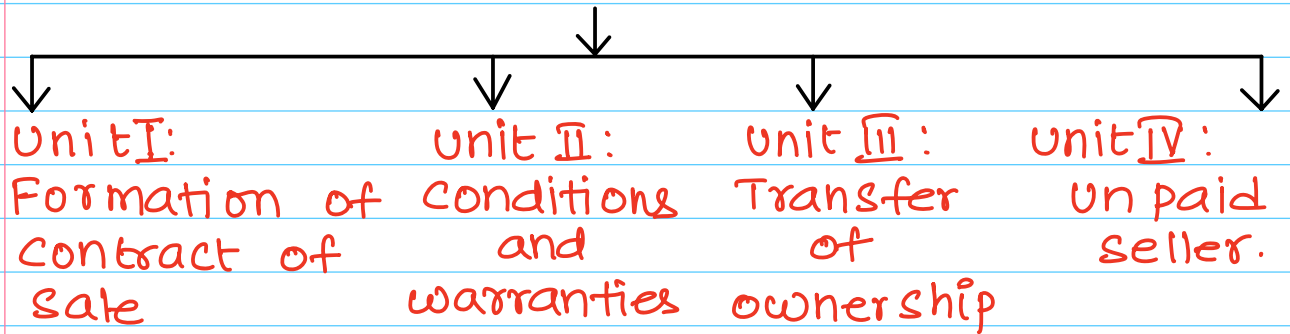


THE SALE OF GOODS ACT, 1930

Division of the Act



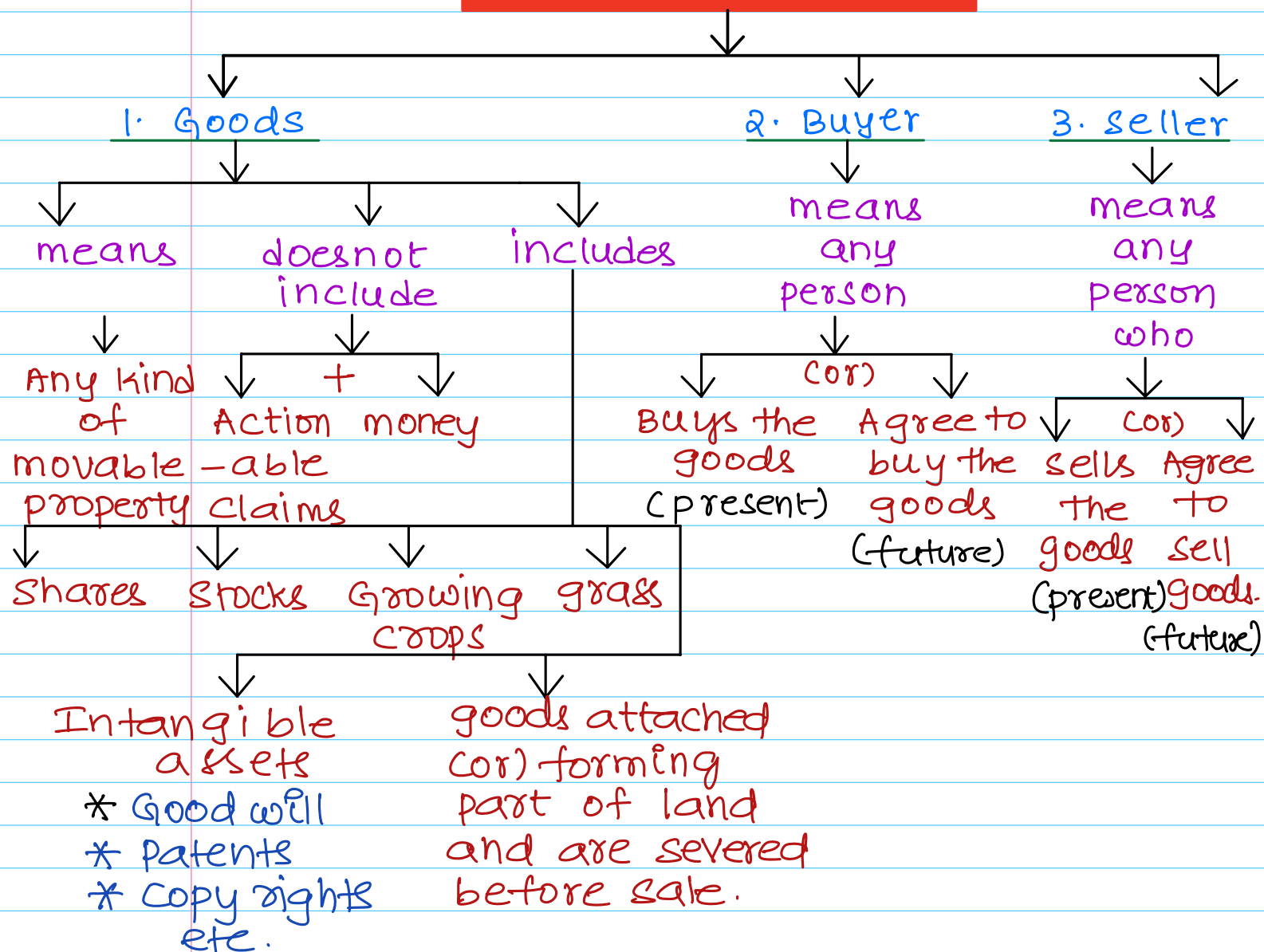
UNIT I

FORMATION OF CONTRACT OF SALE

Learning objectives

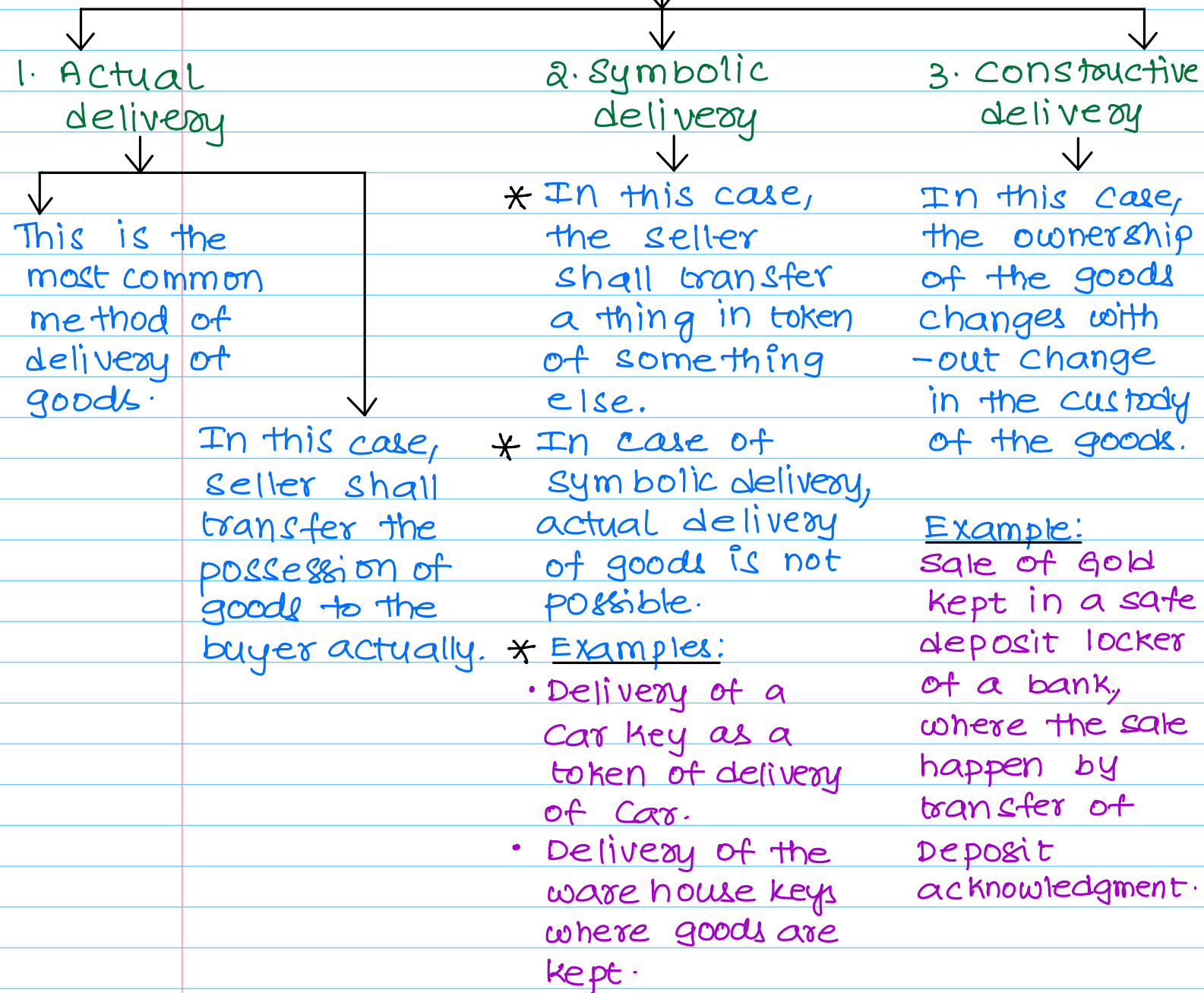
- * Basic definitions.
- * Essentials of valid contract of sale.
- * Differences between sale and other forms of contract.
- * Concept and kinds of delivery.
- * Pricing of contract of sale.
- * Various types of goods.
- * Miscellaneous concepts.

1. Basic Definitions



contd....

2. Types of delivery.



3. Types of Goods

1. Existing goods

Existing goods are those goods which are available/owned/possessed by the seller on the date of C.O.S.
Existing goods are of 3 types

Specific goods

