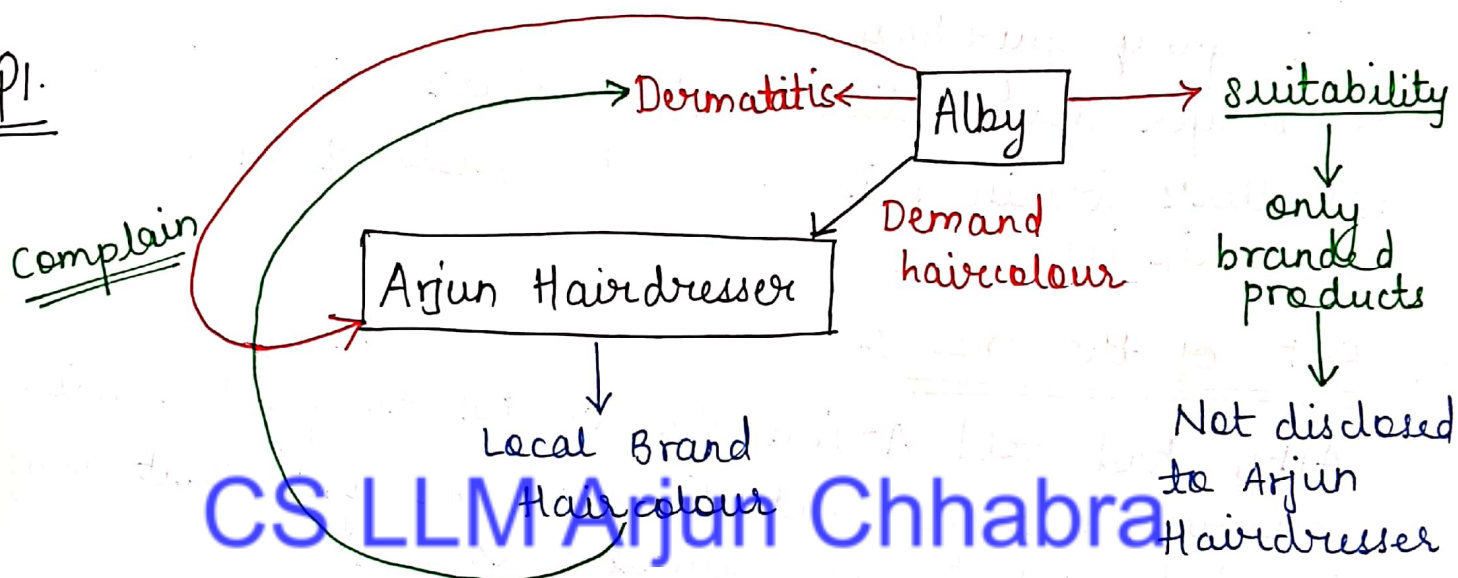
⑤ Sold by sample

⑥ By sample + description

⑦ Trade usage

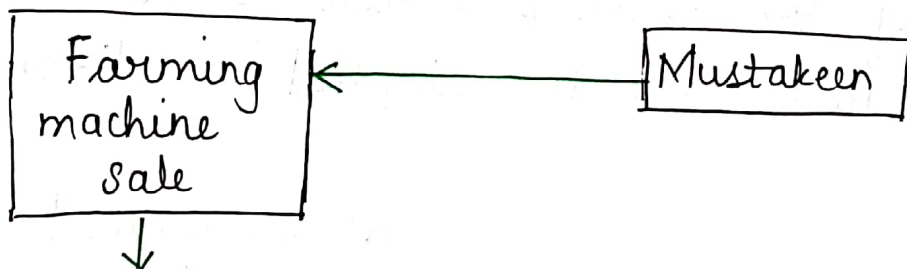
⑧ Seller actively conceals a defect or is guilty of fraud.

Q1.



Decide → Implied condition breached or not?

Q2



There is 1 machine, new "one year old" machine.  
used only to cut grass of 50 acres.

At the time of delivery :-

- 2 years old
- 500 acres used.

Implied condition breached or not?

