

## \* Caveat Emptor :-

In the case of sale of goods, the doctrine 'caveat Emptor' means 'let the buyer beware'. When seller display their goods in the open market, it is for the buyer to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

### 1. Fitness as to quality or use :-

Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgement and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose. [sec 16(1)]



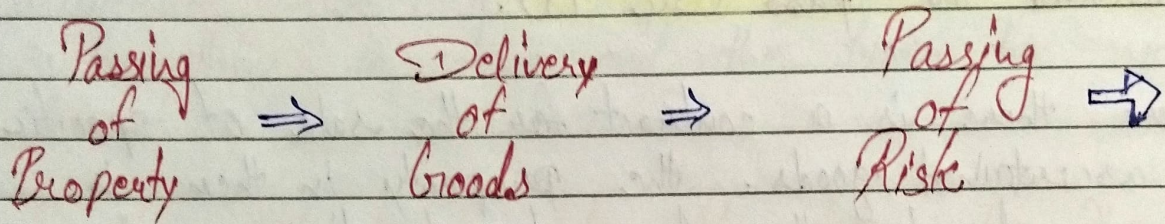
2. Goods purchased under patent or brand name: →
3. Goods sold by description
4. Goods of Merchantable Quality:
5. Sale by sample.
6. Goods by sample as well as description:
7. Trade Usage.
8. Seller actively conceals a defect in its guilty of fraud.



### 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 (Sections 18-26) :->

Passing of property implies passing of ownership. If the property has passed to the buyer, the risk in the goods sold is that of buyer and not of seller though the goods may still be in the seller's possession.

⇒ Two factors to transfer of goods from seller to buyer:

#### a) Identification of Goods :->

Where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. The buyer can get the ownership right on the goods only when the goods are specific and ascertained.



### 3) Intentions of Parties: →

The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

#### A. Property (Specific or ascertained goods) passes when intended to pass (Sec 13).

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

#### ⇒ Stages of goods while passing of property.

→ Specific goods in a deliverable state

→ Specific goods to be put into a deliverable state

→ Specific goods in a deliverable state when seller has to ascertain price.

#### 1. Specific goods in a deliverable state (Sec 20): →

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of



delivery of the goods, or both is postponed.

## 2. Specific goods to be put into a deliverable state (sec 21):

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of getting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

## 3. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (sec 22):

Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh measure test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

## B. Goods must be ascertained:→

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.  
[sec 18.]



Subject \_\_\_\_\_

## 1. Sale of unascertained goods by description [sec 23(1)] :->

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made.

## 2. Delivery to the carrier (sec 23(2)) :->

Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

## 6. Goods sent on approval or "on sale or return" (sec 24) :->

It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.



## ①. Reservation of right of disposal (sec 25):→

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. [sub-section (1)].

Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipts, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal [Sub-section (2)].

## ⇒ Risk Prima facie passes with Property (sec. 26):→

According to section 26, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.



It is provided that, where delivery has been delayed because of the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Example: → A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

⇒ Transfer of title by non-owners (Sec. 27-30)

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

⇒ This rule is expressed in the Latin maxim "Nemo dat quod non habet" which means that no one can give what he has not got.



1) Sale by a Mercantile Agent :-> A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

- (a) If he was in possession of the goods or documents with the consent of the owner;
- (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and.
- (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

⇒ Mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods [section 2(9)].

2) Sale by one of the joint owners (Sec 28) :->

If one of several joint owners of goods has the sole possession of them by permission of the co-owners the property in the goods is transferred to



Subject \_\_\_\_\_

any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

(3) Sale by a person in possession under voidable contract :->

A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale. (sec 29).

(4) Sale by one who has already sold the goods but continues in possession thereof :->

If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid (Section 30(1)).



5) Sale by buyer obtaining possession before the property in the goods has vested in him:→

Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them [Section 30(2)]

(6) Effect of Estoppel:→

Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

7) Sale by an unpaid seller:→

Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer. [Section 54(3)]-



## (8) Sale under the provisions of other Acts:-

- (i) Sale by an official Receiver or Liquidator of the company will give the purchaser a valid title.
- (ii) Purchase of goods from a finder of goods will get a valid title under circumstances [Section 169 of the Indian Contract Act, 1872].
- (iii) A sale by pawnor can convey a good title to the buyer [Section 176 of the Indian Contract Act, 1872].

## ⇒ Performance of the contract of sale (sections 31-44)

The Performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment of price for them by the buyer in accordance of the terms of the contract.