Goods identified and agreed at the time of C.O.S.

Ascertained goods

This term is not defined in Act.

In actual practice, it is similar to "specific goods".

2. Future goods

Future goods are those goods which are to be acquired by the seller after the C.O.S is entered into.

Note: In case of C.O.S of future goods it is an "agreement to sell".

Unascertained goods

Goods which are not specifically identified at the time of C.O.S are called as "unascertained goods".

When from lot of unascertained goods, any good is identified based on qty, price etc we call it as "ascertained goods".

3. Contingent goods

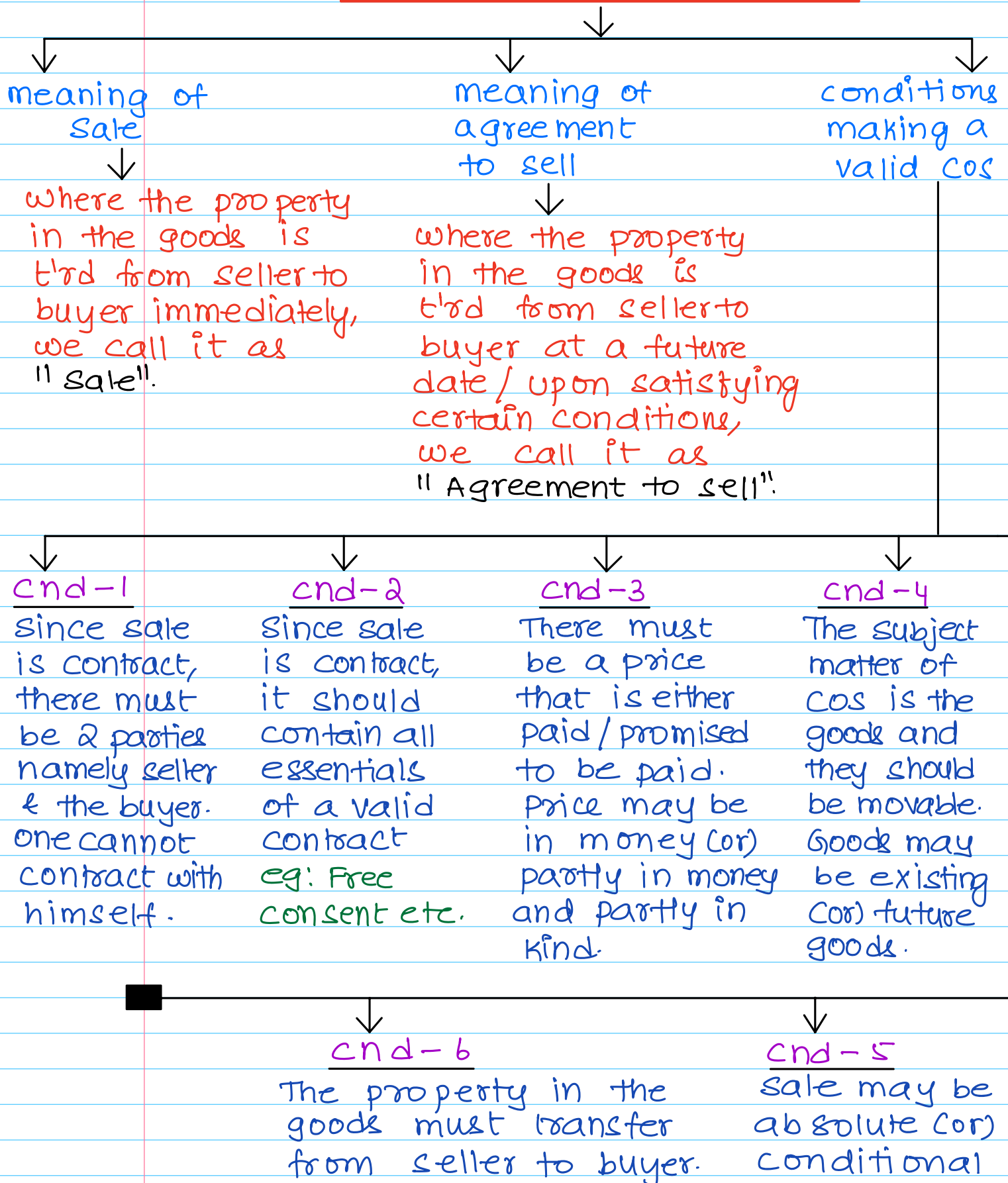
Contingent goods are those goods acquisition of which by the seller is depending on an uncertain future event.

