

# Unit - 01

## The Sales of Goods Act 1930

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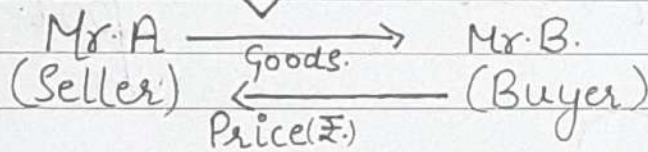
- 16 Marks.

◦ What is goods?

### INTRODUCTION

#### Movable Property

“Goods means every kind of moveable property other than actionable claims and money includes stock, shares and growing crops, grass things attached to / forming part of land which are agreed to be severed before sale or under the contract of sale.”



◦ Ex-1. Mr. A (Seller)  $\xrightarrow{\text{Maggi}}$  B (Buyer).  $\Rightarrow$  [This is a case of ownership immediately transferred].  
 $\xleftarrow{\text{₹12}}$

◦ Ex-2. A  $\xrightarrow[\text{Sell}]{\text{Promise to Bike (15 July)}}$  B  
 $\xleftarrow{\hspace{2cm}}$

₹60000 will be paid on (15 July).

(∴ Therefore Ex-2 is a case of ownership to be transferred on a future date)

\* Goods can be of any kind

◦ Gas

◦ Liquid

◦ Solid

◦ Tangible goods.

◦ Intangible goods.  $\Rightarrow$  Eg :- Goodwill.

\* Note Actionable claims of money are never be treated as goods.....

\* What is an actionable claim?

↓  
\* Can be enforced only by an action or a suit eg. Debt.

\* A debt is not a movable property so, not treated as a good.

\* What is Ownership of goods?

That is <sup>in</sup> exchange of price

↓  
\* General Property

Owner who has all the rights in goods.

\* How is GENERAL property diff. from SPECIAL property.

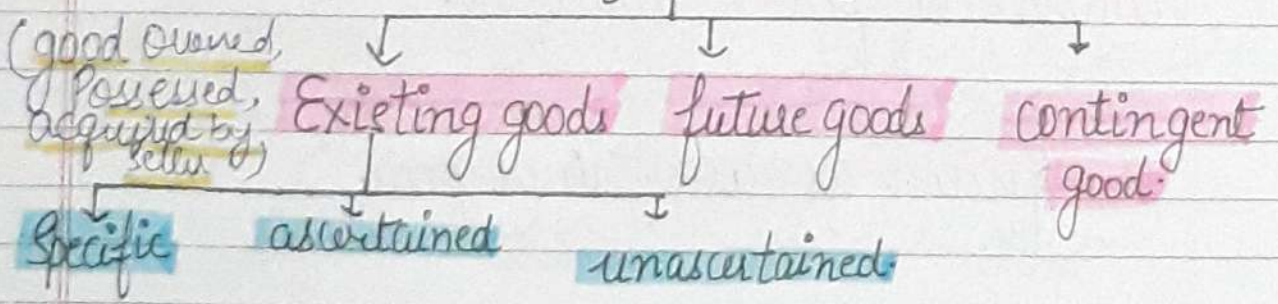
→ all Rights in Goods ...

\* Only a few rights with a Person but not all ...

\* A person in ownership has all rights.

- right to use.
- right to destroy.
- right to Pledge.
- right to Control.
- right to income.
- right to gift / donate.

## Classification of goods



Specific goods ⇒ goods identified & agreed!

at the time of  
contract of sales.

Eg:- A  $\xrightarrow{\text{Car.}}$  B  
A  $\xleftarrow{\text{£ 7,00,000.}}$  B

In case, the sale is for specific goods as car is being identified and agreed at the time of contract of sale.

Ascertained Goods ⇒ identified in accordance with agreement after the contract sales.

out Large quantity

No. of quantity contracted for is identified.

Known as ascertained goods.

/// Eg:- Wholeseller has cottons

↓  
100 Bales.

↓  
agreed to sell 50 Bales as were Selected

→ identified and agreed.

/// Note:- Before the ascertainment of Goods, the contract was for the sales of uncertained Goods.

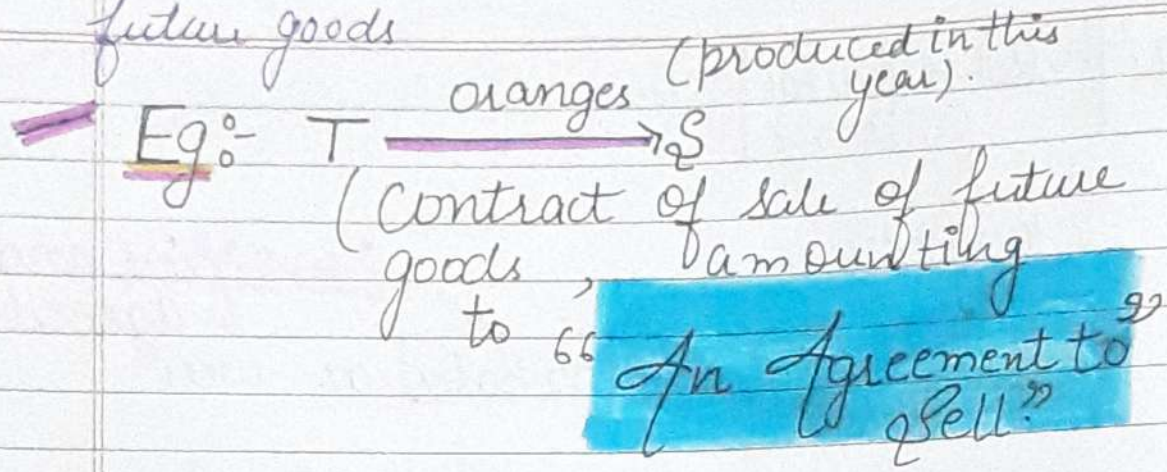
/// Unascertained Goods:-> all those goods which are not specifically identified or ascertained at the time of making a contract.

Eg:- Mr. X — 10 horses

↓  
He promises with Mr. X to sell one of his horse but not  
There is no any specific information about that horse.



future goods

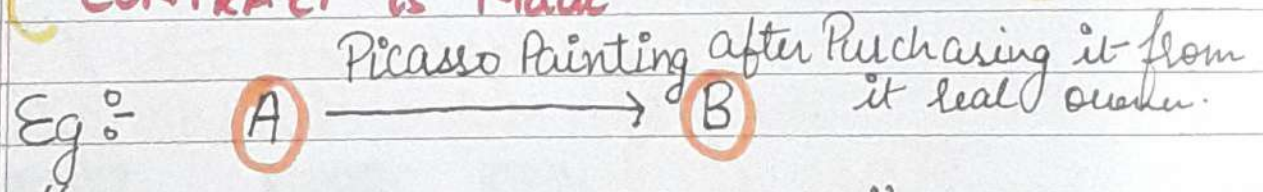


(iii) Contingent Goods :- acquisition of which by seller depends upon uncertain event / contingent event.

**NOTE:-**

AS IN FUTURE GOODS CASE COMES IS "Agreement to Sell". IS AS SIMILAR IN CONTINGENT GOODS

"AS THERE IS NO ANY TRANSFER OF PROPERTY / OWNERSHIP WHEN THE CONTRACT IS MADE"



"This is a Contingent contract."

# Sales and Agreement to Sell

Contract of sales of goods ⇒ May absolute or condition  
-al

Contract

Seller agrees to transfer or transfers the property in goods

↓  
To Buyer for a (₹) Price.

