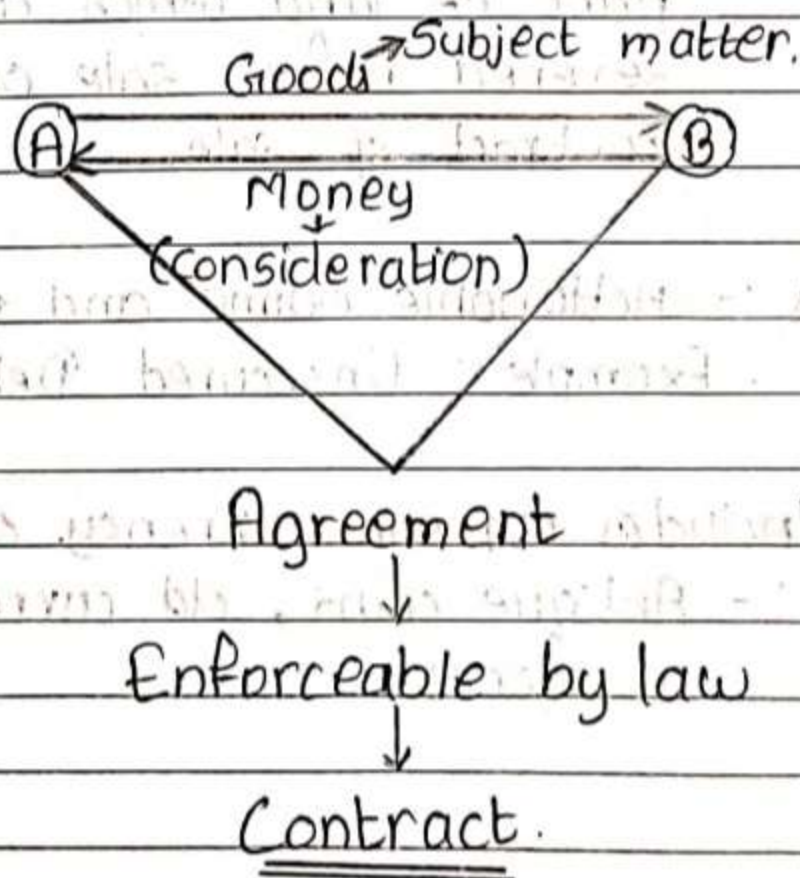
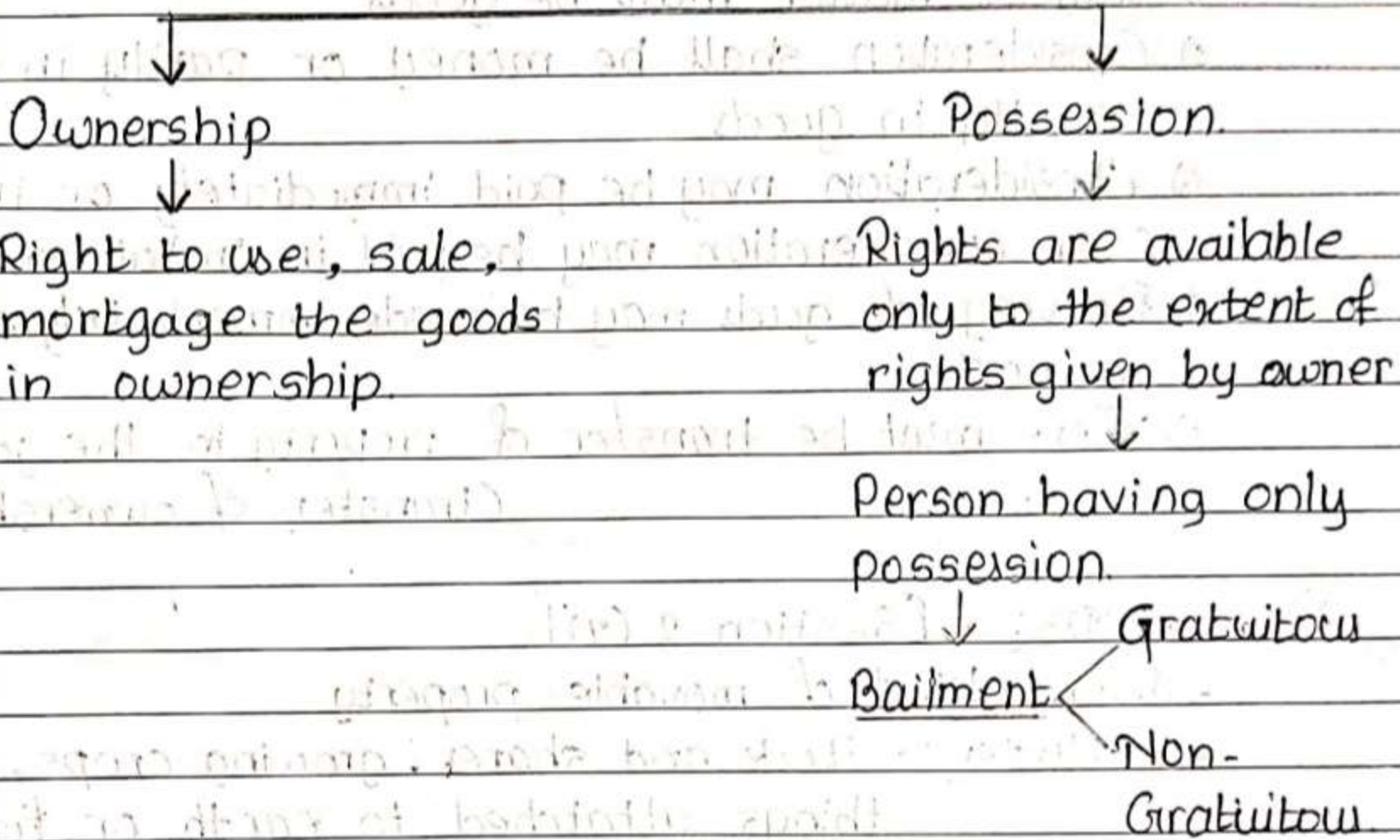