Note: In case of C.O.S of contingent goods it is an "agreement to sell".

Common note for future & contingent goods

In case of C.O.S of future/cont. goods the seller cannot pass the ownership on the goods since he doesn't possess them.

4. Sale v/s Agreement to sell



5.

contract of sale - How made?

1. manner of making cos

A cos may be made by way of an offer made by seller/buyer and accepted by another and it can be by word of mouth (or) writing (or) partly oral and partly in writing.

2. various modes of cos.

There shall be an offer made by seller and accepted by the buyer and vice versa.

There may be an immediate delivery of goods with out pyt of price

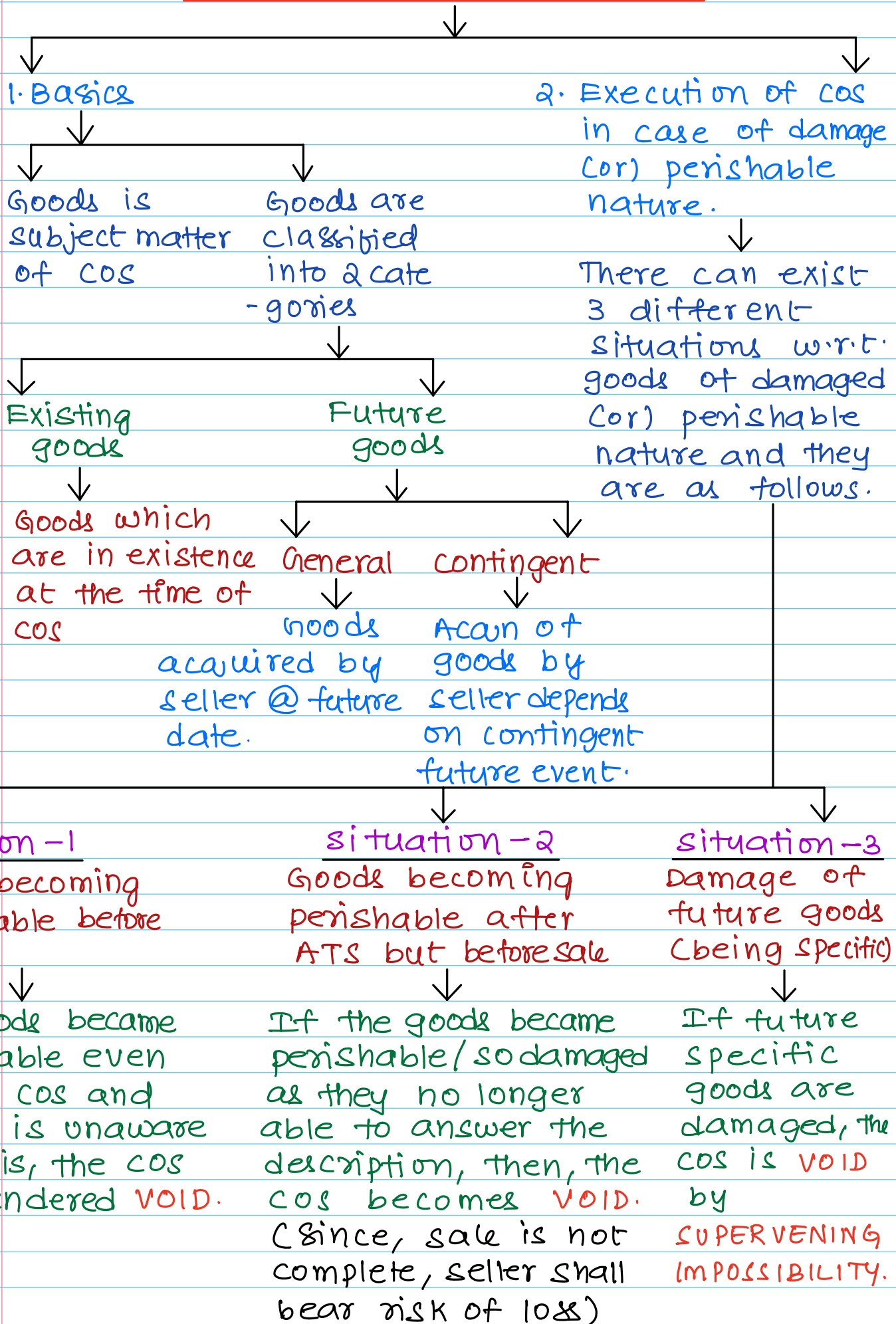
There may be both immediate delivery of goods and immediate pyt of price

There may be immediate pyt of price without immediate delivery

There may be delivery of goods in the installments and/or pyt in instalments.