CONTRACT  
OF SALES  
2 TYPE

Sales

2. AGREEMENT

To  
SELL

1. Where under a contract of sale the property in the goods is transferred from the seller to the buyer, "Sale."

2. Where there is a transfer of property in goods is to take place in future date or subject matter to some condition there after to be fulfilled it is called "agreement to sale"

# ELEMENTS

## MUST

### Co-Exist.

1. There must be Two Parties
2. It must be necessarily to be goods covering only movable property.
3. A Price must be money (not kind).
4. The contract of sale is made by an offer to buy and sell good for a price by one party and the acceptance of such offer by other.
5. Contract may be absolute or conditional.
6. Essential elements like:
  1. Free consent
  2. competency
  3. legality of objectetc.





diff. Sale

Transfer of property • Property Passes to buyer immediately.

Nature • Executed contract

Remedies • Seller can sue the buyer for the price of goods.

Liability • a subsequent loss of goods is the liability of buyer.

Burden of risk • risk of loss is of buyer.

nature of right of resale • Seller can't resell goods.

insolvency of seller • official assignee will not be able to take goods but recover price.

insolvency of Buyer • official assignee can't have control on goods.

agreement to sale

• goods's Property Passes to buyer on future date or on fulfilment of condition.

• Executory contract.

• The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.

• Any loss or destruction is lia. of seller.

• size of loss is that of seller.

• Seller can sell goods.

• official assignee can have control over goods but price can't be reco-  
-vable

• official assignee will not.

## c: Delivery - its forms and delimitation

Voluntary transfer of possession of goods from seller to buyer.

has the effect on putting the goods in the possession of buyers or any other person authorized to hold them on his behalf.

## \* DELIVERY OF GOODS

\* ✓ actual delivery  $\Rightarrow$  (goods physically delivered)

Transfer  $\rightarrow$  possession of goods  $\rightarrow$  buyer or third person  $\rightarrow$  authorized to hold goods on buyer's behalf.

\* ✓ Constructive delivery  $\Rightarrow$  when it is affected without any change in the custody or actual possession of the things as in the case of delivery by acknowledgement.

\* ✓ Symbolic delivery  $\Rightarrow$  where there is a delivery of things in token of transfer of things else.



Goods are said to be deliverable.



When they are in such a condition that buyer would



under the contract



we bound to take the delivery of them.

Diff. b/w

Sales

VS

Hire-Purchase

Time of passing of property

Property in goods is transferred immediately.

Property of goods to the hirer is based upon the payment last installment.

Position of Party

The buyer here is the owner of goods.

The hirer is liable till he pays last installment.

Termination of contract

Buyer can't terminate the contract as bound to pay (F).

The hirer can give back the goods without liability of further payments and can terminate contract.

Burden of risk of insolvency of buyer

The seller takes risk of loss resulting from the insolvency of buyer.

The owner takes no such risk.

Transfer of Title: Buyer can give title to the bona fide Purchaser.

Hise can't give title to the bona fide Purchaser.

Resale: Buyer can resale the goods.

Hise purchaser can't title he pay all the installments.

Sales.

vs.

Bailment.

Transfer of property The property in goods is transferred from seller to buyer. (General Property).

There is only transfer of possession of goods. (Special property).

Return of goods. Not possible.

must return.

Consideration is the price in [money's terms]

may be gratuitous or non-gratuitous.  
↑ (w/o consideration)  
↓ (with consideration)

Sales and contract for work and labour.

goods to be sold for some price or to be sold.

but when no good are sold and there is only work's rendering.

This is called contract for work & labour not of sale of goods.



Eg: → (A) → (B) → goldsmith.  
 Gold Biscuit and asked him to make its (ring of gold).

It is not Bailment. Not sales but only a work which is to be rendered by Goldsmith.

\* Definitions: → 1. Documents of title to goods: Bill of lading, dock warrant, warehouse keeping certificate, wharfinger's certificate, multimodal transport document, railway receipt, warrants or order of delivery of goods.

↓  
 Any other document which is used in ordinary course of business

↓  
 as a proof of possession or control on goods, in authorizing the authorize

↓  
 either endorsement or by delivery

↓  
 possession of the documents transfer or receive of the goods:

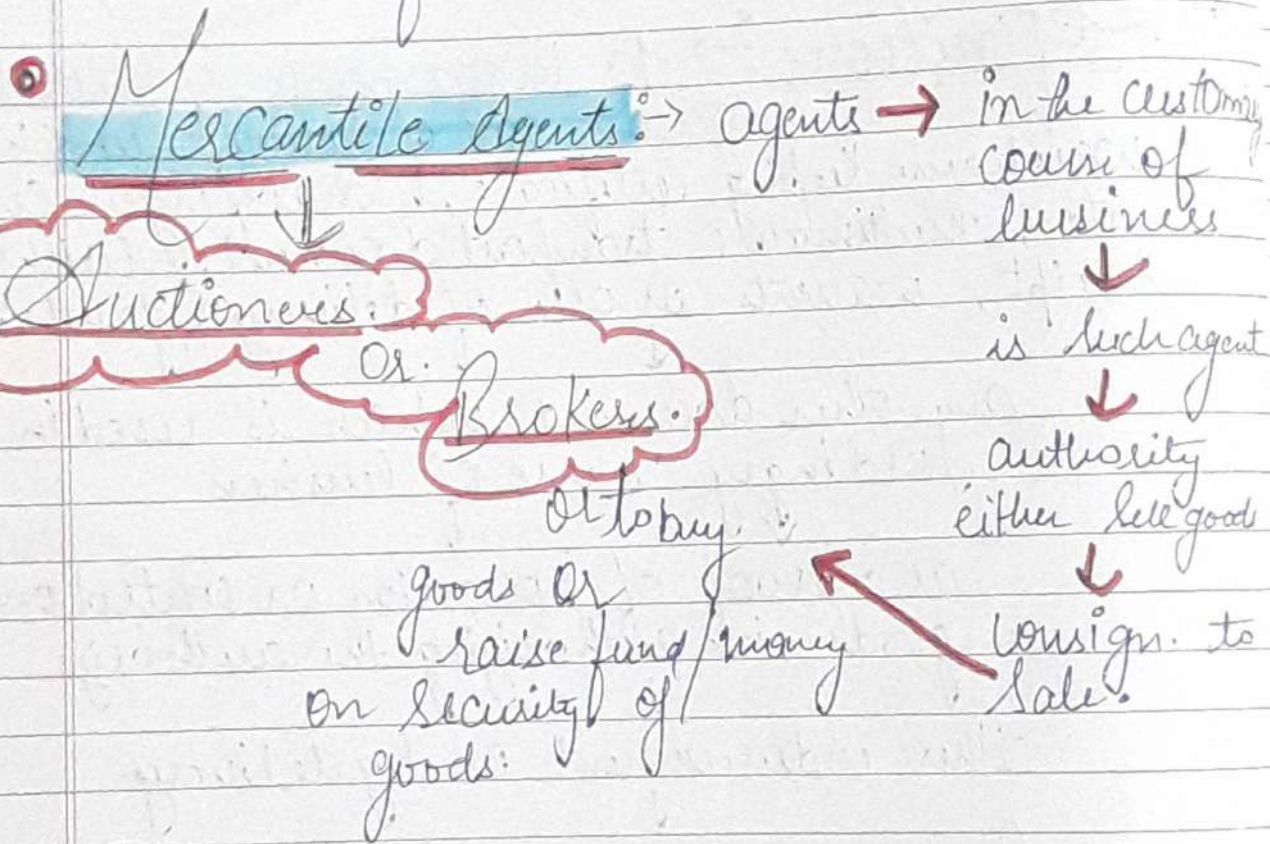
↓  
Thereby represented.