# SALE OF GOODS ACT (SOGA)

- Sale: Transfer of ownership / Transfer of property in Goods.



## • Elements of Sale of Goods:

- 1) Subject matter must be goods.
- 2) Consideration shall be money or partly in money / partly in goods.
- 3) Consideration may be paid immediately or in advance or consideration may be paid in installments.
- 4) Delivery of goods may be made immediately or in parts.
- 5) There must be transfer of property in the goods.  
(transfer of ownership)

## §119 • GOODS: [Section 2 (7)]

- Every kind of movable property
- Includes :- Stock and shares, growing crops, grass, things attached to earth or forming part of land which are agreed to be severed before sale or under the contract of sale.

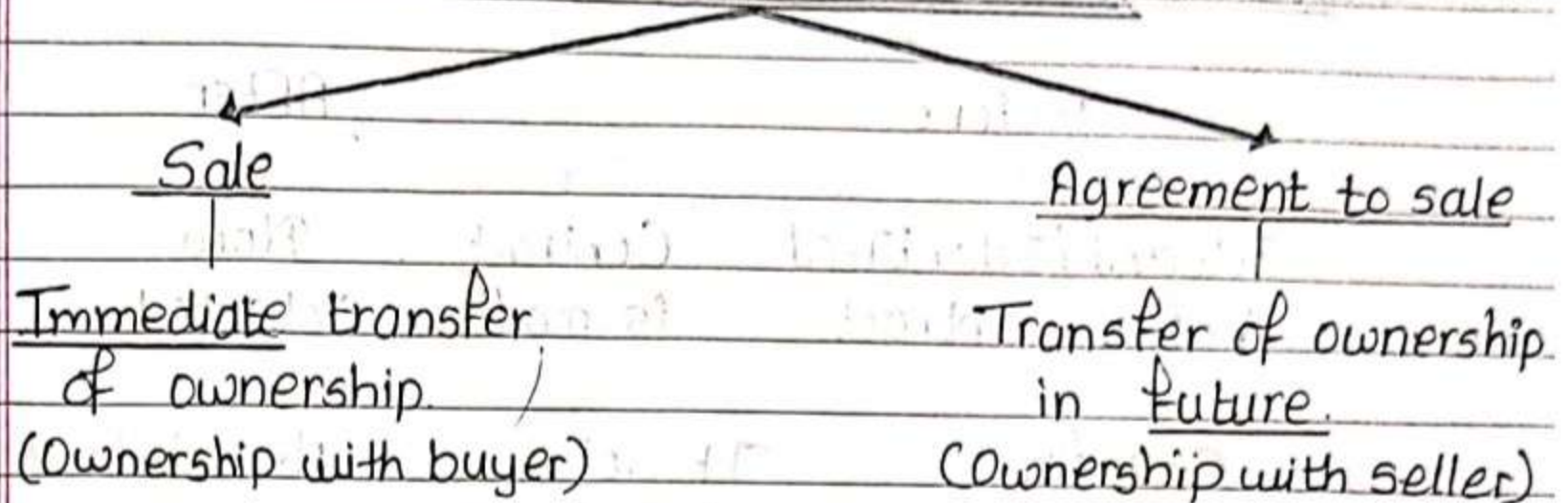
- Excludes :- Actionable claims and money.