There may be delivery of goods and pyt of price both postponed to future date

6. Subject matter of C.O.S



(Sec. 9 & Sec 10)
7. Ascertainment of Price

1. Basics

Price is the consideration for COS of goods.

Price is paid either in money (or) partly in money and partly in kind.

2. Special aspects governing pricing a COS

(Sec. 9)
mode of fixing the price of COS of goods

(Sec. 10)
Agreement to sell at the valuation

mode-1

Both buyer and seller shall agree by contract.

mode-2

Both buyer and seller agree to fix price in a agreed manner.

mode-3

Decided by course of dealing

Reasonable price is dependent on facts of particular case.

mode-4

If price couldn't be fixed by any of the modes, then price shall be reasonable price.

1. Price fixed by valuer

Buyer and seller shall agree to the price fixed.

2. Valuer could not fix the price

If valuer couldn't fix the price, the agreement is then avoided.

Note: If goods are already used by buyer, he shall pay reasonable price.

3. Valuer is prevented from valn.

Party not in fault may sue other party for suit for damages.

don't

CA Koushik Mukhesh

8. Sale v/s similar contracts

A. Sale v/s Agreement to sell

Particulars	Sale	Agreement to sell
1. Transfer of property.	Property in the goods is passed from seller to buyer immediately.	Property in the goods is passed from seller to buyer at future date.
2. Nature of contract	It is a executed contract.	It is a executory contract.
3. Remedy for breach	Seller can sue the buyer for the price.	Seller can sue the buyer for damages.
4. Nature of rights	Jus in rem	Jus in personam.
5. Liabilities & risk.	Liability and risk passes on to buyer since he is the owner.	Liabilities and risk is still with seller since seller is owner.
6. Right of resale	Seller cannot resell the goods already sold.	Seller can sell the goods since it is only an agreement and goods not yet passed on buyer.

B. Sale v/s Hire purchase

Particulars	Sale	Hire purchase
1. Transfer of property.	Property in goods is tr'd immediately.	Property in goods is tr'd on pyt of last instalment.
2. Position of party	Buyer becomes owner immediately.	Hirer becomes owner on pyt of last instalment.
3. Termination of contract.	Buyer cannot terminate contract after sale.	Hirer can terminate the contract at any time before last instalment.
4. Burden of risk of insolvent	Seller has to take risk on insolvency of buyer.	owner can get back the goods on insolvency.
5. Re-sale	Buyer can sell the goods bought	Hirer cannot sell the goods hired.

Koushik

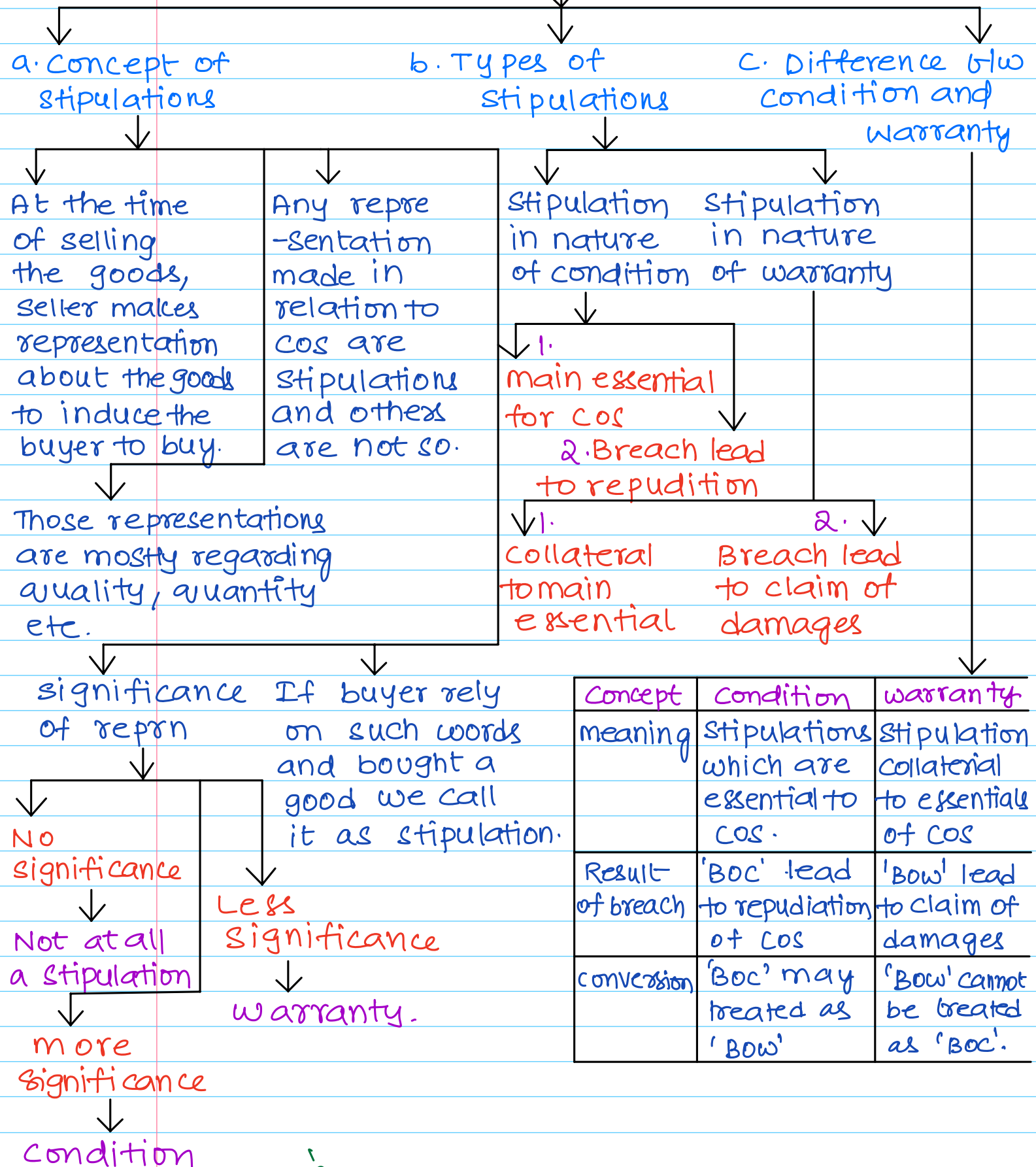
CA Koushik Mukherjee

C. Sale v/s Bailment

Particulars	Sale	Bailment
1. Transfer of property	Property in goods is transferred immediately from seller to buyer.	There is t/r of the possession of goods from bailor to bailee for some purpose.
2. Return of goods.	In a COS goods once sold cannot be returned.	In a bailment bailee must return back the goods once the purpose is accomplished.
3. Consideration	Consideration by way of price is mandatory in a COS.	Bailment may be gratuitous (or) non-gratuitous.