\* Diff B/w Document of title to goods and document showing title.

• A Share Certificate is a document showing title but not a document of title.



- merely shown that the person named in share certificate is entitled to share represented by it.
- do not allow the person to transfer the share mentioned by mere endorsement on the back of certificate and the delivery of the certificate.



- Insolvent → A Person → insolvent → when he ceases to pay his debts, in ordinary course of business.
- ↓
- Or Can't pay debt as they become due.
- ★ when as whether he has committed the act of insolvency or not.

• Price :-  $\rightarrow$  Money  $\rightarrow$  for sale consideration of goods. } } } Expressed in Monetary Terms.

(is essential to make a contract of sale of goods.)

• Quality of goods :- State or Condition of goods.

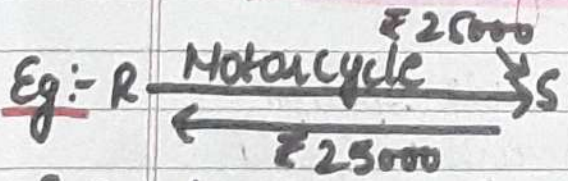
## \* Contract of sales How made (Section-5).

• contract of sale  $\rightarrow$  offer to buy & to sell the goods  $\rightarrow$  for price  $\rightarrow$  acceptance of offer.



- Immediate delivery and immediate payment. } } } vice versa
- delivery immediate but payment in installments
- delivery and payment based on a future date.

Contract of Sale May be written, Oral (by word of mouth)



• Can be implied too. (by conduct)

{ Contract of Sale }

## \* Subject matter of Contract of Sale

(1) goods form. Subject matter are Existing goods or future goods.

(2) Contract for sale of goods

acquisition of which by seller depends upon a contingency.  
(May happen or not).

(3) Contract of sale → Seller purports to effect

Present sale of future goods

Contract operates as an agreement to sell goods.

## \* Goods Perishing before Making of contract:- (Section 7)

- if goods damages without a knowledge of seller at when contract is made, contract become void.

## \* Goods perishing before sale but after agreement to sell. (Section 8):-

- in this case, agreement to sell specific good, goods become perish without default of parties before the risk passes



to the buyer, the agreement is thereby avoided or legally void.

\* Perishing of future goods ⇒ future of goods → specific.

↓  
damage of this goods will amount to supervening impossibility

↓  
Void contract.

\* Ascertainment of price. (Section 9 & 10).

• Price <sup>May</sup> → fixed by parties. Contract.  
→ left to be fixed in manner  
thereby agreed.  
→ determined by the course of dealing  
betw parties.

• Price not determined → Buyer shall give  
a reasonable price.

↓  
\* (depend upon  
circumstances of each  
case.)

\* Agreement to sell at valuation (Section 10).

①. agreement to sell → Price → determined by valuation by (3rd party.)

↓  
Valuation must not be such that agreement is thereby avoided.

Note: if goods or any part thereof have been delivered and appropriated by buyer.

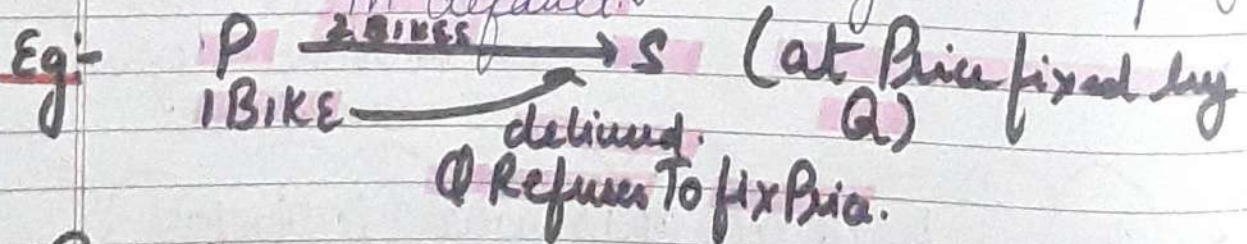
→ shall pay Reasonable amount.

②. Seller or Buyer

↓  
fault

↓  
3rd party is prevented from valuation.

↓  
So, Party not in fault can sue damages against the party in default.



For 1 BIKE He must give him Reasonable (R) and For 2 BIKE Contract will be Avoided.



# Unit-02. (Started)

## CONDITIONS AND WARRANTIES.

\* INTRODUCTION:- Seller usually <sup>Make.</sup> => Statement / representation

REPRESENTATION  
Do not form contract of sale  
-> NOT Revealed  
-> No legal effect on contract.

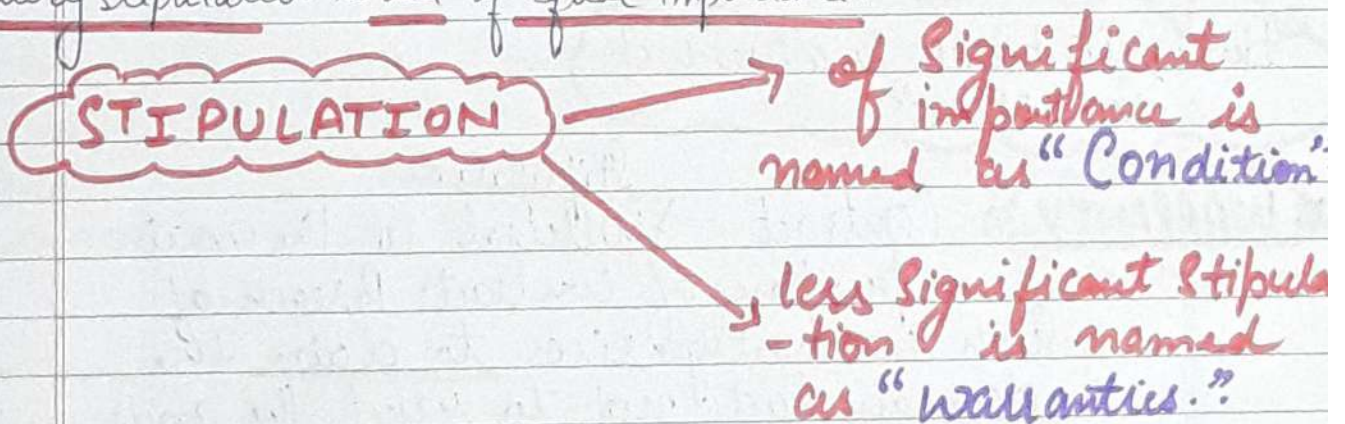
with view to induce seller/buyer  
intending to buy/purchase the goods.

REPRESENTATION  
form contract of sale  
-> Are Revealed.  
-> By Buyer it is Relied  
-> Have a legal effect over the contract.

Representation is on nature and quality

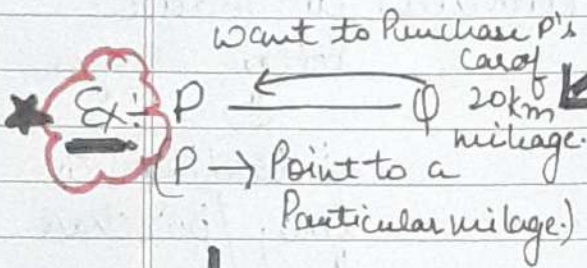
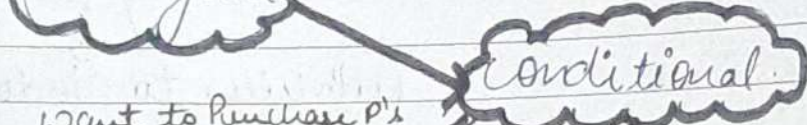
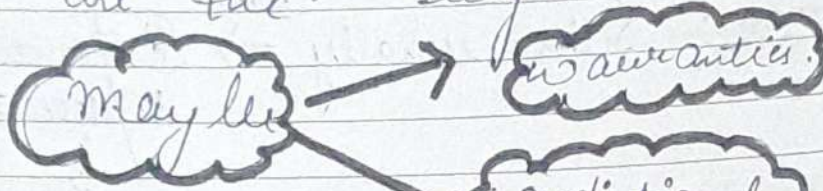
\* STIPULATION: A Representation which forms a part of contract and affect contract.

