

# UNIT-3 Performance of Contract of sale

## Introduction -

Sale of goods involves transfer of ownership from seller to buyer. It is essential to determine time of transfer of property as in case of loss or damage of goods, only buyer has right to <sup>take action for</sup> ~~accept~~ goods.

## Passing of Property (Section 18-26) - MM

### (1) Specific / Ascertained Goods [Sec 19] -

- (i) Property in goods shall be transferred when parties to contract intend it to be transferred.
- (ii) For ascertaining intention, we need to check terms of contract.
- (iii) Rules contained in section 20 to 24 shall ascertain intention of parties.

### Stages of goods while passing property

#### (i) Specific goods in deliverable state:

Property in goods passes to buyer when contract is made, <sup>immaterial that time of payment & delivery of the goods, or both, is postponed</sup>

#### (ii) Specific goods to be put into deliverable state:

Seller is bound to do something to the goods for the purpose of putting them into deliverable state <sup>the property does not pass until such thing is done</sup>

#### (iii) Specific goods in deliverable state when seller has to ascertain price:

When there is a contract sale of specific goods in deliverable state, but seller is bound to weigh, measure or do some act to goods for ascertaining price. Property shall transfer after such act.

### (2) Unascertained Goods:

In contract of sale of unascertained goods, goods needs to be ascertained. Rules in respect of passing of property:-

#### (i) Sale of unascertained goods by description and appropriation:

There has to a contract of sale between seller and buyer, and goods must be of deliverable stage.

After appropriation, seller with assent to buyer and buyer with assent to seller for contract of sale of goods at certain price.

It may be express or implied. The goods must correspond with the quality & description

## (ii) Delivery of goods to carrier:

If seller unconditionally delivers goods to buyer or any carrier to deliver it to buyer than goods are deemed to be transferred.

## (3) Goods sent on approval or 'on sale or return' (Sec 24) -

Property shall pass to buyer if -

- He signifies his approval or acceptance.
- He does not signify approval, however reasonable time to reject is over.
- He does something inconsistent to ownership.

Sale for cash or return - If goods are sold on condition i.e. sale for cash only than, property in goods shall not transfer unless cash is paid for.

## (4) Reservation of Right of Disposal :-

If goods are sold by seller with conditions attached in it and seller shall only pass ownership goods once these conditions are satisfied.

Then, in such cases risk of loss is also of seller ownership is passed to buyer {after condition satisfied → both risk + ownership transfer}

## Risk Prima Facie Passes with Property [Sec 26] :- M M

Risk of seller - until property passes to buyer

Risk of buyer - after property passes from seller

Goods shall remain at seller's risk until property in goods is transferred to buyer but when property is transferred to buyer, goods are at buyer's risk.

However if:

1. Delivery is delayed by the fault of seller or buyer, risk shall pass to party in default.
2. Duties and liabilities of seller or buyer as bailee of goods for other party remain unaffected even when risk is passed.

## Transfer of title by Non owner [sec 27 to 30] :- MM

In general, seller can sell only those goods which he is in absolute ownership. As per latin maxim "Nemo dat quod non habet" i.e. No one can give what he has not got.

### Exceptions :

conditions

- ① he was in possession of goods or documents with the consent of owner.
- ② he has sold goods in the ordinary course of business.
- ③ buyer (good faith) not knowing seller has no right to sell the goods.

1. sale by merchantile agent : Any sale made by merchantile agent on behalf of owner of goods as per instructions of seller shall be considered as valid transfer of property.

2. sale by one of the Joint owners : If one of the Joint owners has sole possession of goods than without permission of other joint owners, seller shall transfer valid title.

3. sale by a person in possession under voidable contract : A buyer could acquire a valid title if seller sold goods and he bought in good faith and owner did not <sup>cancel/refuse</sup> rescind contract until sale.

4. sale by buyer obtaining possession before property in goods vested in him : Buyer shall resale goods which are yet to transferred to him with permission of seller, such sale is valid.

5. sale by one who have already sold goods but continues in possession thereof : <sup>Sachal → goods → sell → M/s A → B, C, D</sup> If a person have sold goods but continues to be in possession of them than on demand from third party if they sold goods ~~now~~ again, the ownership shall pass to this third party.