## Definition of Delivery [Section 2(2)]:

Delivery means voluntary transfer of possession from one person to another. The buyer should be placed in a position so that he can exercise his right over the goods.



→ Delivery of goods is of three types: →

- a) Actual Delivery
- b) Symbolic Delivery
- c) Constructive Delivery

\* Duties of seller and buyer (Section 31): →

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

→ Payment and delivery are concurrent conditions (Sec. 32): →

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. That is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

⇒ Rules Regarding Delivery of Goods (Sec 33-41).

The sale of goods Act 1930 prescribes the following rules of delivery of goods:

- i) Delivery (Section 33).



- ii) Effect of Part delivery: (Section 34).
- iii) Buyer to apply for delivery: (Section 35).
- iv) Place of delivery [Section 36(1)].
- v) Time of delivery [Section 36(2)].
- vi) Goods in possession of a third party [Section 36(3)].
- vii) Time for tender of delivery [Section 36(4)].
- viii) Expenses for delivery [Section 36(5)].
- ix) Delivery of wrong quantity [Section 37].
- x) Instalment deliveries. [Section 38].
- xi) Delivery to carrier [Section 39(1)].
- xii) Deterioration during transit [Section 40].
- xiii) Buyer's right to examine the goods: [Section 41].

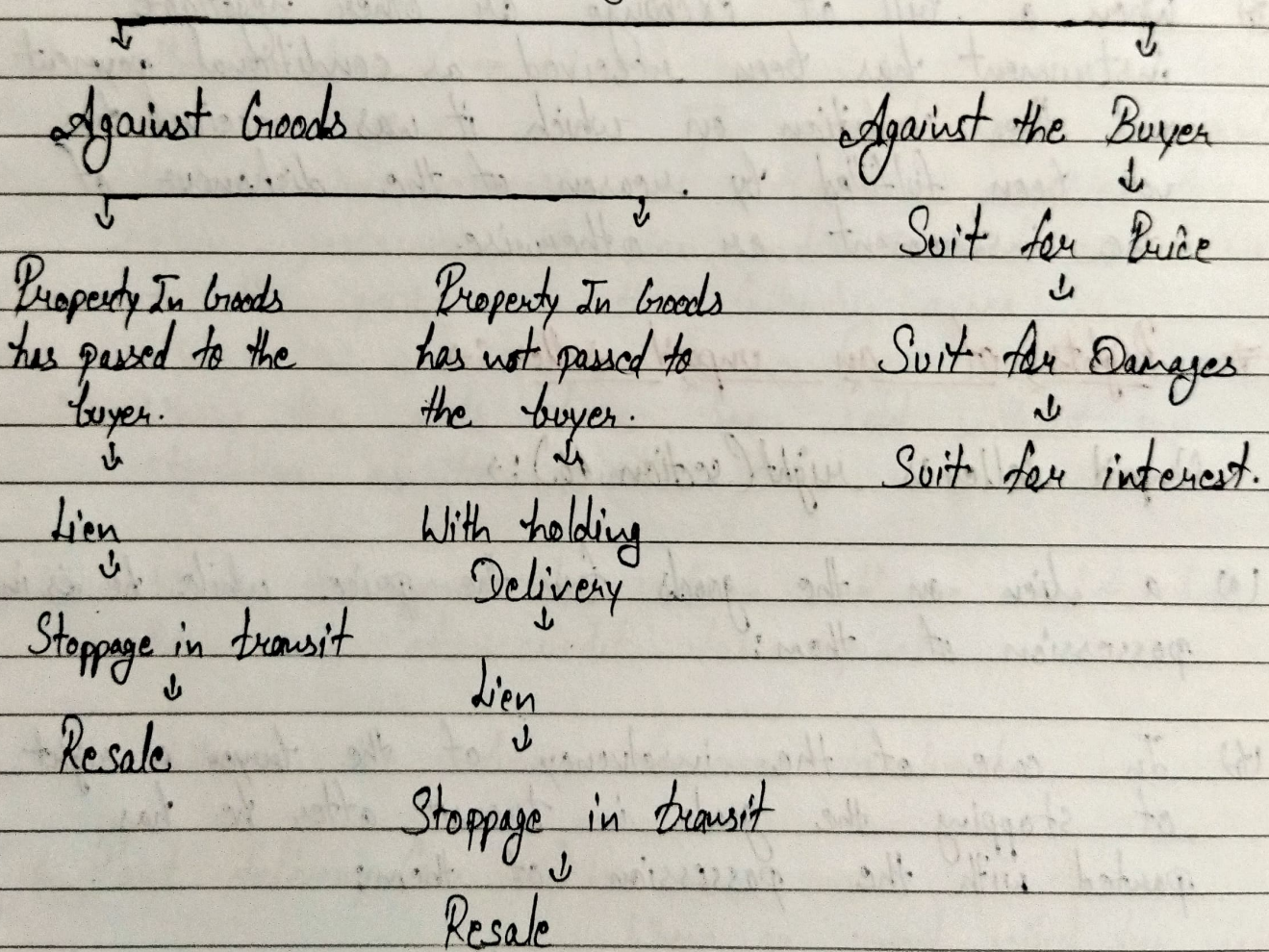


Unit - 4:

Unpaid seller

जब किसी विक्रेता द्वारा वस्तु का विक्रम करने पर वस्तु का मूल्य प्राप्त नहीं हुआ हो या वह प्राप्त हुआ हो, बकाया राशि रखने पर वह Unpaid seller कहलाता है।

Rights of an unpaid seller



⇒ Unpaid seller: ⇒

A contract comprises of reciprocal promises. In a contract of sale, if seller is under



an obligation to deliver goods buyer has to pay for it. In case buyer fails or refuses to pay, the seller as an unpaid seller, shall have certain rights.

(a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

### \* Rights of an unpaid seller :->

Unpaid seller's right (section 46) :->

(a) a lien on the goods for the price while he is in possession of them;

(b) In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(c) A right of re-sale as limited by this Act (see [sub-section (1)]).



Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [sub-section (2)].

### \* Right of unpaid seller against the goods :->

#### (1) Seller's lien (sec 47) :->

The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:-

- Where the goods have been sold without any stipulation as to credit;
- Where the goods have been sold on credit; but the term of credit has expired.
- Where the buyer becomes insolvent.

#### \* Part delivery (sec 48) :->

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.



Termination of lien (sec. 49): →

The unpaid seller of goods loses his lien.

- (a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) When the buyer or his agent lawfully obtains possession of the goods;
- (c) By waiver thereof.

(2) Right of stoppage in transit (sec. 50 to 52)

Right of stoppage in transit (sec. 50): →

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods.



## Duration of transit (sec 51):

- 1) Goods are deemed to be in the course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.
- (2) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
- (3) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.
- (4) Where part delivery of the goods has made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit.