\* Every stipulation is not of equal importance.



\* Section-12 [Condition and warranties]

A Stipulation of contract of sale with the reference to goods which are the subject thereof



Q Buys and find that top mileage of car was 15km.

is a Stipulation essential to "Main" purpose of the contract. The Breach of this contract rise right to treat the contract as "Repudiated" (Section - 2).

As mileage was a stipulation essential to the main purpose of the contract

"Hence, its breach is a breach of condition."

**WARRANTY** ⇒ Contract ⇒ Stipulation collateral to the main purpose of contract. Breach of such contract rises to claim the damages but not to reject the goods or to treat the contract as "Repudiated".

Eg.

Ram → Buy new car

(Car is guaranteed against any manufacturing defect (1 year of Period).)

After 6 months Ram find that the horn of car is not working.

In this case he can't terminate the contract. Manufacturer can either get it repaired or replaced with a new one.

He only have a right to claim damages but not to Repudiation.



Diff. Condition

warranty.

Meaning:

A contract is a stipulation to the main purpose of the contract.

A warranty is a stipulation collateral to the main purpose of the contract.

Right in case of Breach:

The aggrieved party can repudiate the contract or can claim damages or both in case of breach in condition.

The aggrieved party can claim damages only in case of breach of the contract in warranty.

conclusion of Stipulations:

A breach of condition can be treated as a breach of warranty.

A breach of warranty can not be treated as a breach of condition.

Important :- When contract to be treated as warranty. (SECTION-13)

\* In following cases, a contract is not avoided even on account of a breach of a condition. →

① Buyer waives the performance of condition. The Party waives the condition for his benefit. which should be a voluntary waiver by buyer.

② Buyer elects to treat the breach of condition as a breach of warranty, so in this case he cannot repudiate the contract but he can only claim damages. Hence, here buyer has not waived the contract but decide to treat it as warranty.

③ Contract is non sensible. but buyer as whole accepts the goods or partly. Acceptance as per Section 72 of the Indian contract act 1872 is as envisaged.

④ Where the fulfillment of condition and warranty is excused by the law for a reason otherwise or impossibility.

## \* Express and Implied Condition and Warranties.

### \* (Section 14-17)

- \* Expressed conditions are those which are agreed upon between the parties at the time of contract and are expressly provided in the contract.
- \* Implied conditions are those which are presumed by law to present in the contract. It should be noted that implied can be negative or negated or waived by an express agreement.

## \* Implied Condition.

- |  |   |
|--|---|
| ① Condition as to title.               | ② Condition as to description.              |
| ③ Sale by sample.                      | ④ Sale by sample as well as by description. |
| ⑤ Condition as to quality and fitness. | ⑥ Condition as to merchantability.          |
|  | ⑦ Condition as to wholesomeness.            |

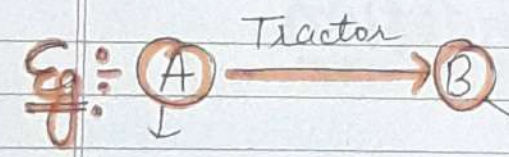
(i) Conditional as to title [Section 14(a)]

In a contract of sale unless the agreement to the contrary the implied condition on part of seller is that.

1. Seller — sell goods —> sale of sale.
2. Agreement to sell. —> Seller. can sell goods when property is to pass.

∴ Seller's title turn out defective.  
Buyer —> Back to Seller.  
Return goods

Buyer. ← Seller.  
Seller have to pay money back.



has no title to it

2 months later

Termination.  
asked him

Tractor from B.

He handed over him.

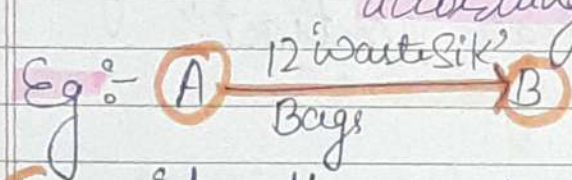
\* Now, HE do have a right to sue on A for undelivered tractor. And can recover purchase price.

\* Sell by description: Case → sell by description  
(Section 15).





- \* Implied condition <sup>goods since</sup> → correspond with description.
- \* Base on rule (Principle) <sup>66</sup> if a contract to sell peas, you can't compel buyer to take Beans."
- \* Buyer is not bound to accept and to pay for goods → description of goods.  
*not in accordance*



if the goods are according to implied condition then the Buyer can pay for it if not then he can claim damage on the behalf of goods.

(iii) Sale by sample [Section 17J]

- (a) Bulk shall correspond with the sample quality.
- (b) Buyer → Reasonable opportunity → to compare Bulk with sample.
- (c) goods free from → defect  
This condition applicable on that goods whose defect can't be examined or discovered.

**NOTE :- IF THE DEFECT IS LATENT, BUYER MUST AVOID THE CONTRACT.**

(iv)

Sale by sample as well as description  
(Section 15)

↓  
Bulk of goods supplied shall correspond with sample and description

66 Goods correspond both with the sample and the description do not tally  
Buyer can repudiate contract?

Described as sunflower oil

\* [A] → [B]

Goods tendered were equal to sample but not with description.

"Here, B Rejected goods."

\* [Condition as to quality or fitness  
Section 16(1)]? →

If Buyer has made known to seller purpose of his purchase relied upon the skill and judgement of seller to select the best goods.

Good must dealt in description, whether he is a manufacturer or not.

Some goods are those that can be ascertained by the conduct of the parties.

\* Implied condition → Do not apply on goods sold for Trade Mark or Patent name.

\* Before Buying Buyer goods he must Examine goods. This is called "Caveat emptor" means "Let the Buyer Beware".

(vi) Section 16(2) Condition as to Merchantability

↓  
Goods are bought by description from a seller who deals in goods of that description.

Implied condition that goods shall be of merchantable quality.

1. Goods should be brought by Description.
2. The seller should deal in goods of that description.

Merchantable quality → nevertheless consists goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description.  
Black velvet cloth.

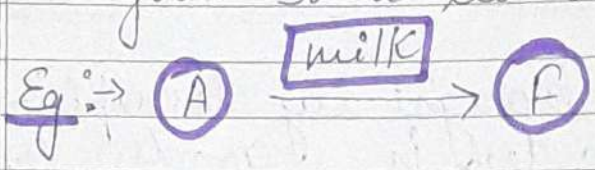
Eg :- A ← C  
found it to be damaged by white ants.

66  
Condition as to merchantability was Broken?



(vii) Condition as to wholesomeness →  
edible and poisonous

Condition as to Merchanability, there is another implied condition that the goods shall be wholesome.



contained thyroid germ. His wife died after consuming it.

∴ Hence, due to Breach of a condition as to fitness and a was liable to pay damages.

\* Implied warranties :-> warranty that is implied by law into contract of sale. It is not included in the expressed word. Law presumes that the parties incorporated it into contract of sale.

\* Implied warranty are read into every contract of sale unless it is excluded by expressed agreement by parties.