## UNIT-3 :- TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS.

### \* Transfer of ownership

Passing of property

↓  
Delivery of goods

↓  
Passing of risk

### \* Importance of Time Transfer

Risk passes with the property. → General rule

### \* What if goods damaged or destroyed?

Loss will be borne by the owner, even if goods are in possession of the seller.

### \* 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 the property is passed.

\* Time of transfer of <sup>ownership</sup> Property in goods.

[A] Transfer of property in ascertained/specific goods.

- ① Intention of parties  
↓
- ② Terms of contract & circumstances of case  
↓
- ③ Still can't figure out intention  
↓

Section 20-24

① Specific goods in a deliverable state [Section 20]

- a) Property passes when contract is made.
- b) Property passes immediately even if pay and delivery is postponed.

② Specific goods in deliverable state, but price not ascertained [Section 22]

Property passes only after  
Seller has  
→ weighed



→ measured

→ tested

'OR'

does some other action or thing to ascertain.

### ③ Specific goods not in a deliverable state [Sec 21]

When seller has done some action and put the goods into deliverable state and buyer has notice thereof.

### \* Unascertained Goods [Section 18 to 23]

When property will pass?

Ans :- Goods 

Selection of goods  
With the intention of using them in performance of contract.

and

with the mutual consent of the seller & the buyer

\*. For property to pass following condition must be satisfied. [Section 23]

a). Goods of the description mentioned in the contract must be produced or obtained.

b). Deliverable state.

c). Unconditionally appropriated

i) Seller delivers the goods to :-

buyer  
'OR'  
carrier  
'OR'  
other bailee

For transmission of goods to buyer

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ii) Does not reserve the right of disposal (sale) Doesn't keep the right to sale with himself (seller).

d). Assent → expressly  
→ impliedly

can be either → before  
→ after } → Appropriation

\* Example :- "A" → Having quantity of sugar in bulk [obtained]

\* Sufficient to fill 20 bags.

\* Contract to sell 20 bags to B.

Ascertained/  
Deliverable state ← \* After contract → Fills 20 bags of sugar

\* And gives notice to B.

\* B says he will take them as soon as possible.

By this appropriated by A  
and  
Assent by B } Property passed to B.

\* Goods sent on approval or on Sale or Return Basis.

- a). Approval
- b). Retain Goods
- c). Adopting the transaction  
ownership passed.
- Time fixed within 2 days → Deemed approval.
- Time not fixed → Decision approval or return/reject → within a reasonable time.

\* Sale for cash only or return when property will pass.



## \* Risk Passes with Property → Exceptions.

- a) Delayed delivery
- b) Special agreement between parties.
- c) Trade usage

Note :- Nothing contained in Sec 26 shall affect the duties & liabilities of bailee.

Nemo dat quod non <sup>habet</sup> ~~habet~~

↓  
No one can transfer better title than he himself has

## Transfer by non-owner [Sec 27] [Exceptions]

If buyer acquire it  
→ bonafide (good faith)  
and  
→ For value.

## \* Exceptions :-

### (1) Sale by a merchantile agent [section 27]

- (a) Possession of goods or document of title → Consent of owner.
- (b) Sell → Ordinary course of business
- (c) Buyer
  - Good faith
  - Value.
- d) Not aware of seller authority to sell.

(2) Sale by Joint owner [Section 28]

a) Sale possession of goods with permission of other buyer.

b).

(4) Sale by one who has already sold goods but continues possession [Section 30(1)]

(5) Sale by buyer obtaining possession before property passes [Section 30(2)]

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(6) Effect of Estoppel

True owner by his conduct, Act or omission leads the buyer to believe that seller has the authority to sell or induce buyer to buy the goods.

(7) Sale by an unpaid seller [Section 54(3)]

(a) Person making sale → unpaid seller.

(b) Us → exercise → right of lien

and

or stoppage in transit → insolvent

in possession of goods.

(c) Without notice to previous buyer.

(8) Sale under other provisions.