- Example :- Unsecured Debts / Debtors.

- Money includes current currency only.

Except :- Antique coins, old currency c  
as goods

• Contract of Sale Includes



\* ∴ Buyer [2(1)] : Person who buys goods or agrees to buy the goods.

\* ∴ Seller [2(13)] : Person who sell goods or who agrees to sale the goods.

• TYPES OF GOODS :-

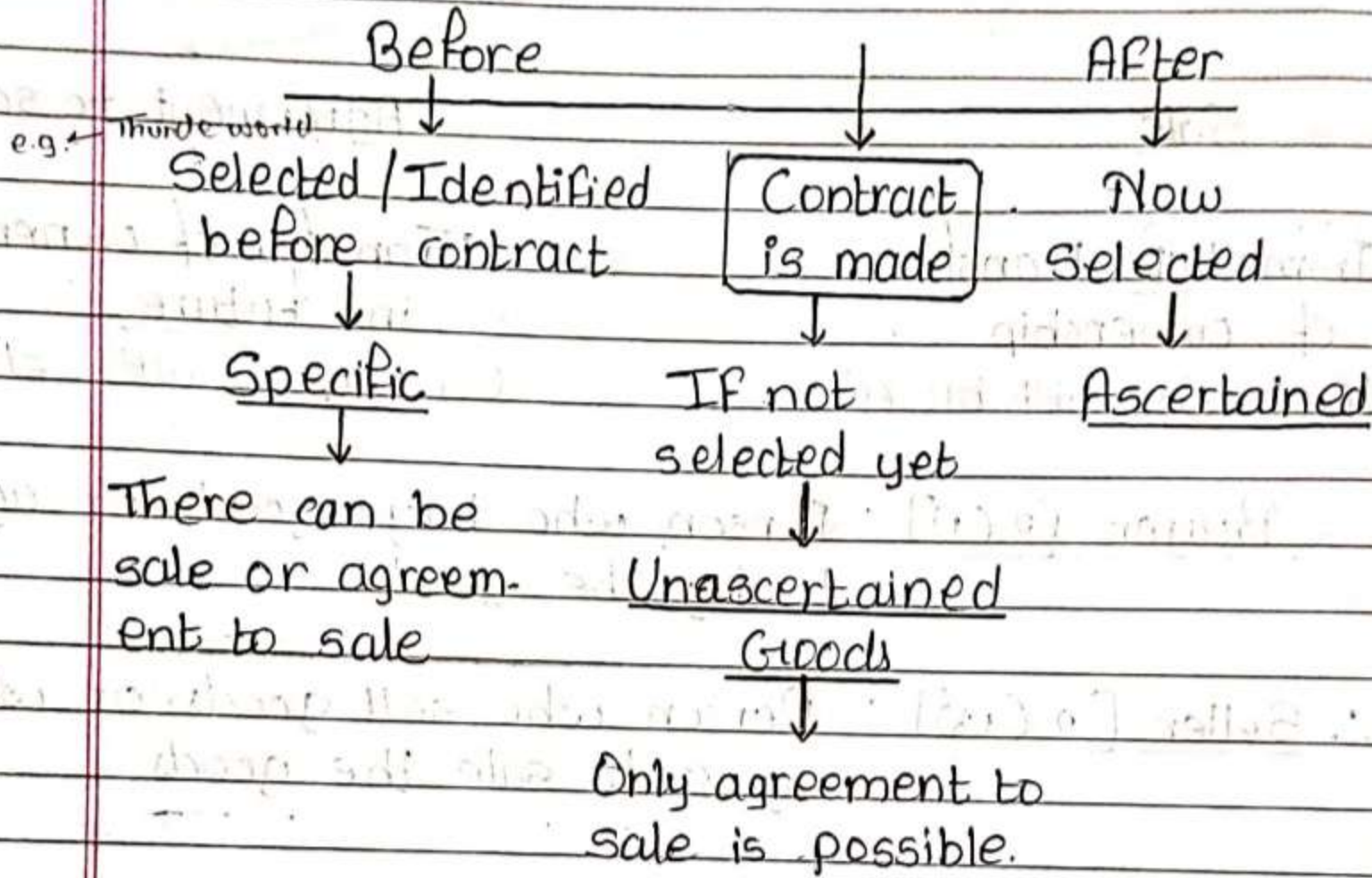
1) Existing Goods :- ① Goods Manufactured/Produced (Section 6) +