6. Effect of Estoppel : where the owner inspite of knowing remain silent on an estoppel transaction than buyer shall get valid title.

7. sale by unpaid seller : where an unpaid seller who had exercised his right of lien or stoppage in transit, resales goods, buyer ~~also~~ acquires good title to goods as against original buyer.

8. sale under other provisions of Act :

(a) sale by official ~~receiver~~ receiver or liquidation of company.

(b) sale by finder of goods.

(c) sale by pawnee.



## Performance of Contract of Sale :-

**Delivery** - voluntary transfer of possession from one person to another.

Types of Delivery -

- 1) actual
- 2) symbolic
- 3) constructive

Duties of Seller & Buyer :- It is duty of seller to deliver goods and it is duty of buyer to accept and pay for them.

\* Payment and Delivery are concurrent conditions

Rules Regarding Delivery of Goods :-

i) Delivery -

It is made by doing anything which parties agree shall be treated as delivery.

ii) Effect of part delivery -

If one severed intentionally, part delivery cannot be assumed as full delivery.

iii) Buyer to apply for delivery -

Seller is not bound to deliver until buyer applies for delivery.

iv) Place of Delivery -

either - mentioned in contract

- else, place of manufacture or sale, etc.

v) Time of Delivery -

either mentioned in contract or within reasonable time.

vi) Goods in possession of third party -

If goods at the time of sale, in possession of third party then third party must acknowledge to buyer.

vii) Time for tender of delivery -

Demand for delivery must be done in reasonable time.

viii) Expenses for delivery -

to be borne by seller.

### (x) Delivery of Wrong Quantity :-

If less goods are delivered than contracted than buyer may either accept or reject whole goods

If more goods are delivered -

1. either accept whole & pay for them
2. Reject whole
3. accepts ordered Qty only & rejects extra

### (x) Installment deliveries :-

Buyer is not bound to accept delivery in installments

### (xi) Delivery of carriers :-

Considered as delivered to buyer

### (xii) Deterioration during transit :-

shall be borne by buyer

### (xiii) Buyer's right to examine goods :-

Buyer must get opportunity to examine goods before taking delivery.

### Rule Related to acceptance of Delivery of goods :-

1. Intimates to seller for acceptance.
2. Does any act to goods, which is inconsistent to ownership.
3. retain goods after lapse of reasonable time.

Buyer not bound to ~~retain~~ <sup>return</sup> rejected goods - buyer only needs to intimate to seller of his non acceptance

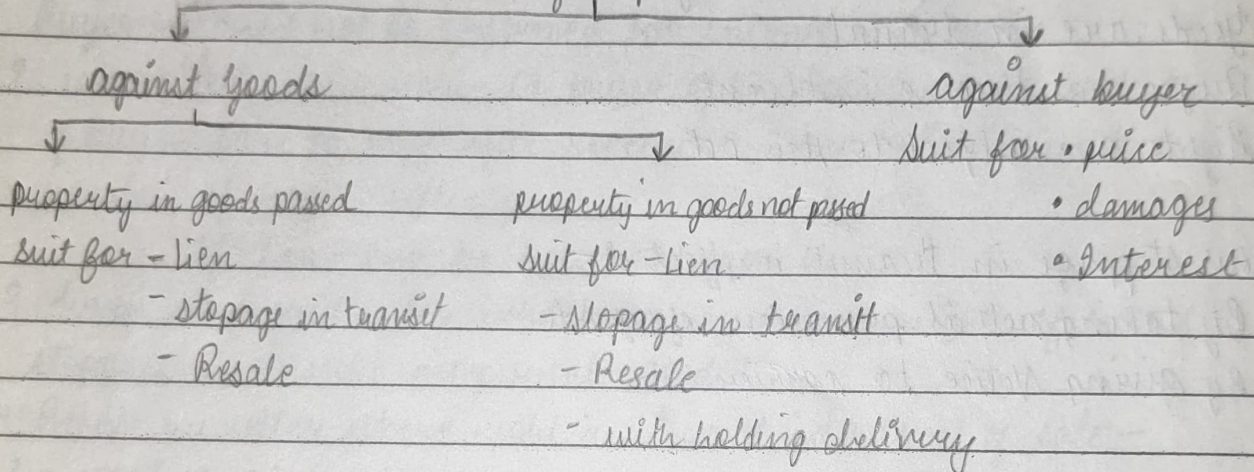
Liability of Buyer for neglecting or refusing delivery of goods - seller may ~~be~~ ask for reasonable charge or charges for custody.