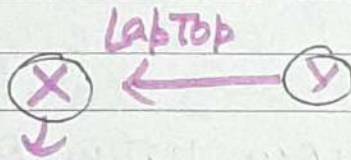
## \* Section (14 - 16)

### 1. Warranty as to undistributed Possession:- [Section (146)]

Buyer → Enjoy and have  
quiet possession of goods.

if seller's distributed  
Possession → he can Sue on  
the seller on  
[breach of contract]

Eg



Spend Money on repair

Later laptop was stolen, given to its true owner  
⊗ - is for breach of contract.  
Responsible.

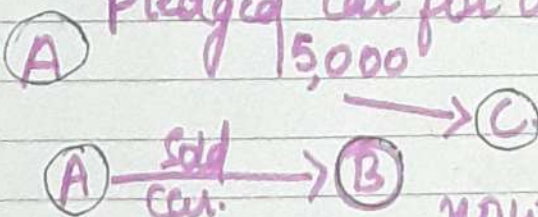
⊗ can claim damages + also Repair cost.

### 2. Warranty to non-existence of encumbrance [14c]

\* goods must be free from any charge or  
encumbrances. in favor of any  
third party → not known to buyer

at the time  
entered into contract.

Eg:-



now B can ask A to pay car  
his interest or can pay himself and a file.

3. Warranty as to quality or fitness by usage of trade (16(3)). for a particular purpose

Implied warranty as to quality must be attached by usage of trade.

\* Seller must, to let be reveal unflattering truths about the goods sold but this rule has certain exceptions.

4. Disclosure of dangerous nature of goods:

When Buyer is not aware (ignorant) about the danger of goods. Here Buyer must be informed by the seller about probable danger.

\* if due to any reason buyer is injured or their is a breach of contract  
Then  
Seller is liable to pay damages.

\* CAVEAT Emptor.

“Let the Buyer Beware.”



Seller → display goods → So that Buyer can select goods seems him satisfactory.

And if buyer's choice goods turn out defective, he can't hold the seller liable.

"Seller is not responsible for Buyer's Bad selection."

### Caveat Emptor.

(Section - 16).



Subject to the provision of this Act or of any other law for the time being in force. No implied warranty and condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

following condition are to be satisfied.

- Buyer had made known the seller purpose of purchase.
- the buyer relied on seller's skill & judgment.
- Seller's bus. to supply good of that description.



A — Pig. — B

Pig infected by Typhoid. But seller was not bound to tell the warranty Pig.

# \* EXCEPTIONS

- (1.) Fitnes as to quality or use.
- (2.) Case law = <sup>1.</sup> Priest vs Last.  
2. Bombay Burma vs Aga Muhammad.
- (3.) Goods sold by sample.
- (4.) Goods sold by descriptions.
- (5.) Goods sold by description and samples.
- (6.) Goods of merchantable quality.
- (7.) Purchased under Patent.
- (8.) Trade usage.
- (9.) Seller actively conceal a defect and is guilty of fraud.

Unit 2 Ended.



# Unit-3 Started

Transfer of ownership and delivery of Goods.



SALES Means Passing of Property's ownership from { Seller to Buyer }

Determining of time is essential

\* Passing of Property.

From Seller → Buyer

② factors are Based on

- Section 18 ⇒ ① Identification of goods.
- Section 19(1) ⇒ ② Intention of parties.

Goods should be ascertained only then the ownership of goods can be transferable from Seller to Buyer.

Goods at Time Intended to be transferred may Passed from Seller → Buyer

- Section 19(2) ① To the terms of contract.
- ② To the conduct of parties.
- ③ To the circumstances of case

# Primary rules

## Passing of Property

• Specific and ascertained goods.

• Pass unascertained goods.

• Goods sent on approval [Sales on on return]

• Transfer of property in case of reservation of right to dispose.  
(Sale)

## Section-19

1. Property intended to pass :->

Section 19(1) -> Property is passed or transferred to the Buyer when intended.

Section 19(2) -> [Property is] For the purpose of ascertaining the intention of the parties regard shall be of

- 1) Conduct of the parties.
- 2) Circumstances of case.
- 3) Terms of contract.

Section 19(3) -> unless different intention appears, the rules contained in Section 20 to 24.



- for ascertaining the intention of parties to the time at which the property in goods is to pass -> Buyer.

\* Goods must be ascertained.

Section - 18.



∥

Unascertained goods can't be transferred until and unless it is ascertained.

Sale of unascertained goods by description (Section 23(1))

- \* goods must be unascertained and future good.
  - \* goods must be in description and quality must be mentioned in contract.
  - \* goods must be in deliverable state.
  - \* goods must unconditionally appropriate.
  - \* goods appropriation: Either by the seller with Buyer's assent.
2. Either by Buyer with seller's assent.

- ✓ Expressed or implied.
- ✓ before appropriation or after.

Section 23(2)  
carrier →

\* Goods's delivery by assent to the carriage

after Rescission of goods contract, Seller delivers the goods → Buyer or Balance or Carrier for Transmission.  
do not reserve the right of disposal he is assumed/deemed to have unconditionally appropriated of goods to contract.

Eg → M ← Book — Seller

Book lost in the way and due to unconditional appropriation the owner of goods now was M.  
 So, Risk would be Bearred by the Buyer himself.

\* Goods sent on approval or sale or return (Section 20)

a) Buyer signify his assent to Seller.

b) if Buyer do not signify but Retain goods, no return of such goods upto fixed or reasonable time.

c) Something he do → As acceptance.

[eg:- Pledges or Sells the goods].

Eg:- A car — B (Return time was fixed, but no return)  
 so A will not Take it Back if he is Payable (B).

- \* Sale for cash only or return basis  $\Rightarrow$  Property will remain with the seller till the price is paid for that by the buyer.

No Property Passes into the Buyer until the term is complied.

### D Reservation of right of disposal (Section 25).

- \* Explanation :- (Subsequent appropriated goods)

Seller may by term of contract Reserve the right of disposal of goods until certain condition are fulfilled. (Section (1))

Eg  $\Rightarrow$  X furniture  $\rightarrow$  CO.

not to give furniture until payment is made.

furniture would be passed when pay would be done.

Right to ~~the~~ Disposal may reserved  $\Rightarrow$  Goods.

$\Downarrow$   
Railway administration  
For Bill of lading, carriage  
Railway receipt (goods)

delivered  $\rightarrow$  To order of seller or agent.

**Seller Prima Facie deemed to have reserved to Right of disposal.**

\* **Seller** → Bill on buyer for price → Send Bill of lading, Railway Receipt, Secure acceptance or payment.

By the way in case no. Payment or acceptance Bill of lading must be returned. Agar qbt se wo Bill ko retain karta h. Property Pass nahi hoti h use.

### \* Risk Prima Facie Passes with Property [Section-26].

66 unless otherwise agreed, the goods remain at seller's risk until the property therein is transferred to buyer.

But (property) of goods → Buyer's Buyer risk. (Chahi delivery? hui h ya nahi.)

**"Risk Follow ownership"**

Goods agar delay hota h. delivery mei ya toh Buyer ya seller ke default se....

goods at risk of Party of fault (as regard any loss of)

might not occurred but for such facts.

\* Risk Prima facie Passes with ownership ⇒

Owner of goods must (Pass) with the loss or Risk to be beared

↓

unless agreed to.

⇒ Duties and Lia. of Seller or Buyer as a Parties of goods for other, even when Risk is Passed.

\* Transfer of ownership by non-owners ⇒ (title)

⇒ Sale by person not the owner ⇒ (Section 27).

Acc. to general rule Being time in force the seller can sell only those goods whose title/ownership is with him. If the seller sell goods not any title with him the buyer to do not have the title for such goods.

\* "Seller can't transfer a better title he himself has to Buyer."