## How stoppage in transit is effected (sec 52).

- 1) The unpaid seller may exercise his right of



stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice of his claim to the carrier may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice to be effectual, shall be given at such time and in such circumstances; that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

When does the transit come to an end?

The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end in the following cases:

- When the buyer or other bailee obtains delivery.



- Buyer obtains delivery before the arrival of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.
- Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
- If the carrier wrongfully refuses to deliver the goods to the buyer.
- Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
- Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.
- Where the goods are delivered to a ship chartered or chartered by the buyer, the transit comes to an end.

\* Distinction between Right of Lien and Right of stoppage in Transit.



- (i) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
- (ii) Seller should be in possession of goods under lien while in stoppage in transit (a) seller should have parted with the possession (b) possession should be with a carrier & (c) buyer has not acquired the possession.
- (iii) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
- (iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage in transit.
- (v) Right of lien comes to an end as soon as the goods go out of the possession of the seller but the right of stopping in transit comes to an end as soon as the goods are delivered to the buyer.

Effects of sub-sale or pledge by buyer (Sec 53):→

The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods



unless the seller has assented to it. This is based on the principle that a second buyer cannot stand in a better position than his seller. (The first buyer).

\* Exceptions where unpaid seller's right of lien and stoppage in transit are defeated:

(a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.

Example: A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result, A's right to lien is defeated (Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd.).

(b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for Price



then, the provisions of sub-section (1) stipulates as follows:

(i) If the last-mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated as

(ii) If the last mentioned transfer is by way of Pledge unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the Pledgee.

Effect of stoppage: ⇒

The contract of sale is not rescinded when the seller exercises his right of stoppage in transit. The contract still remains in force and the 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 given to an unpaid seller. In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

⇒ The unpaid seller can exercise the right to re-sell the goods under the following conditions:



(i) Where the goods are of perishable nature :->

In such a case, the buyer need not be informed of the intention of resale.

(ii) Where he gives notice to the buyer of his intention to re-sell the goods :->

If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

(a) Recover the difference between the contract price and resale price, from the original buyer as damages

(b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [section 54(2)].