(a) Liquidator

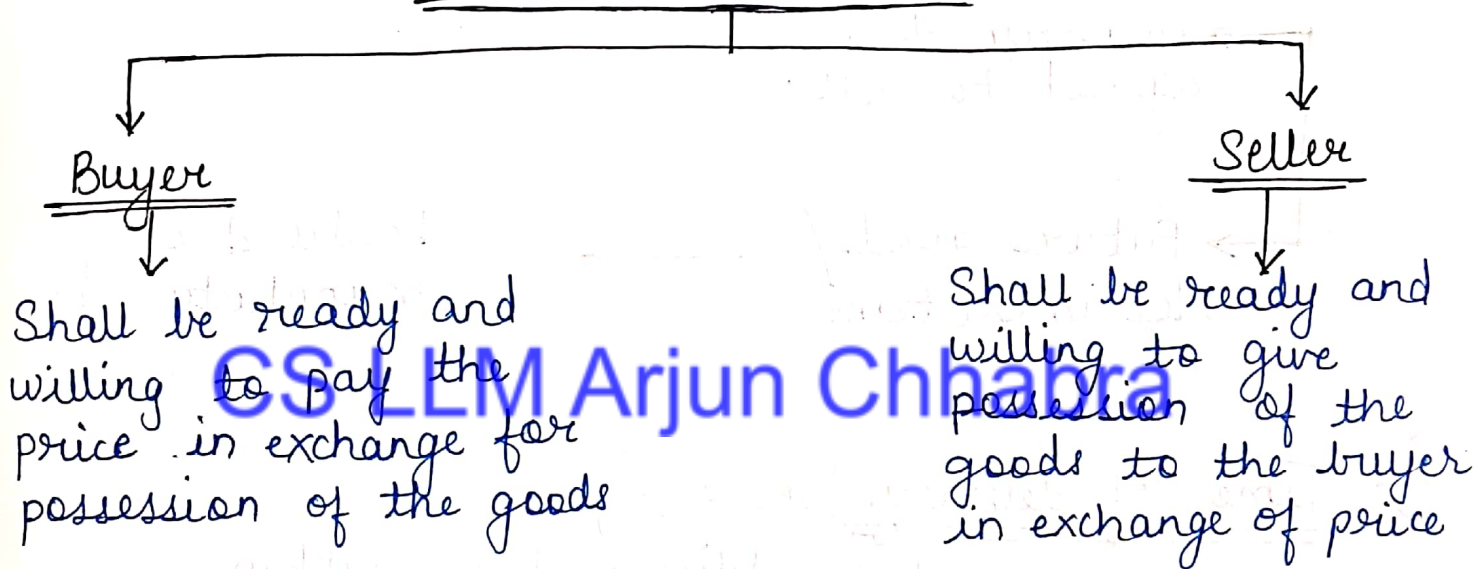
(b) Finder of lost goods.

(c) Sale by Pawnee.

\* Payment & Delivery are <sup>simultaneously</sup> Concurrent conditions

[Section 32]

Unless otherwise agreed  
concurrent conditions



\* Rules regarding delivery of goods. [Sec 33-34]

ii) Effect of Part Delivery [Sec 34]

a) Part delivery = Delivery

If so intended and agreed.  
had the intention

b) Part delivery = No delivery (Part delivery)