\* "Nemo dat quod non habet." ⇒ No one can give what he has not got.

Ex 3:- A <sup>Stolen</sup> goods → B

B will get no title  
"and true owner can take goods back from B."

↓ (Nemo Dat quod non habet)

Exceptions:-

① Sale by mercantile agent:-

- when he has possession of the goods or document with owner's consent.
- when he works in ordinary courses of the business as a mercantile agent.
- Buyer → in good faith and has at the time of contract. (Seller do not have authority to sell).

② Sale by one of joint owner:- when goods are in joint owners and

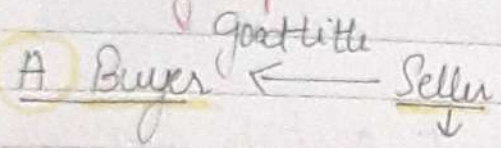
with the consent of co-owner good is kept in the possession of one.

↓  
Property can be transferred to intended buyer with other consent without the notice that goods's authority is not of him. to sell.





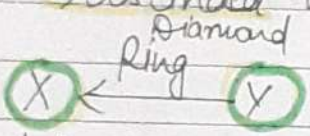
✓ Sale by a person in possession under voidable contract



obtained possession under contract

voidable on ground of coercion, fraud, misrepresentation provided that the contract had not been rescinded until the time of sale.

Eg. H.



before terminating of contract

$$\text{X} \xrightarrow[\text{Sell}]{\text{Ring}} \text{Z} \text{ good title.}$$
  
Y can't recover it.

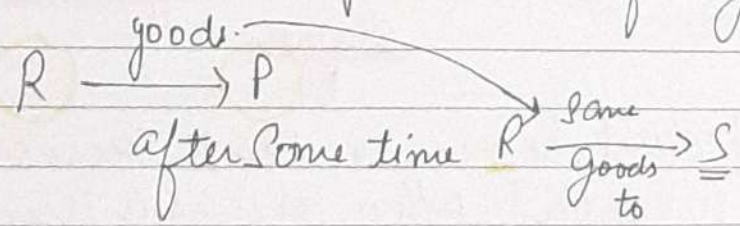
✓ Sale by one who already sold the goods but continues in possession thereof :-

if a person has sold goods but possession is with them  $\rightarrow$  Sell 3 party

got delivery in good faith without notice of previous sale

document of title by seller in possession equally valid.

Eg. :-



S have a good title.

(5) Sale by buyer obtaining possession before the property in goods has vested in him.

Buyer with seller's consent obtain possession of goods, he can sell that to 3rd person and the person obtaining goods in good faith without notice of lien, he would get a good title to them.  
(30(2)).

Eg  $\Rightarrow$  Buyer A  $\leftarrow$  car B Seller  
A would pay installments £5000 as hire.

Seller A  $\xrightarrow{\text{car}}$  C Buyer  
B can recover it as A had neither bought the car nor had agreed to buy the car.  
He can buy car.

## estoppel's example

classmate

Date \_\_\_\_\_

Page \_\_\_\_\_



Eg: A <sup>C said</sup> B want to purchase horse.  
owner of horse.

So, A sell the horse to him and now C can't deny, as he himself held out 'a' as a true owner or a person authorized to sell goods.

(7) Sale by an unpaid seller. (Unit No. - 4).

Sale under the provision of other acts

(i) Sale by official receiver & liquidator of co. will give the purchaser a valid title.

(ii) Pur. of goods from a finder of goods will get a valid title.

(iii) A sale by pawnee can convey good title.

★ (Section 31 - 44)

★ Performance of contract of sale.

- ★ delivery of goods by seller.
- ★ acceptance of the delivery of goods.

Price (Payment)

in accordance of term of contract.

★ Definition of Delivery (Section 24)

Voluntary Transfer of possession

- ★ Delivery is not Physical possession hona impo. nahi hota
- ★ Buyer ko hag hona chahye ki wo goods ke against apne rights exercise kar sake.

Duties of Seller and buyer (Sec. 3)

★ To deliver goods.

★ To accept them and pay for it

② Payment and delivery are concurrent condition.  
[SECTION = 31.]

Seller Ready <sup>delivers</sup> → goods in exchange of price.

Buyer Ready → To accept and pay price in exchange of goods's possession.

3. Delivery (Section 33)

- ① Buyer's possession.
- ② Buyer's authorized person on his behalf.
- ③ or goods to be delivered by doing anything which parties agreed for.

4. Effect of Part delivery:-  
(Section - 34)

a part delivery in progress of whole (same effect) delivery in part, is with an intention of seeing it from whole.  
(do not operate as delivery of remainder).

Eg:- Seller instructed wharfingers to deliver them to buyer who was paid them and the buyer, accepted them and took away part. Hence delivery of whole.

### 3.) Buyer to apply for delivery (35).

Seller of goods not bound to deliver until the buyer applies for delivery.

### 4.) Place of delivery (36(1))

it can be expressed or implied in contract.

apart from it, goods can be delivered at a place manufactured, at a place which they are at time of sale, apart from it at a place at which they are at time of agreement to sell.

### 5.) Time of delivery:-

36(2)

In contract seller is bound to send goods to the buyer  $\Rightarrow$  no time for sending is fixed.

Seller must send them in a reasonable time.

(vi) goods in possession of 3<sup>rd</sup> party (36(3))

⇓  
 \* if goods with 3<sup>rd</sup> party it is no delivery until he/she tells or acknowledges the buyer about his possession

\* Nothing in section shall affect operation of issue or transfer of document of title of goods.

(vii) Time of Tender of delivery:

⇓  
demand or tender → ineffectual

↓  
 unless made at a reasonable hour.

↓  
 gives of facts

(viii) Expense for delivery: [Section 36(5)]

in absence of contract of contrary.

the Exp. of making goods in a deliverable state is borne by a seller.

(ix) Delivery of goods of (wrong quantity)  
(Section - 37)

\* if seller send wrong quantity  
Seller's goods ← can be rejected  
by buyer and  
if accepts then  
he must pay  
for it.  
(Subsection 1).

\* where large quantity is send

Buyer can reject → whole  
→ Partly in excess  
→ accept whole and  
he must pay.

\* if seller sends mix goods not in the  
description.

Buyer can reject whole or accept those  
in the contract's description.

Ex 21.5

Contract A  $\frac{100 \text{ quantity}}{\text{wheel}}$  B at ₹ 1000.

Contract A  $\frac{1000}{\text{quantity}}$  B he can either reject  
or accept and  
pay for whole.





## ★ Section 38 (instalment deliveries) :->

Buyer not Bound to accept delivery in installments

Rights, Lia in cases of delivery [There on may be determined by parties].

## ★ Delivery to carrier :- Section 39(1).

Delivery of goods to carrier for transmission to the buyer, is prima facie.

→ deemed to be deli - very to Buyer.

## ★ Deterioration during transit :-> (Section 40)

Goods at distant Place → Lia. of Deterioration necessarily incidental to course of transit

Eg: P - iron  
it was Rusted Before Reached to Buyer

↓  
it was not affecting merchantable quality.

→ Fall on Buyer  
↓

Taab b agar Seller agree karta h ki wo apne risks par goods de Raha h.

Deterioration was not necessarily incidental to its transmission.

"Q is to accept it."

### \* Buyer's Right to examine goods:

Goods → delivered to Buyer

(Section 41) ⇒

entitles a reasonable opportunity of examining them.

In order to ascertain whether they are in conformity or not with contract.

### \* Acceptance is deemed to Take Place

- intimates to the seller
- does any act to goods, inconsistent with ownership of seller.
- retain the goods after lapse of a reasonable time.  
without intimating seller that he has rejected them.