# Unit-4 Unpaid Seller

Unpaid Seller [sec 45(1)]: Seller is deemed to be unpaid seller when:

- (1) whole of the price has not been paid or tendered and seller has immediate right of action
- (2) when bill of exchange or other negotiable instrument has been received as conditional payment and condition is not fulfilled.

## Rights of Unpaid Seller



## Rights of Unpaid Seller against Goods

<sup>Legal claim</sup>

474 seller's lien: Unpaid seller has right of lien on goods for price while he is in possession until payment or tender of price of such goods.

The unpaid seller's lien is possessory lien i.e. lien can be exercised only if seller is in possession of goods.

When right of lien can be exercised?

- (i) when goods are not sold in credit i.e. cash sales
- (ii) when goods are sold on credit & credit period expired.
- (iii) when buyer becomes insolvent.

Termination of lien:

Unpaid seller loses his right of lien in following circumstances:

1. when he delivers goods to carrier for the purpose of transmission to buyer.
2. where buyer or his agent lawfully obtains possession of goods.
3. seller waived right of lien.
4. By estoppel

Part delivery: when unpaid seller made part delivery, He may exercise right of lien on remaining goods.

25 Right of stoppage in transit: It means stopping the goods while they are in transit, to take possession back until price is received.

Conditions -

- Seller must be unpaid
- He must have parted with goods
- Goods are in transit
- Buyer has become insolvent
- Rights are subject to this act.

How stoppage in transit is effected -

- By taking actual possession of goods.
- By giving Notice to carrier.

When transit comes to an end -

1. When buyer and other bailee obtains delivery.
2. Buyer obtains delivery before arrival of goods at destination.
3. Where carrier or other bailee acknowledges buyer or his agent that they hold goods on buyer's behalf.
4. If carrier wrongfully refuses to deliver goods.
5. If goods delivered to carrier hired by buyer.
6. Where part delivery of goods are made to buyer & remaining goods were not severed then are assumed to be delivered.
7. If goods are delivered to chartered ship of buyer.

Effect of sub-sale by buyer:

Right of lien or stoppage in transit is not affected by buyer selling or pledging goods unless seller has assented to it.

Exceptions where unpaid seller's right against of lien or stoppage in transit affected:

1. if seller assented to sale, mortgage or dispose goods made by buyer
2. when document of title of goods has been transferred to buyer & ~~seller~~ buyer transfers it for value in good faith.

Right of resale:

1. When goods are perishable -

Buyer ~~no~~ need not be informed for intention of resale.

2. where seller gives notice to buyer of his intention to resale -

if buyer fails to pay after receiving notice seller is entitled to ~~resale~~ resale; if profit - seller's

if loss - can be recovered from buyer

3. Even a unpaid seller who have exercised right of lien & stoppage in transit may resale goods.

4. Resale by seller where right is resumed in contract of sale -

No need to give notice if right of resale is given in contract.

5. Property in goods passed to buyer -

Unpaid seller shall have additional right to withheld goods called Quasi lien.

Right of Unpaid Seller against buyer MM

1. Suit for price - seller may sue buyer if he wrongfully refuses or neglects to pay price.

2. Suit for damages for non acceptance - where buyer wrongfully neglects or refuses to accept & pay for goods seller may sue for damages.

3. Repudiation of contract before due date - If buyer repudiate contract before due date, seller may sue for damages for breach.

4. Suit for interest - seller may sue buyer for interest if payment is delayed.



## Remedies of buyer against seller - MM

1. Damages for Non-Delivery -  
Where the seller wrongfully neglects or refuses to deliver goods than buyer may sue seller for such non-delivery.
2. Suit for specific performance -  
Where seller commits breach of contract buyer may sue seller for performance as per contract.
3. Suit for breach of warranty -  
Where seller breaches warranty as per contract than buyer is not entitled to reject goods on basis of breach of warranty but can sue for damages.
4. Repudiation of contract before due date -  
Where either party to contract repudiates before due date, the other may treat contract as subsisting or can claim damages.
5. Suit for Interest -  
Buyer to recover interest if he recovers money paid on failed agreement.