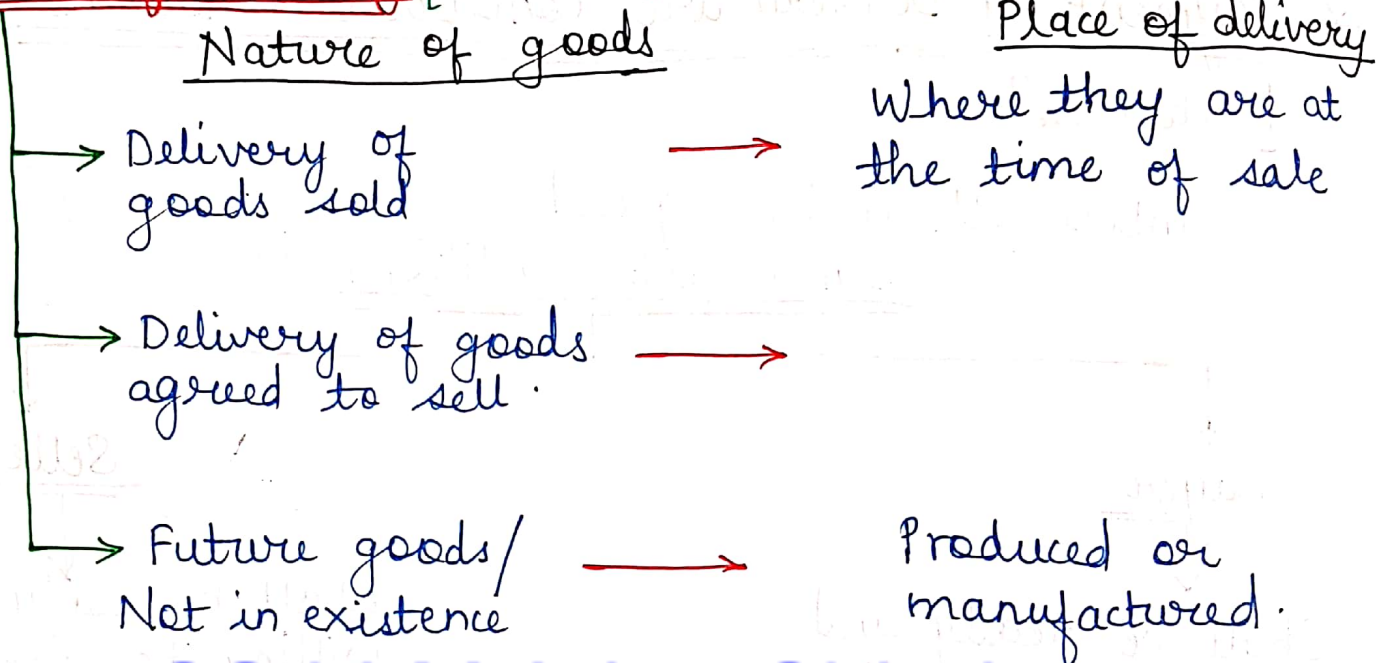
Where part is intended to be severed from the whole.



### iii) Buyer to Apply for delivery [Section 35]

- Unless otherwise agreed.
- Seller not bound to deliver.

### iv) Place of delivery [Sec 36(1)]



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### v) Time of delivery [Sec 36(2)]

- Seller is bound to deliver them within a reasonable ~~place~~ time.

### vi) Goods in possession of a third party [Sec 36(3)]

- No delivery unless third person acknowledge to the buyer.

### vii) Time for tender of delivery [Sec 36(4)]

#### Ineffectual delivery.

- If not made in reasonable time.

viii) Expenses for delivery [Sec 36(5)]

→ Unless otherwise agreed  
Borne by the seller.

ix) Delivery of wrong quantity [Sec 37]

Unless otherwise agreed

↓  
Short delivery

- a) Reject <sup>the</sup> goods
- b) Accept and pay as per contracted price [Sub-sec 1]

↓  
Excess

- a) Reject in full.
- b) Accept the contracted and reject the excess.
- c) Accept the whole [Sub-sec 2]

Mixed

- a) Accept the contracted goods & reject the rest.
- b) Reject the entire lot. [Sub-sec 3]

x) Installment Deliveries [Sec 38]

Unless otherwise agreed

→ Buyer is not bound to accept delivery in installment

xi) Delivery to carrier [Sec 39(i)]

Delivery to carrier is prima facie delivery to buyer.

xii) Deterioration during transit [Sec 40]

Goods → Delivered → Distant Place

Liability → <sup>or</sup> Deterioration → incidental to transit  
→ borne by buyer, though seller agrees to take risk.

xiii) Buyer's right to examine goods [Sec 41]

Who has not previously examined the goods.

\* Acceptance of delivery by Buyer [Sec 42]

Deemed

- ① Intimate → to seller
- ② Does some action inconsistent with ownership of owner.
- ③ Retains goods after reasonable period without rejecting.

Buyer not bound to return rejected goods [Sec 43]

Unless otherwise agreed

→ If buyer refuses the goods in his right to do so.