UNIT 2 : CONDITIONS AND WARRANTIES

1. Basics and meaning :-



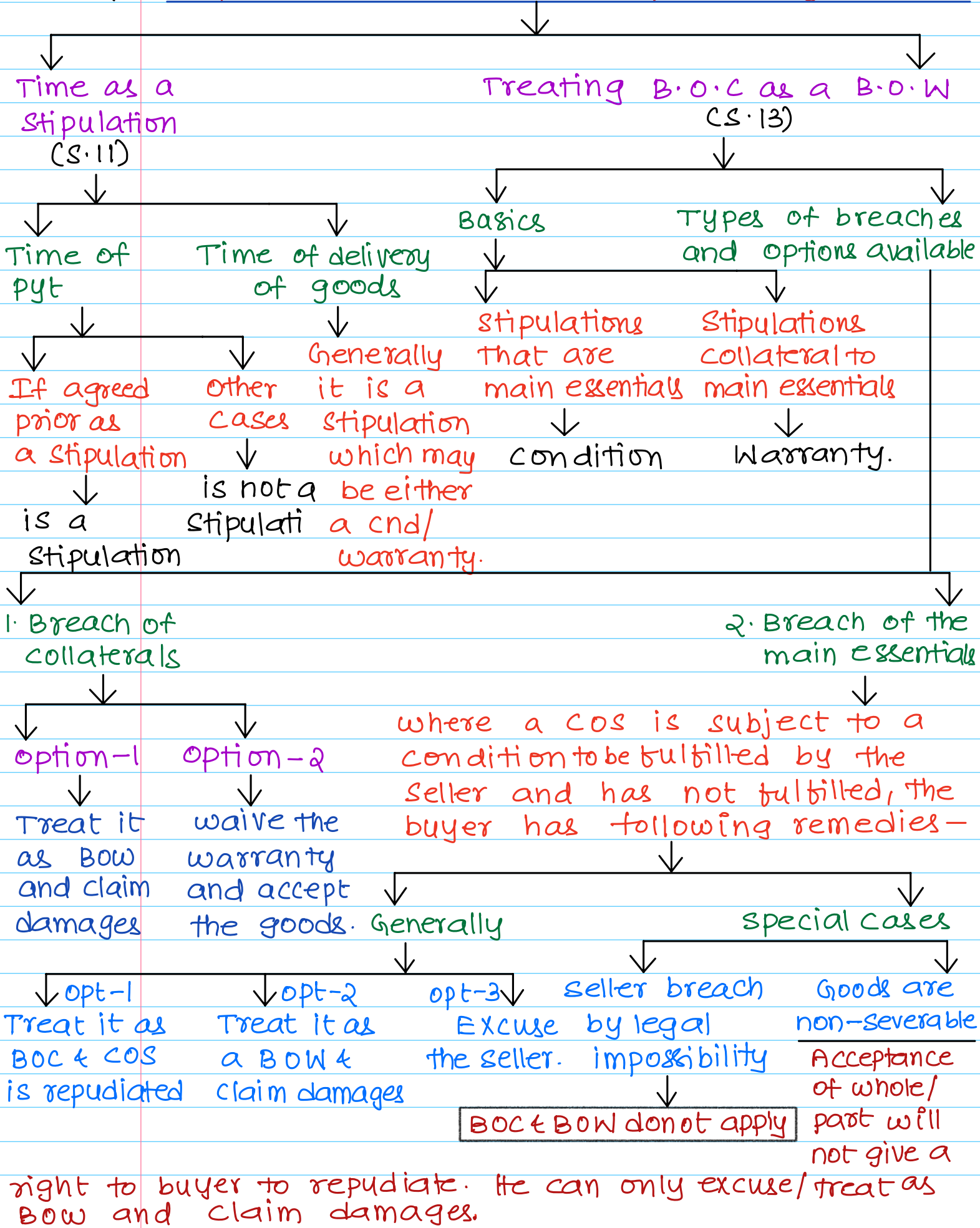
donsil

CA Koushik Mukherjee

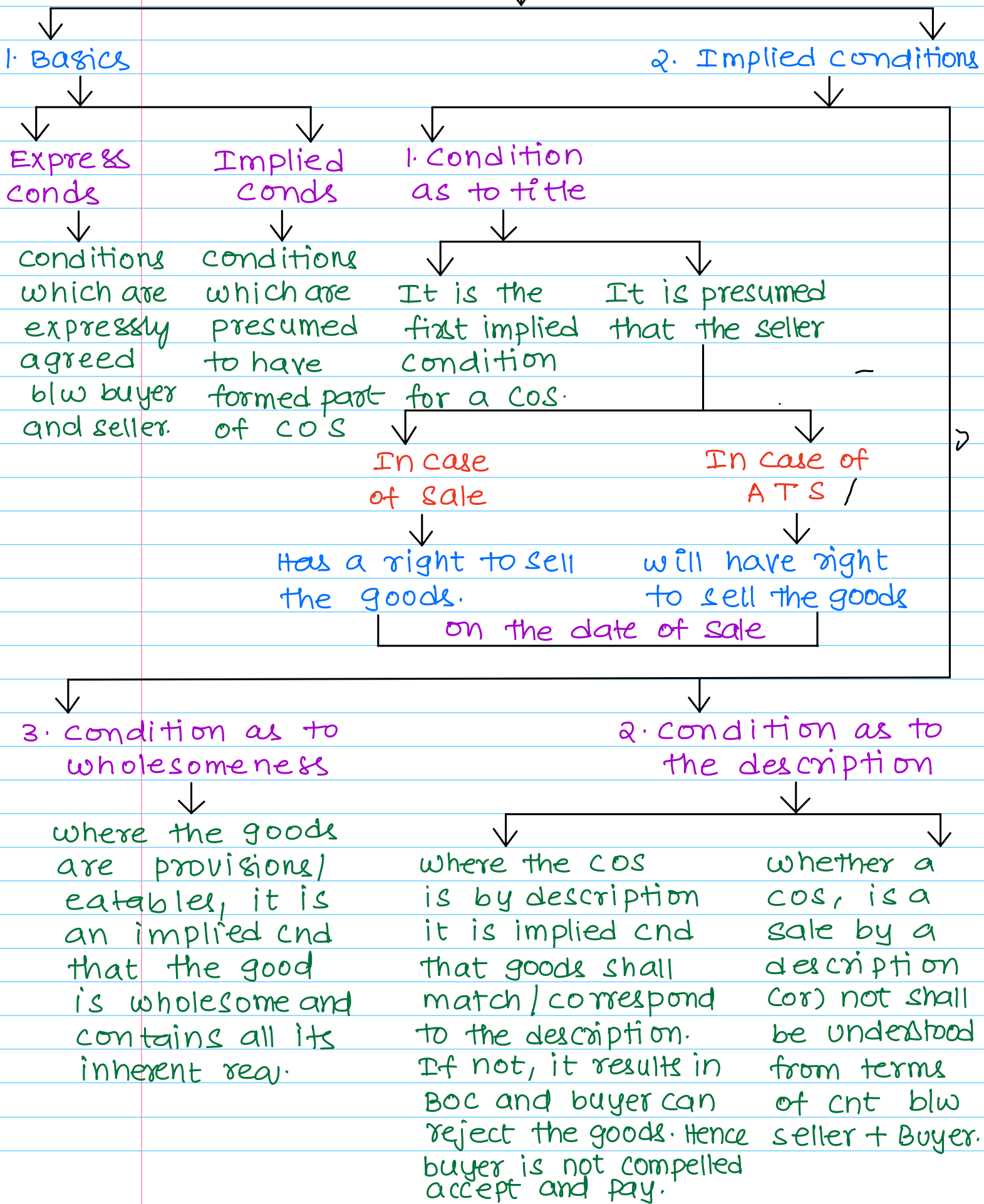