② Ownership with Seller

2) Future Goods :- Either: ① Not Manufactured (Section 2[6]) OR

② Not in ownership of seller.

3) Unascertained Goods / Specific / Ascertained:



4) Goods in Deliverable State:

Goods are in such position that buyer may take immediate delivery of goods. (Goods identified or packed).

• Transfer of Ownership:

① Future Goods → ② Existing Goods → ③ Unascertained Goods

④ Appropriation of Goods (Selection of Goods) → ⑤ Specific / Ascertained Goods

⑥ Goods in Delivery state → ⑦ Notice to buyer → Before ————— After  
- Buyer is owner

\* Immediate sale is possible in case of goods are in delivery state.

• CONDITIONAL SALE: (Reservation of Right of Disposal)

Additional condition may be imposed by seller for transfer of ownership.

Example → 'Payment of full amount in cash.'

In such case ownership will be transferred when normal condition is fulfilled + Normal procedure given above also completed.

- In other words:- Payment + Selection and Deliverable state.

• TRANSFER OF RISK:

- Risk follows ownership.

- In case of normal sale:- Risk will be transferred when Goods are selected and in deliverable state.

- In case of Conditional Sale: Risk transferred when:

Condition fulfilled + Normal Procedure completed.

Generally risk is transferred with ownership but in following cases it will be transferred before or after transfer of ownership:

① IF there is specific agreement

(between buyer & seller)

② Person in default:

In case if there is loss of goods due to fault of other party than owner then other party is liable. (Not owner).

③. Person fails to comply the duties of Bailee: <sup>eg. cement</sup>

④ Other person than owner may be liable due to usage of trade. (eg → e-business)

3/8/19.

• Transfer of Ownership by person other than owner:

- Only owner can transfer ownership.

- In Latin word "Nemo dat Quod Non Habet."

जिसके पास वो नहीं है, वो वो नहीं दे सकता → (No one can give what he has not got)  
जिसके पास वो नहीं है, वो वो नहीं दे सकता  
Ownership Ownership

- Exceptions to above Rules:-

\* Where person other than owner can transfer ownership :-

Situation 1:- Sale by mercantile Agent.

IF mercantile agent having possession with consent from owner then he can transfer ownership even though agent is not owner.

Situation 2:- Sale by one of Joint Owner.

One of the joint owner can sale goods even if there is consent of other.

joint owner is not taken and Buyer will get title if purchased it in good faith.

Situation 3 :- Sale by person having possession under Voidable Contract.

If person who received goods under voidable contract and sells goods before cancellation of contract then buyer will get proper title of goods if he bought in good faith.

Situation 4 :- Sell by seller having possession after sell:

Buyer will get title if he purchased goods in good faith.