→ Buyer not bound to return — Intimation of rejection/ ~~is~~ refusal is sufficient.



\* Liability of a buyer for neglecting or refusing delivery of goods. [Sec 44].

If buyer does not within reasonable time take delivery of goods

→ Buyer liable to seller for any loss occasioned by his ~~neglect~~ negligence

'OR'

→ Refusal to take delivery.

'OR'

→ Also for reasonable charges for the care and custody of goods.

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## \* UNIT - 4 - UNPAID SELLER

### ① \* Unpaid Seller [Sec 45(i)]

Seller → Deemed unpaid seller

#### (a) Non-payment

→ Whole price not paid or tendered <sup>presented</sup>.

#### (b) Dishonour of Negotiable instrument

→ Bill of exchange or other negotiable instrument received.  
↓  
cheques, promissory notes

→ For conditional payment.

→ Condition → Not fulfilled

Dishonour

Otherwise

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### ② \* Seller to include agent [Sec 45(2)]

→ Any person

→ Who is in a position of a seller

Ex. → Seller's agent } Directly responsible  
→ Consigner } for price.

### ③ Small Dues

→ Substantial amount paid.

→ Small dues pending.

→ Seller → Still unpaid seller

#### ④ Rights [Sec 46]

### Rights of Unpaid Seller

#### Against the goods

When property in goods passed

Right :-

- Of lien on goods → (retain)
- Stoppage in transit → (regain)  
if buyer becomes insolvent
- Right of resale.

#### Against the buyer

Right to sue

→ Price

→ Damage

→ Interest.

When property not passed

Additionally right of withholding delivery.

\* Right of lien [Sec 47] (possession still with seller)

① When to retain possession

→ Till tender or payment of price

\* Situations

- a) Goods sold → without credit i.e. for cash.
- b) Goods sold → credit → period expired.
- c) Buyer becomes insolvent.

## ② Rules regarding Right of Lien

- Goods must be in possession.
  - Possession lost → Right of lien lost.
  - Goods delivered to carrier
  - but document of title → seller's name  
ie. seller reserved right of disposal.
- } Deemed right of lien

## ③ Lien only for Price

- Not for any other expenses
  - Godown charges
  - Interest, etc.

## ④ Part Payment

- Seller may refuse to deliver a part of goods on proportionate payment of price.

## ⑤ Lien of Partly Delivered/Retained Goods.

Unpaid Seller → Part delivery.

↓  
He can exercise → Remainder.  
Right of lien

However

Part delivery = Full delivery

Right of lien lost.



## ⑥ Lien irrespective of decree [Sec 49(2)]

<sup>court's order</sup>  
court orders to pay money.

ROL → can be exercised even though seller has obtained decree for price of goods.

## ⑦ Termination of lien [Sec 49(1)]

- (a) When he delivers the goods to carrier and does not reserve right of disposal.
- (b) Buyer or agent lawfully obtains possession of goods
- (c) Seller waives right of lien
  - Express
  - Implied.

## \* Right of Stoppage in Transit

When can be stopped

Only when buyer becomes insolvent.

## \* Conditions

- (a) Lost right of lien / lost possession.
- (b) Buyer → Insolvent.
- (c) Notice
  - person actual possession
  - principle

## d) Deemed to be ~~insolvent~~ in transit

From the time delivered to the carrier until buyer takes delivery from them.

### (e) Redelivery to Seller

Seller → gives notice to stoppage in transit.

Carrier → redeliver goods to seller

Cost → seller

(f) Goods in transit can be stopped only for price.

### (3) Manner of Affecting Stoppage in Transit

(a) Taking actual possession.

(b) Notice.

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### (4) Loss of Right of Stoppage

(A) If buyer or agent obtains delivery before their arrival at their destination.

### (B) Acknowledgement by Carrier

Carrier or bailee acknowledges to buyer or agent that he held goods on his behalf

and continues possession even if buyer indicates another destination.

### (c) Delivery to ship :-

Ship chartered by buyer

↓  
Transit ends when loaded.