B.O.C. = Breach of Condition

B.O.W. = Breach of Warranty

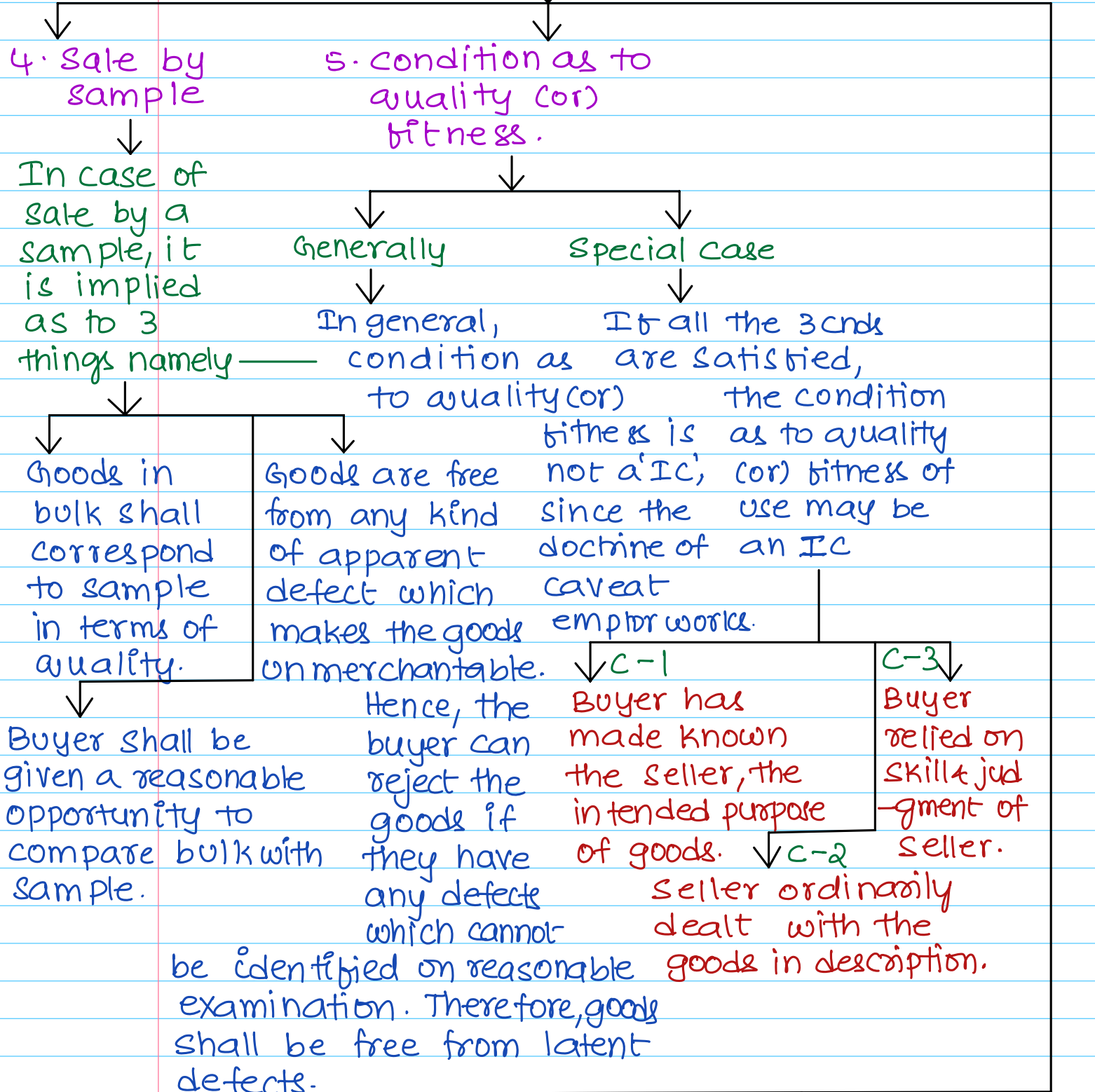
2. Impact of breach of cond/warranty (S.11+S.13)



3. Express and implied conditions



contd....