Situation 5 :- Sell by buyer having possession before sell.

Buyer will get valid title if he purchased goods from the buyer having possession with good faith. e.g. → sale on approval basis

Situation 6 :- Effect of Estoppel

If any person is selling goods of another person and owner was aware about it and owner did not take any objection then owner is not allowed to take objection after sale, in other words owner is stopped from denying the validity of the sale. → Stopped from denying.

Situation 7 :- Sale by unpaid seller.

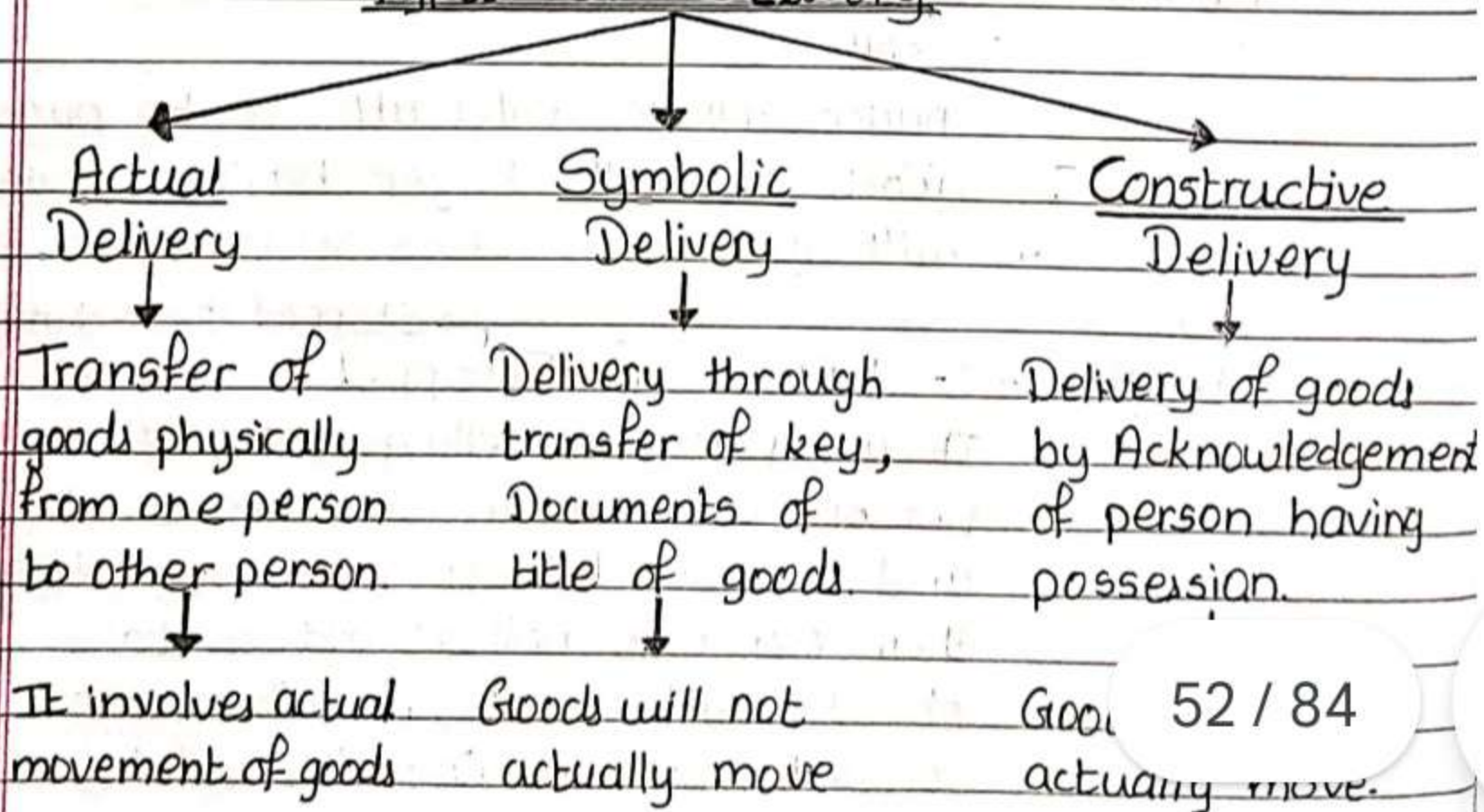
Situation 8 :- Sale by other person than owner under provision of other act.