## Auction Sale: MM

An auction sale is a mode of selling property by inviting bids publicly & property sold to highest bidder.

### Rules of Auction Sale

1. Where goods are sold in lots → It is subject to separate contract of sale.
2. Completion of contract of sale → Sale is complete when auctioneer announces its completion by fall of hammer.
3. Right of bid may be reserved → Seller may reserve right bidding specifically.
4. Where sale is not notified by seller → Then it is not lawful for seller to bid himself or employ someone for this price.
5. Reserved price → ~~sale~~ sale may be notified to a reserve or upset price.
6. Pretended bidding → If seller makes use of pretended bidding, sale is voidable at option of buyer.

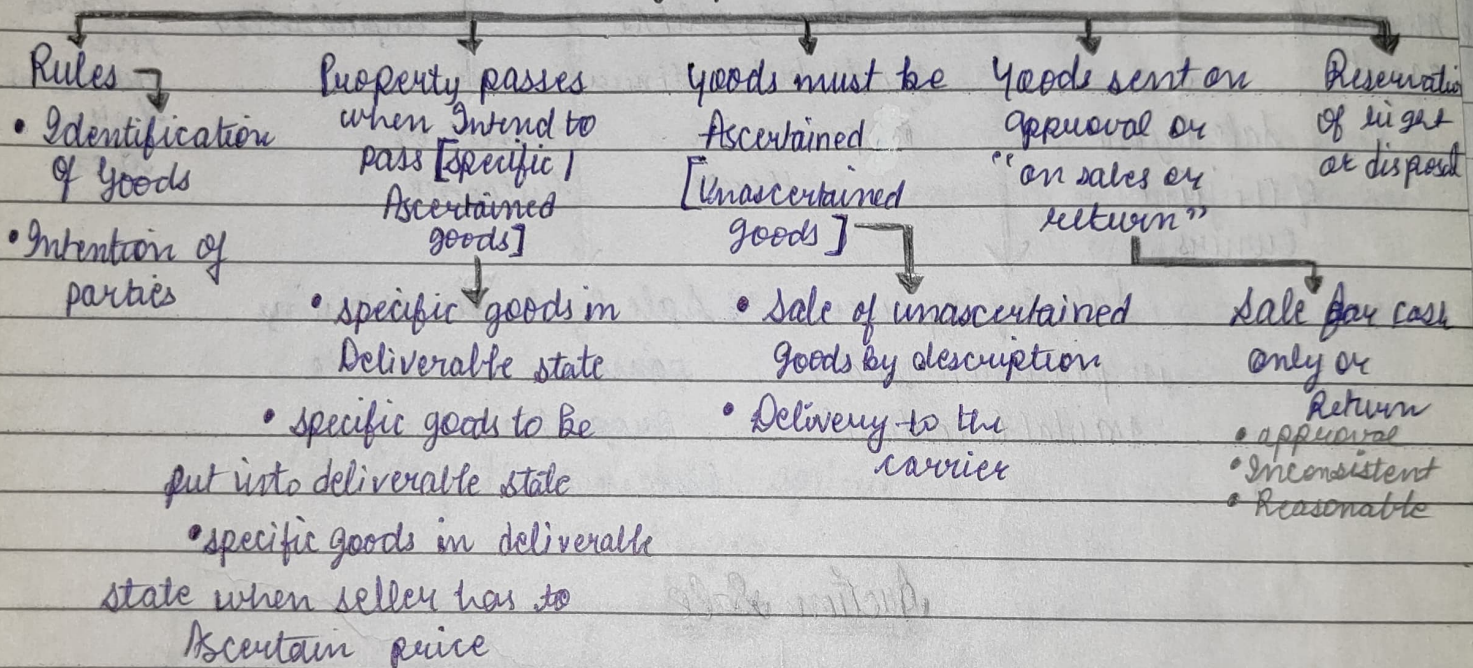
## Increase and Decrease of Taxes in Contract of Sale:

14 After agreement to sale if taxes (GST) increases before sale than high taxes needs to be paid.

24 If decreased, than decreased taxes shall be paid.

## Mind Maps (Unit - 3 & 4)

### Passing of Property



### Risk prima facie passes with property

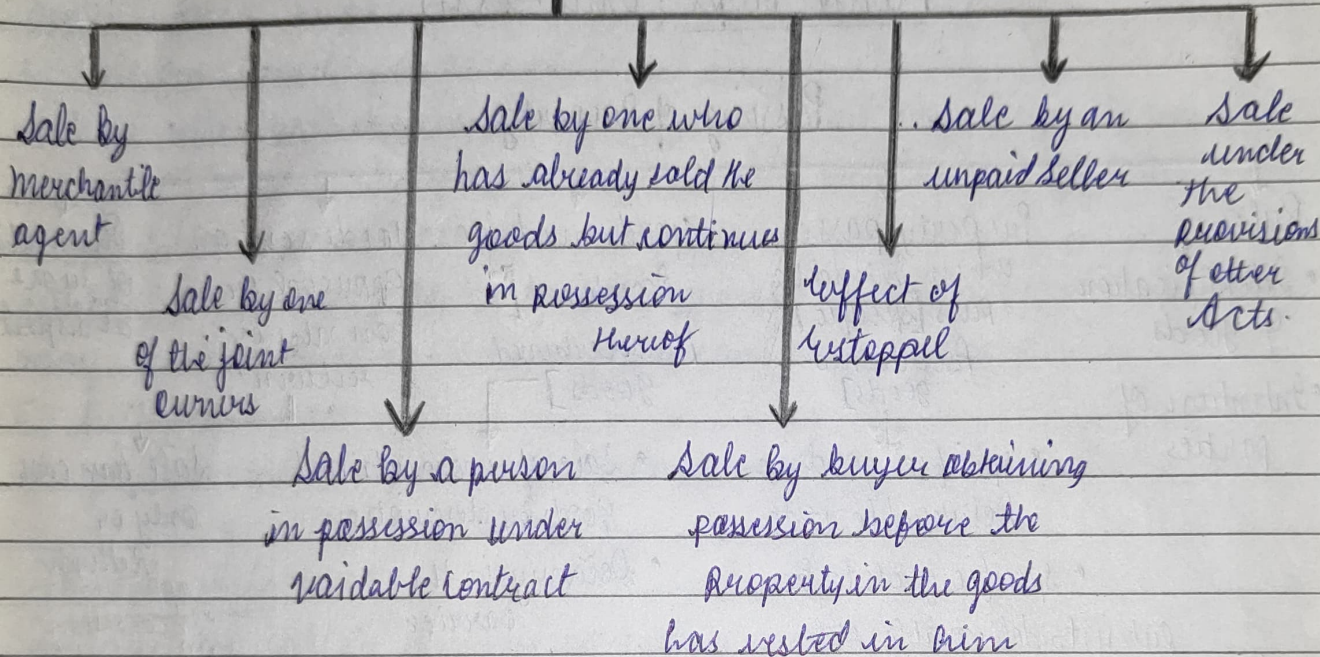
Goods remain at the seller's Risk until the property therein is transferred to the buyer, but when the property therein transferred to buyer, the goods are at the buyer's risk whether delivery has been made or not.

In case of delay, Party in fault shall be liable.