<p>7. condition as to merchantability</p> <p>where the goods are bought by description, it is implied that</p> <ul style="list-style-type: none"> * Goods shall be of description * It shall be in merchantable quality and * Seller should deal with those goods. 	<p>6. Sale by sample & description</p> <p>when goods are sold by S&D, the bulk should correspond to sample and also description. If it matches the sample but not description / vice versa / both, buyer can repudiate the cos.</p>
---	---

4. Implied warranty

1. Warranty as to undisturbed possession

2. Warranty as to the non-existence of encumbrances.

3. Disclosure of dangerous nature of goods

It is an implied warranty that the buyer shall have & enjoy a quiet & undisturbed possession of goods.

If a buyer is later on disturbed in his possession, he may treat it as a breach of implied warranty and claim damages from the seller.

It is an implied warranty that the goods sold are free from any charge/encumbrance in favour of a third party.

However, it shall be proved that seller has not declared / buyer don't know the fact of encumbrance before / at the time of COS.

It is implied warranty that the seller has to disclose the dangerous nature of goods sold.

If undisclosed, it shall lead to breach of warranty and buyer may claim the damages.

Note: Buyer should not be aware of the dangerous nature.

S. DOCTRINE OF CAVEAT EMPTOR (DOCE)

1. Basics

The concept where the goods of doctrine are sold in a open market, it of caveat emptor says is to the buyer "let the buyer beware". to make right choice of goods.

seller is also seller cannot be not at any made liable for obligation to improper choice of disclose any goods made by the defects which buyer. are clear on normal examination.

It is the duty of the buyer to satisfy himself that goods shall serve his purpose. If later it is found that goods are not fit for his purpose, Seller cannot be made liable.

contd....

d. sale made by sample and description

If goods are sold by sample as well as description, the DOCE donot apply if goods don't correspond to sample or) description or) either both.

2. Exceptions to the doctrine of Caveat emptor

a. Goods under brand name

where the goods are sold under a brand or) patent, it is implied that it can be used only for that purpose and buyer need not disclose again and "DOCE" is not applicable.

c. Sale by description

If goods are sold by description, it is implied that goods shall correspond to goods in the description.

If not seller is responsible and DOCE donot apply.

b. Sale by sample

If the sale is made by sample, the DOCE donot apply if the bulk donot correspond with sample in quality.

contd.....

e. Goods as to the merchantability

Where the goods are bought by description, it is the implied cond that they shall be usable and merchantable. If goods bought are not in the merchantable state, **DOCE** donot apply.

f. Seller concealed defects.

Where the seller by mis representation (or) fraud conceals the defects on the goods which cannot be identified on a reasonable examination the **DOCE** donot apply. seller is responsible.

g. Goods fit for usage

If all the 3 following conditions are satisfied, The buyer is not responsible, rather seller is made responsible. In short, **DOCE** donot apply.

condition-1

Buyer have made aware the seller the particular purpose of buying the goods.

Note: This condition doesnot apply if good can be used only for one purpose.

condition-2

seller deals with good in the description.

condition-3

Buyer relied on skill and judgement of seller.

UNIT 4: UNPAID SELLER

1.

1. Basics of this Chapter

2. who is an unpaid seller?

sale is a contract b/w 2 parties i.e. seller & Buyer

A contract is an agreement enforceable by law

Every promise and set of promises forming part of consideration for each other is called an "agreement".

A seller shall be termed as "unpaid seller" if any of the conditions are satisfied —

If seller is not paid by the buyer as promised, we call him as "unpaid seller".

where a seller is under an obligation to deliver the goods, the buyer is also having an obligation to pay for it.

A COS is a reciprocal promise.

1. Whole or price on the goods has not been paid/tendered and seller has an immediate right of action against price.

2. A BOE/other negotiable instrument is issued & the BOE/NI is dishonored.

Summary of rights of an 'UPS'.

As against goods

As against buyer

Property thrd	Property not thrd	1. Suit for price
1. Lien	1. withhold delivery	2. Suit for damages
2. Stop in transit	2. Lien	3. Suit for interest
3. Resale.	3. Stop in transit	
	4. Re-sale	

Note.

The term "unpaid seller" includes any person in the position of a seller.

Example:

* Agent holding a Bill of lading.

* Agent who paid himself for goods.

2.

RIGHTS OF UNPAID SELLER (S.46-S.54)

I. Basic rights and Right of lien (S.46-49)

Basic rights

The unpaid seller shall have the following rights as against the goods —

Right of lien while the goods are in possession of the Seller.

Right of Stoppage of goods in transit.

where the goods are sold without any stipulation of credit.

Right of resale of the goods.

where the goods are sold on credit and credit period is expired

Termination of Lien (S.49)

The seller's Lien is terminated when

Goods are delivered to carrier of buyer without reserving the right of disposal.

Buyer has lawfully obtained possession of the goods

Seller has voluntarily waived the lien.

Right of Lien

The seller can exercise a right of lien either whole (or) in part (or) may even terminate it as follows.

Seller's Lien (S.47)

Lien

Seller may exercise the lien on the goods in the following situations —

where the buyer has become insolvent.