- i) Sale by official receiver / liquidator
- ii) Sale by finder of lost goods:
  - a) Owner refuses to pay lawful charges
  - b) Cost of finding owner is  $\frac{2}{3}$ rd or more of the value of goods.
  - c) IF goods are perishable goods.

7/8/19

DELIVERY : Voluntary transfer of Possession  
मज्जिसे

Types Of Delivery



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• Document of Title

Such documents represents ownership & ownership is transferred with transfer of documents.

Examples :-

- ① Railway Receipts
- ② Doc. Warrant
- ③ Multimodal transport receipt
- ④ Bill of lading  
(All receipts of transportation given by transportation authority itself treated as Document of Title [D.O.T.]

Does not include mate receipt. (Not treated as DOT.)

Example :- Godown Receipt

Document showing Title.

Such documents shows the name of owner

Transfer of documents is not transfer of ownership.

Additional formalities are required to be fulfilled.

Examples :-

- ① Share certificate
- ② Document of Vehicles

⑥ Delivery of Wrong Quantity

Either accept it and pay for it OR Reject it

Seller is responsible for expenses of return.

⑦ Delivery to Carrier:-

- Prima facie. Deemed to be Delivery to Buyer

⑧ Deterioration during transit:

- Decrease in quality or market value of goods
- Buyer shall take responsibility.

- Seller agreed to deliver at his own risk.

Abnormal Loss

Seller is liable

Normal Loss

Buyer is liable

⑨ Buyer's right to examine the goods:

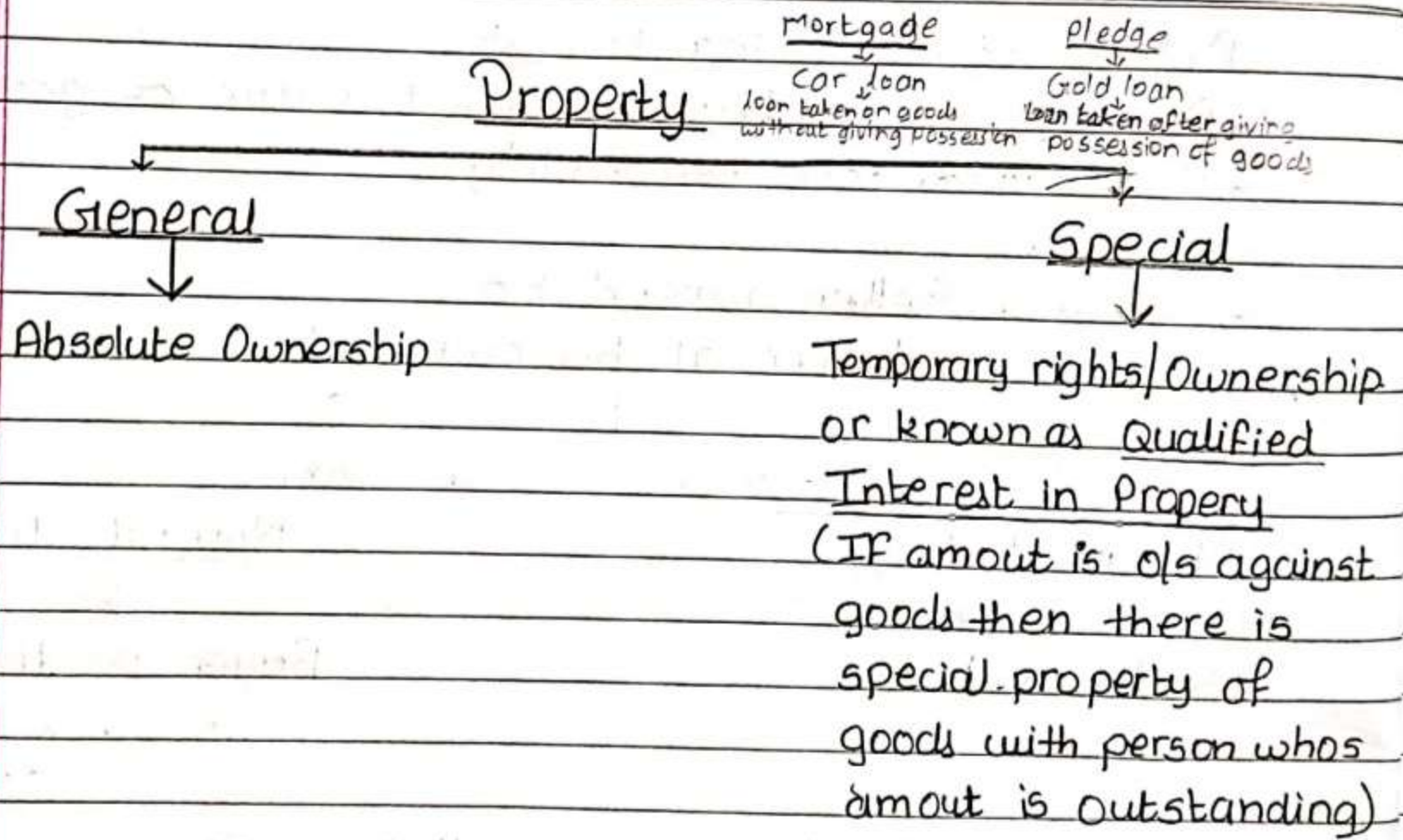
- Buyer can examine goods before taking delivery of goods.