\* Buyer not Bound To Return rejected goods:  
[(Section - 43.)]



good delivered to Buyer  $\implies$  he Refuses.



he is not  
Bound to  
return them Back



it is Sufficient if he intimates  
Seller that he refuses to  
accept them.

\* Lia of buyer for neglecting or rejecting  
delivery of goods [(Section 447.)]

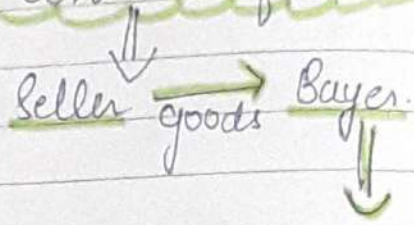


if after request By Seller to Buyer  
to take goods & limit he don't  
he is liable to Pay any loss Occurs  
due to his neglect or refusal

And Reasonable charge for the care of  
goods.

# Unit = 04

- Unpaid Seller :- Contract of sale.



Buyer refuses to pay it or fail to pay it.

due to this seller becomes unpaid seller and he have many rights.

\* Acc. To Section 45(1) [SOGA, 1930].  
Seller goods ⇒ deemed to an unpaid seller

= whole price has not been paid.

= BOE / Negotiable instrument ← Rec. condition pay Per. uncondition  
← Rec. fulfill hi nahin hai (dishonour ya kisi aur wajah se).

= Seller → (Position of seller),  
(agent seller ka)

endorse → Bill of lading.  
or consignor who paid himself  
ya wo responsible hai price ke liye.  
(Section 45(2)).

Date \_\_\_\_\_  
Page \_\_\_\_\_

★ Rights of an unpaid seller.

⇓  
rights of unpaid seller (Section 46).

- a) lien on the goods.
- b) buyer insolvent no sale.
- c) a right of re-sale as limited by act. (Sub Sec.)

★ Property — X Pass. to Buyer

⇓  
add in his other remedy

⇓  
Property has → Buyer a right of withholding delivery with right lien and stoppage in transit when the property has passed to Buyer.

★ Rights against the goods of an unpaid seller:

★ Seller's lien ⇒ (Section 47) (Sub-section 1).

Sub. → Provision of his act → By Seller he can

retain possession of goods.

until pay hona jaye.

- 3 cases :->
- ① Buyer ko goods without any stipulation as to credit.
  - ② Buyer ko goods → credit ke diye toh they per usa time Expire ho chuka hi.
  - ③ when the buyer become insolvent.

Sub-Section (48) → Seller apna Right of Lien use kr sakta h.

⇓  
yeh soch ke nhi ke uske par goods ki possession hai agent ya Balie ki Tarah.

(B) Part delivery (Section 48) :->

⇓  
unpaid seller ne part delivery ki h goods ki.

⇓  
to wo right to lien laga sakta h ek remainder ke.

⇓  
jab tak is farah ki delivery made undu such circumstances. is wajah se wo ek agreement to waive the lien

## \* Termination of Lien (Section 49):-



- light of disposal of goods ko reverse rakhe bina carrier ko good dena taki wo delivery kar ske Buyer ko.
- jab Buyer ya uska agent lawfully ko kar obtain karne possession ko good ke.
- By waiver.

\* Lien lose nhi hoti → reason se ki Usne obtain ki h deed for price of goods (S.S.Q).

Yo ESTOPPEL se → Seller conduct karta h khudko → ki 3rd Party ko Lage ki koi Lien exist nahi karti hai.

## \* Right of STOPPAGE of Transit (Section 50-52).



jab Seller ko Pata chalta hai ki Buyer insolvent hoga to wo Transit ke time par hi goods ki possession resume kar sakte hai.

and Retain kar sakte hai until Paid or Tenders Price of goods.

Mumbai

(A) → (B) Delhi  
 → (C) Carrier → Transmission ke liye B ko.

B Insolvent ho gaya To ab wo goods ko Transit mei h jab Tak kharid resume kar sakte hai.

## \* Right Exercised by Seller again.

- ① unpaid seller hai.
- ② Parted with possession of goods.
- ③ goods should be in Transit.
- ④ The Buyer → insolvent honachaliya.
- ⑤ The right is Subject → Provision of Act.



- ◆ When does Transit come to an end?
- ◆ Buyer obtain title & delivery.
- ◆ Buyer to delivery uski destination
- ◆ Part of Arrival hath se Pehle Milna
- ◆ interception by buyer.
- ◆ carrier. ki consent ke bith ya Bina b ho Sakta hai.

◆ carrier acknowledge karta hai

↓

he load goods as soon as goods are loaded on ship

↓

unless ki seller ne goods ka jo right of disposal reserve rakha h.

- ◆ galti se buyer ko delivery karne se mana kare.
- ◆ jab goods Buyer ke carrier ko mil jaye.
- ◆ Part delivery goods ki Buyer ko aur Transit behind Board Per a jaye Remaining ke liye.
- ◆ yet in course of Transmission.
- ◆ Jab goods Buyer → Ship chartered ko deta h. (Section 51).

## Analysis

### How Stoppage Transit ki effect hoti h. (Sec. 52).

By taking actual Possession of goods.

By giving notice to carrier not to deliver goods.

#### \* Right of Lien



#### \* Right of Stoppage in Transit

\* Essence → Possession Retain karna

\* Right hai Regain karne ka Possession ko.

\* Seller Possession mei hona chahiye lien mei

\* Seller - Parted with Possession.  
2. Possession carrier ke sath honi chahiye.  
3. Buyer acquired nhi ki honi chahiye Possession

\* Can exercised even Buyer insolvent nhi h Tab bhi.

\* it is not with the right of Stoppage in Transit.

\* Stoppage right of Lien ke end hone Per Shuru hota hai

\* ye Start hota hai end Per Lien ke.

\* Right Lien ka end hota hai jab goods ki possession seller ke Pass se jate.

\* ye end Per ata hai jab goods ki Possession  
↓  
Buyer ko miljaye.

Concluded :- "Right of stopping in goods in transit is extension of Right of Lien"

## Effect Sub-Sale Or Pledge By Buyer. [Section 53].

Right of Lien and Right of Stoppage in Transit  
Effect nhi hota

agar → Buyer goods ko Pledge or  
selling karta hai unless  
seller has assented to it.

Principal Par Based hai ki first seller ki jo  
better position hai wo second seller  
ki nhi ho sakti.

## Right of Stoppage → defeat ho jata hai

↓  
Buyer → Transfer  
karega document  
of title or  
pledge to goods  
to a sub buyer.

In good faith and for consideration.

eg: A →<sup>goods</sup> B

→ Railway ko handover karta hai  
goods

B → C sold kije consideration mei

B Insolvent.

• A can still exercise his  
right of stoppage in  
Transit.

## \* Where unpaid seller's right of lien and stoppage in transit are defeated is

- a) Seller → assented to sale, mortgage or other disposition of goods made by buyer. (Mount. D.F Ltd vs Jay)
- b) document of title → Buyer and he transfer  
↓  
To person who has brought goods in a good faith of consideration.

(i) Sale le Transfer hota hai → right of lien or stoppage is defeated.

(ii) By Pledge → unpaid seller right of Lien or stoppage Subject to right of pledgee? → Exercise hota hai

Pledgees Reg → unpaid seller's right to use in first instance, other goods or securities of pledgee avails to satisfy his claim. (Sule-Section 2).

\* Effect of stoppage :- Contract → <sup>not</sup> Rescinded jab Seller Right of stoppage lagta hai, contract jai me hi our Buyer delivery mang sakta hai on payment of price.