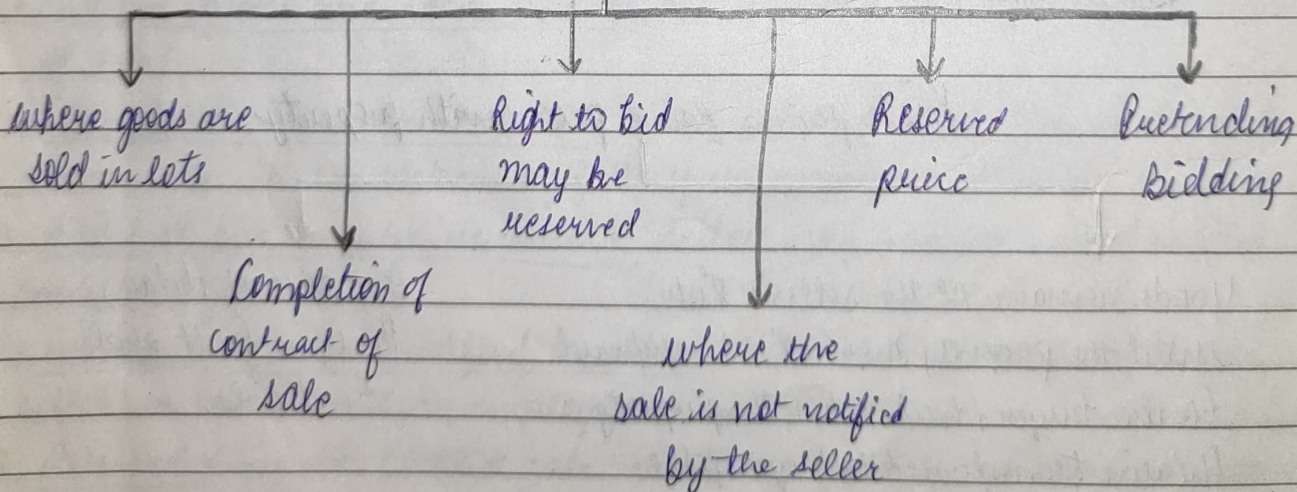
# Transfer of title by Non-owners

"Nemo dat quod non habet" which means no one can give what he has not got.