• Acceptance of Delivery of Goods:

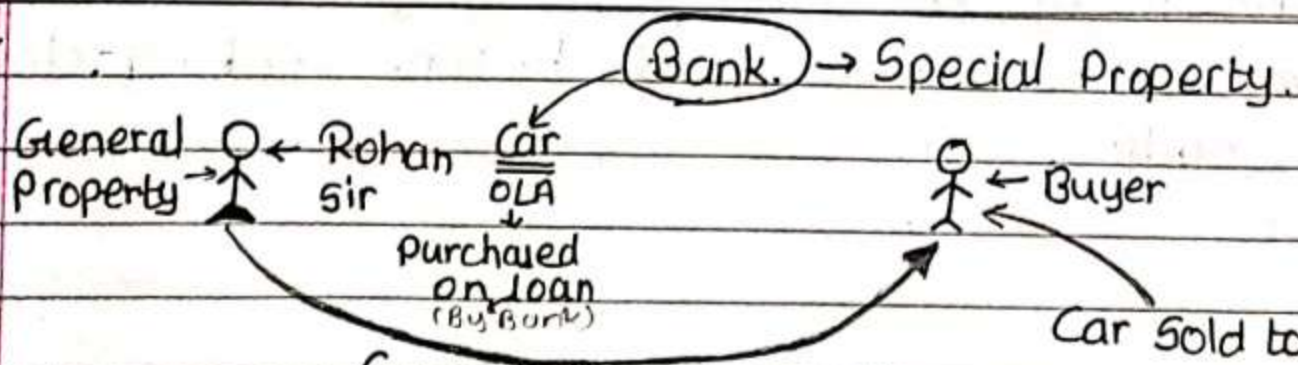
- ① Approval given by buyer
- ② Does any act in consistence with ownership of seller, and not.
- ③ Not returned within reasonable time.

Buyer is responsible for damages caused by wrongful rejection of Goods. (If buyer rejected goods wrongfully)