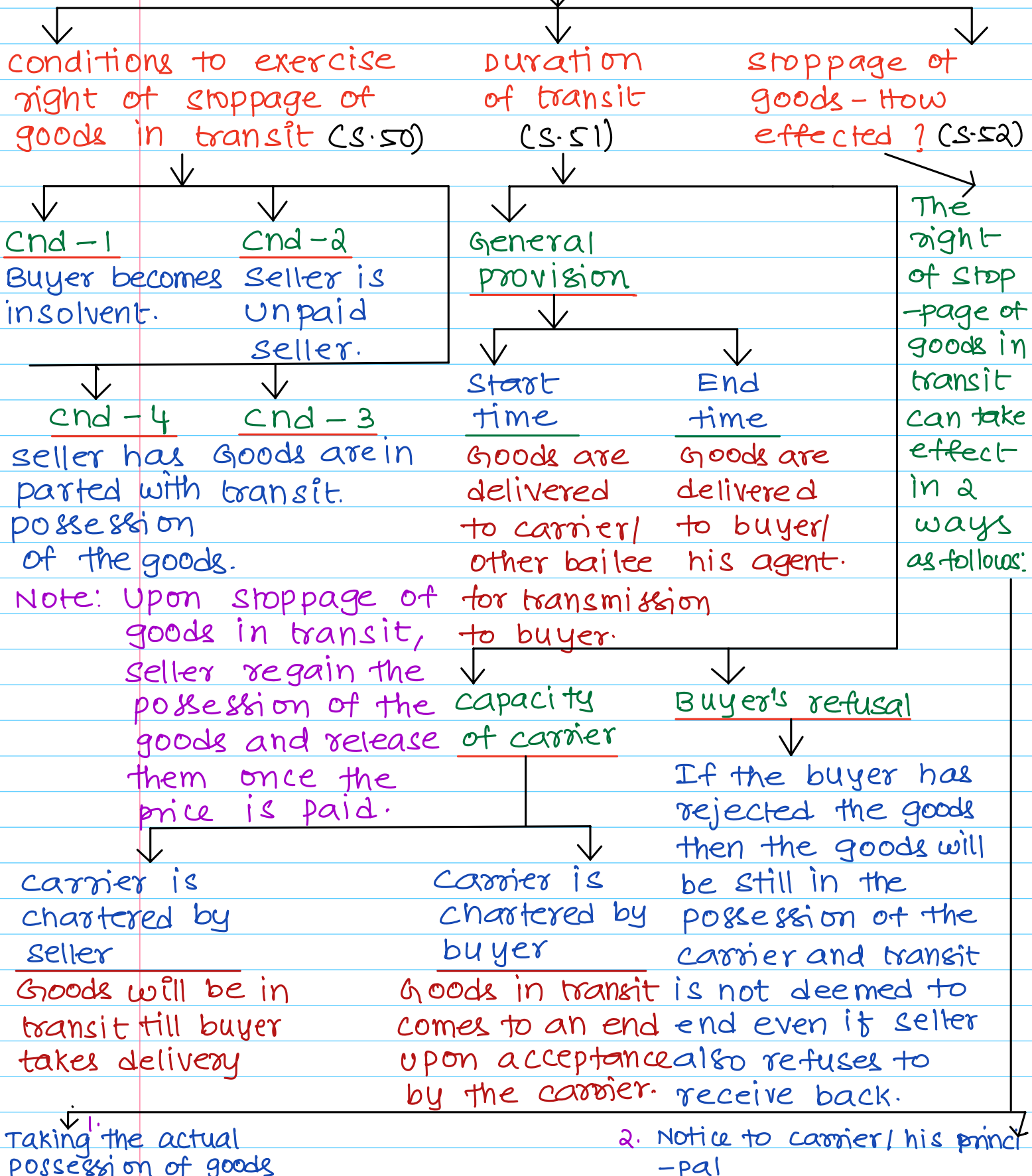
Part-Lien (S.48)

where the goods are sold on credit and payment of price is not made & a part of the goods have already been delivered, the Seller may have the lien on remainder of goods.

(unless the circumstances suggest a waiver).

II. RIGHT TO STOP GOODS IN TRANSIT

General provisions



1. Taking the actual possession of goods

2. Notice to carrier/ his principal

Note: 1. Notice to principal shall given in such a way the principal shall have reasonable time to inform the carrier.

2. If seller instructed redelivery, expenses of redelivery shall be borne by seller only.

III. Exceptions to Right of Lien (or) Stoppage of goods in transit. (Sec 53)

1. Basic provision

The right of the seller to exercise the Lien / to stop the goods in transit is not affected by buyer selling / pledging the goods

Exception:
If seller assents for sale / pledge.

2. Additional Analysis

Situation - 1

If the seller assented to the buyer to sell / mortgage (or) other disposition

The seller's right of lien / stoppage in transit will be defeated.

Situation - 2

Where a document of title to the goods is transferred by the seller to a buyer, and that buyer has re-transferred the document of title to goods to another person who took it in good faith and for value, the following are the rights of UPS —

C1

If last-mentioned transfer is by way of sale.

Rights of UPS of lien / stoppage of goods in transit is defeated

C2

If last-mentioned transfer is by way of pledge.

seller may require the pledgee to satisfy his claims as follows

Step-1

Use other goods of pledger.

Step-2

Then, use goods belonging to seller.

IV. Right of Re-sale

1. Basic provision

The right of re-sale is a very important right given to an unpaid seller.

without this right, the right of lien/stoppage in transit are not of much use because they only give right to the seller to take possession until paid by buyer.

a. Goods are perishable in its nature

If the goods are perishable in nature, then seller can resell without informing the buyer.

Sometimes, it may be expressly agreed by the seller and the buyer that seller reserves the right to resell in case of default of buyer to pay the price. In such a case, if buyer defaults to pay, seller may exercise his right of resell without informing the buyer and can also recover deficit as damages.

can recover the difference b/w contracted price and actual sale price as damages

+

If the resale results in surplus, he need not give to buyer.

Note: But if no intimation is given, then seller to pay excess to buyer & any deficit cannot be recovered.

2. Situations of re-sale

1. By 'NOT' informing buyer

In the following cases seller can exercise his right of re-sale even without informing buyer

2. only by informing the buyer

In any case not covered by point (1.), seller has to inform buyer of his intent to resale and

b. Express agreement

V. MISCELLANEOUS

1. Additional analysis on duration of transit - when transit comes to an end?

2. Additional analysis on the right of lien and right to stop the goods in transit - Differences

a. When buyer/ his agent has taken delivery of goods.

b. When the buyer has taken delivery of goods even before the goods reaching the destination.
(This is called as interception).

c. Carrier wrongfully refuses to deliver the goods.

d. Goods delivered to carrier belonging to/hired by buyer.

e. Goods are delivered to the ship that is chartered by the buyer.

Particulars	Lien	Stop the goods
Nature of taking the possession	Right to RETAIN the possession.	Right to REGAIN the possession
Person having possession	Seller has possession to lien the goods.	a) seller has parted with the possession b) Carrier has possession c) Buyer has not taken the delivery.
Condition of buyer	Buyer has not taken delivery and seller is unpaid.	Buyer has to become insolvent.
Sequence of action	Lien exists before the stoppage of goods.	Right to stop the goods starts when Lien ends.
End of action	Upon seller parted with possession of goods.	Upon the delivery of goods to the buyer.