## Section - 24.

\* Right of Resale :-> The right of resale is very valuable right given to unpaid seller.

agar right absent hai toh uski jo rights hai against goods ki hain unki stoppage would not be much use because those right only entitled because ye exercise kiye jate h retain goods kame ke liye until paid by the Buyer.

\* Unpaid Seller Exercise kar sakta hai right to re-sell goods ka?

① Where goods are Perishable nature :-> is jagah seller ko inform nhi karna padta ke sale ke liye Buyer ko.

② Where the goods notice given to Buyer of his intention to re-sell goods :-

is Tarah ke notice receipt of notice milne per likhi agar seller ko buyer reasonable time per pay nhi karta toh re-sell hogi.

= Recover diff. b/w contract price and resale price from original buyer, as damages.

= Retain Profit if contract price is less.

= Section 54(2). notice dena jarahi h nahi to surplus apni Pan nahi Rakhe Paoge na damage claim ka Paoge

(iii) where an unpaid seller who has exercised his right of lien and stoppage in transit with the goods :- jo bhi Subsequent buyer hai good title uska hojayege -> against original buyer

despite fact that the notice of re-sale has not given by seller to original buyer.

(iv) A-re-sale By seller where a right is expressly reserved in contract of sale:-

↓  
 Tab Buyer default karega Price Pay karne mei  
 Seller — kisi aur ko goods dedega.  
 ↓  
 have a right reserved of resale.  
 aur yaha notice देने ki koi jarurat nahi.

(v) where Property goods ki Pann nhi hai to Buyer:-

unpaid seller (+) karega remedies mei apni (a to light of withholding delivery of goods).

Quasi lien hai kyunki lien ke similar hai.

\* Right of unpaid Seller against the Buyer  
(Section 55-62).

Known as Right in Personam.  
where unpaid seller has a  
right against goods and Buyer

### ≡ Suit for Price (Section 55)

a) Where Property <sup>Passes</sup> → Buyer.  
Buyer Refuses to Pay. In this case Seller  
can sue him for Price. (55)  
Sub-section (1)

b) Price Payable on certain day → But Buyer Refuses  
to Pay  
↓  
Here Seller can sue on him  
although Property Passed not

\* Suit for damages for non-acceptance  
(Section 56).

Buyer neglects and Refuses to accept  
goods and to Pay  
Seller sue → for damages to Buyer.

(as regard measure of damages)

### 3. Repudiation of contract before due date (Section - 60)

↓  
"Rule of anticipatory breach of contract"

Buyer Refuses to Accept goods — Before due date — Called Rescinded  
Seller can Sue damages for Breach ← By Buyer

### 4. Suit for interest (Section 61):

- As Payment become due Seller can take interest from Buyer (if agreed in contract)
- If no specific agreement then the Seller can charge interest on price.

### \* Remedies of Buyer Against Seller:-

Breach by Seller.

- = fail to deliver goods at time.
- = Repudiate contract.
- = Deliver non-conforming goods and buyer reject.

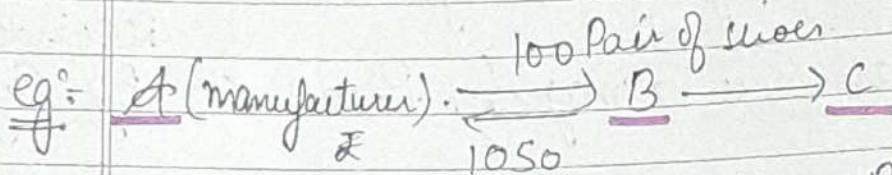
### \* Rights of Buyer →



① Damages for non delivery (Section 57):

⇒ Seller neglects to deliver goods

Buyer can sue → seller for damages.



On due date A fails to deliver  $\rightarrow$  B.  
B can't perform his contract too.

Hence B will recover damage from A ₹ 50.  
(diff. Contract price - resale)

② Suit for Specific Performance (Section 58)

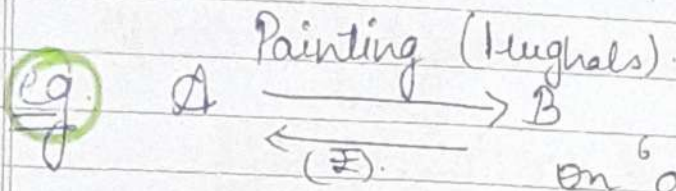
Seller commits Breach of contract  
Buyer  $\xrightarrow{\text{appeal}}$  Court for specific performance.

Court will order for Specific Performance  
if goods are  $\rightarrow$  ascertain  
 $\rightarrow$  specific.

○ Remedies allowed by court under:-

1. Goods ascertain or specific
2. Goods of specific, special, unique nature.
3. Under that damages are not adequate remedy.

# 4. Court Order Specific performance → Subject to Provision of Specific Relief Act of 1963.



on 'due date' A Refuses. Now B file a suit against

Order obtained 'A' court → compel A to perform contract.

## 3. Suit for breach of warranty (Section 59):

When Breach of warranty on Seller's part Buyer is not to treated goods rejected. Or he is not entitled to reject them. But he may:-

- (i) Set up as extinction or diminution of price.
- (ii) Sue seller for damage.

## 4. Repudiation of contract before due date: (Section)

One Party repudiate contract → other one treat it as

- 1) Subsisting.
- 2) wait.
- 3) Rescinded and sue for damages.

5. Suit for interest: Here we can sue damage, we can recover damages, interest, any money paid & where the consideration for it have been failed.

2. Absence of contract of contary, Court  $\rightarrow$  interest to Buyer but well at amount he has paid and is fit for that ( $\neq$ )

eg:- Sale of cigarettes — unfit for consp<sup>n</sup>  
Damage awarded on Basis of diff.  
ie. :- Contract - Price released.  
Released.

eg:- Absence of Transfer of title or Registration  
Can't claim damages. (related to Sale)

## \* Auction Sale (Section 64)

- By inviting Bids Publicly and giving property to the person who has highest bid among all.
- Auctioneer  $\leftarrow$  agent governed by law of agency
- When he sell he is only agent of seller.
- He can't sell his own property.

a) Where goods are sold in lots  $\rightarrow$

\* Each lot is prima facie assumed/deemed to be subject of separate contract of sale.

## b.) Completion of contract of Sale:-

Sale is completed → auctioneer  
Announces its  
Completion by fall  
of hammer or by other  
of customary manner.

until such announcement is made,  
Bidder may retract from his bid.

## c.) Right to bid may be reserved:-

May be reserved by expressly by seller or  
on behalf of seller,  
but not otherwise, seller or  
any other person on his behalf may bid at  
the auction.

## d.) where the Sale is not notified by the Seller:- (Treated as Be Fraud By Buyer).

if Sale not notified → Subject to right to bid  
it will not be lawful to bid himself or  
by person he employs. Any sale contravening  
this Rule ⇒ fraudulent by the buyer.

(e) Reserve Price:- Sale may notified to the Subject  
to a reserve price or upset Price.

(f) Pretending Bidding:- Used by seller to raise Price  
at option of Buyer → Sale is voidable.

## \* Inclusion of increase or Decrease Taxes in Contract of Sale (64A).

→ after contract has been made but before it  
has performed, Tax Revision Take Place.

where Tax is :-

→ imposed.

→ Increase.

→ decrease.

→ remitted in respect of any good without  
any stipulation.

### Taxes applied on the Sale or purchase of goods

- Any duty of customs or excise on goods.
- Any Tax on Sale.
- Any Tax on Purchase.

Buyer have to pay increase price when  
tax increases.

and can derive benefit of reduction.

- Open to parties to stipulate anything regard  
to Taxation.

Sale of goods Act, 1930  
Ended.