Ship or carrier → Independent

↓  
Transit continues

### (D) Wrong denial to deliver by carrier

Carrier/bailee wrongly refuses to deliver -

Transit deemed to be at an end.

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### (E) Sub Sale

With seller's consent leads to loss of right of stoppage in transit.

### \* Right of Resale (possession necessary)

#### Rules to Resale

a) Goods — Perishable nature

OR

Unpaid seller → Gives notice to buyer of his intention to resell.



(b) Buyer

→ does not pay  
OR.

→ tender price in reasonable time.

### Unpaid Seller's Right

Resell goods in reasonable time  
OR.

Recover from original buyer damages for loss occasioned by his breach.

### Buyer's right

- Not entitled ~~on~~ to any profit on resale.
- Advance of buyer is returned by deducting damages.

### Perishable Goods

Unpaid Seller → Resell without notice

Good title to subsequent buyer

### Express Contract

By seller to reserve right of resale on buyer making default.

### Effect

- original contract rescinded cancel
- seller's right of damage will not be affected
- ~~Not~~ no notice required to be given.



## Effect of Stoppage

Contract of resale not rescinded when seller exercise his right of stoppage in transit.

\* Remedies available to seller against buyer

### ① Suit for Price

- (a) → Property passed  
→ Buyer  
→ wrongfully neglects  
or  
→ refuses to pay price.  
→ seller can sue buyer for price

### (b) Price Payable

- certain day  
→ irrespective delivery.  
→ Buyer → wrongfully refuses  
→ refuses to pay.  
→ & Seller may sue for price.

### ② Damages for Non-acceptance

### ③ Repudiation of Contract before due date

Buyer → Repudiate contract before due date.

## Options to Seller

→ Treat the contract as subsisting and wait till the date of delivery  
OR.

→ Treat the contract as rescinded and sue for damages.

## ④ Interest by way of damage and special damages

Buyer → wrongfully refuses  
→ neglect to accept and pay the price.

## \* Further Right

→ To claim interest on the amount of price.  
→ Seller can claim interest only when he can recover price.

## \* Remedies of Buyer Against Seller.

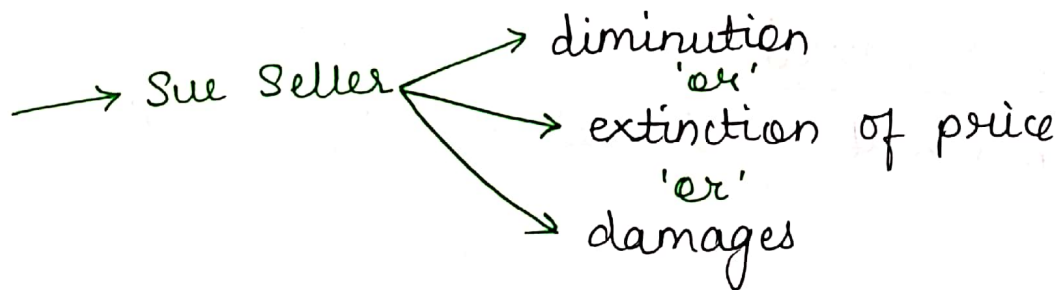
① Damages for non-delivery.

② Damages for specific performance

→ Buyer can appeal to the court for specific performance.

③ Suit for Breach of warranty.

→ Buyer not entitled to reject the goods.



④ Repudiation of contract before due date.

⑤ (a) Suit for interest

→ Buyer → Right to recover money

→ for breach of condition as to title.

(b) Right to claim interest on Price → (when buyer had done advance payment)

(c) Only when he can recover price.

\* Sale By Auction

(A) Where goods are sold in lots

→ Each lot is deemed to be separate contract of sale.

(B) Completion of Contract of Sale ~~when~~

When auctioneer announces its completion by fall of hammer. Until such announcement any bidder may retract from bids.

Right of Bid may be reserved

May be reserved expressly by the seller.  
always expressed.



## When right is reserved.

Any person on behalf of the seller may bid at the auction.

### \* Reserved Price

The seller may be subject  
to reserve  
or  
upset price

### \* Pretended Bidding

Sale is voidable at the option of buyer.

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