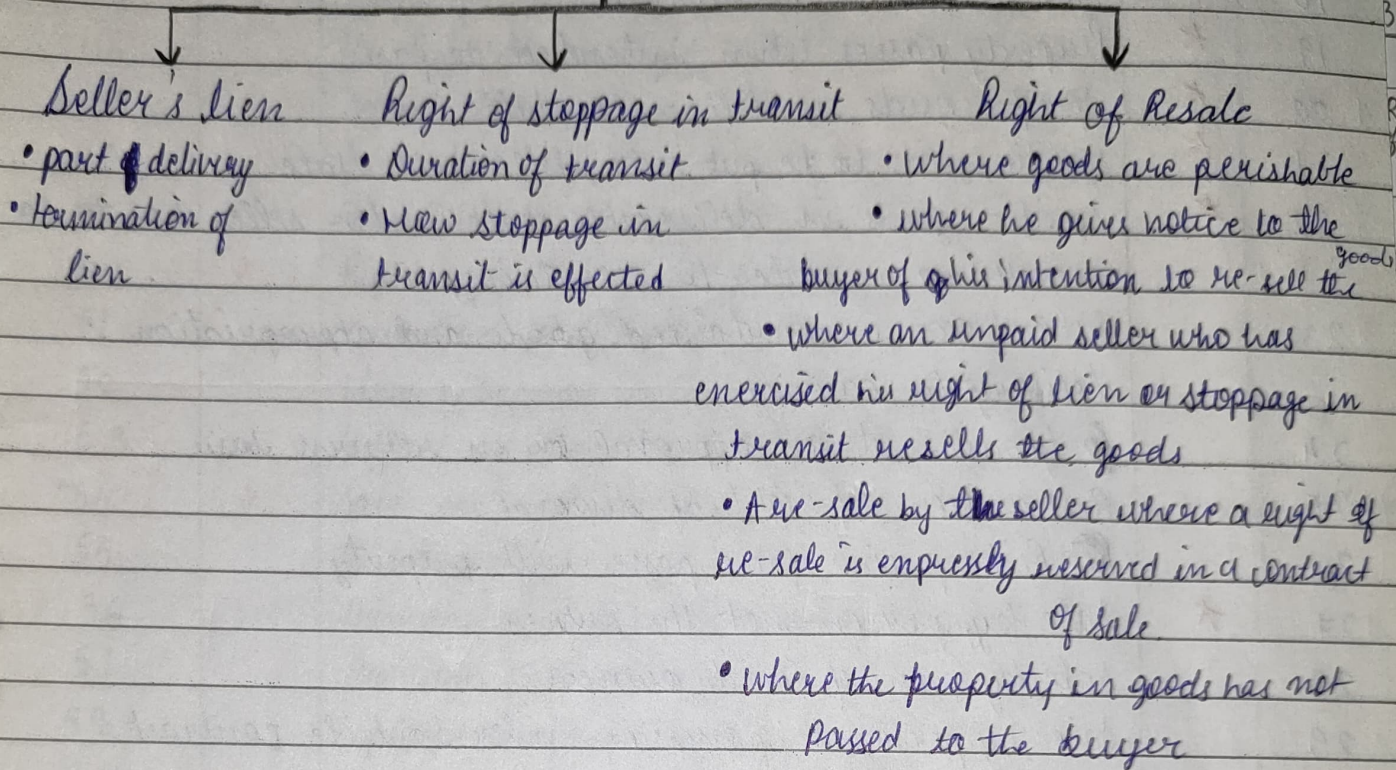
## Exceptions



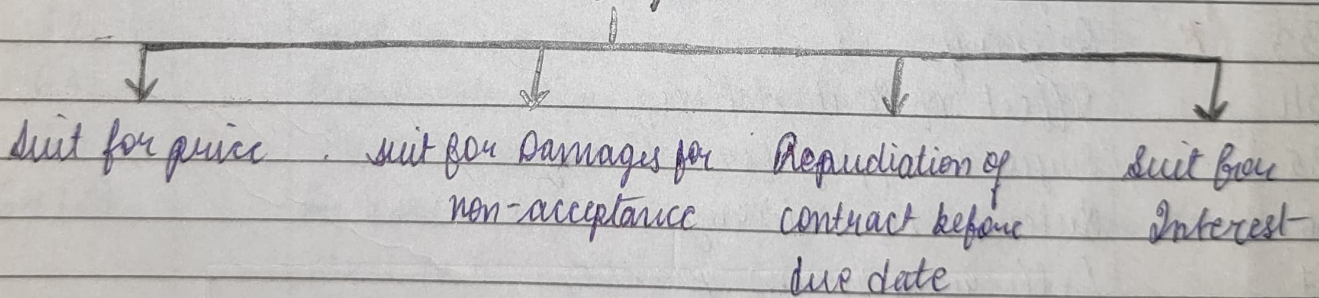
## Auction Sale



## Rights of Unpaid Seller against the goods



## Rights of Unpaid Seller against the buyer



## Sections 506A, 1930 (Unit 3)

Sections	Provisions
18	Goods must be ascertained
19	★ Property passes when intended to pass
20	★ specific goods in deliverable state
21	★ specific goods to be put into deliverable state
22	★ specific goods in deliverable state, when seller has to do something in order to ascertain price.
23	Sale of <del>ware</del> unascertained goods and appropriation. delivery to carrier.
24	Goods sent on approval or on return basis
25	Reservation of right of disposal.
26	Risk prima facie passes with property
27	★ Sale by person not the owner
28	Sale by one of Joint owners
29	Sale by person in possession under voidable contract.
30	Seller or buyer in possession after sale
31	★ Duties of seller and buyer
32	Payment and delivery are concurrent conditions
33	★ Delivery
34	Effect of Part delivery
35	Buyer to apply for delivery
36	Rules as to delivery
37	Delivery of wrong quantity
38	Installment Deliveries
39	Delivery to carrier or wharfinger
40	Risk where goods are delivered to distant places
41	Buyer's right to examine goods
42	★ Acceptance
43	Buyer not bound to return rejected goods
44	Liability of buyer for neglecting or 'refusing Delivery'

## Unit - 4

Sections		Provisions
45	★	Unpaid seller defined
46		Unpaid seller's right
47	★	Seller's lien
48		Part delivery
49		Termination of lien
50	★	Right of stoppage in transit
51		Duration of transit
52		How stoppage in transit is effected
53		Effect of sub-sale or pledge by buyer
54	★	Sale not rescinded by lien or stoppage in transit (Resale)
55		Suit for price
56		Damages for non-acceptance
57		Damages for non-delivery
58		Specific performance
59		Remedy for breach of warranty
60		Repudiation of contract before due date
61		Interest by way of damages or special damages
62		Inclusion of Implied Terms & conditions
63		Reasonable time or question of fact
64	★	Auction sale
64(A)		In contract of sale, amount of Increase or decrease in taxes to be added or deducted.
66		Savings

### Important Cases

- (1) *Bombay Burma Trading Corporation Ltd v/s Aga Muhammad* : Implied condition  
Timber was purchased for making railway sleepers but was found unfit to use for this purpose, court held contract can be avoided.
- (2) *Leist v/s East* : Breach of Implied condition, sale by description