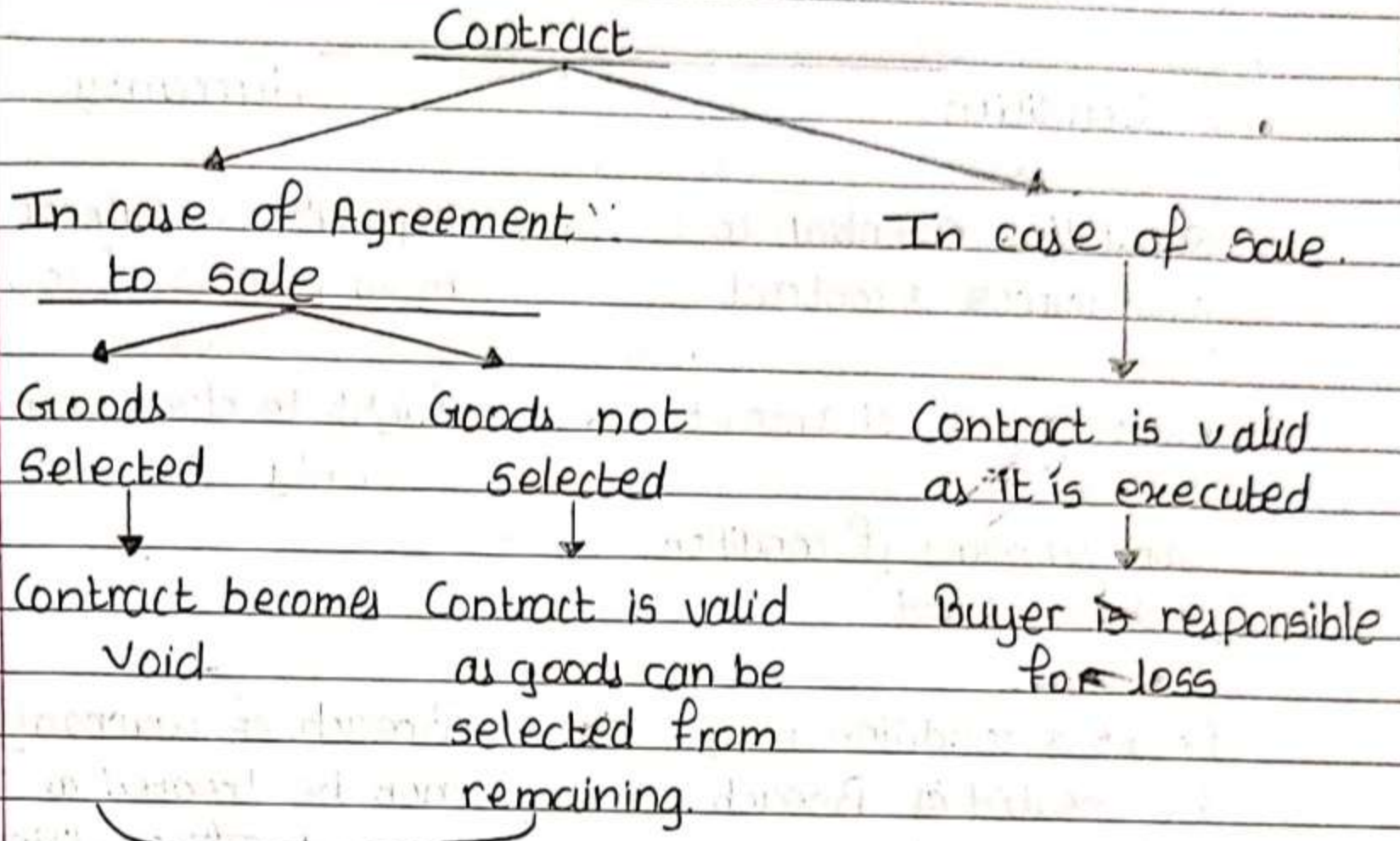
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Example:



By CMA CS Rohan Nambalkar



→ Seller shall take responsibility of loss as he is owner of goods.

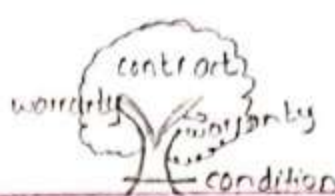
<sup>condition</sup>  
Stipulation as to Time

Time is essence of contract  
(Time is important for delivery / sale)

Example:- Agreement specified that time is important or price of goods is volatile like shares, silver, gold etc.

Time is not essence of contract

Contract shall be continued and other party may claim damages.



• Condition

↓  
 Stipulation essential to main purpose of contract

↓  
 Right to cancel contract

+

claim damages if condition not fulfilled

↓  
 Breach of condition may be treated as Breach of warranty

↓  
 Root of contract

Warranty

↓  
 Stipulation collateral to main purpose of contract.

↓  
 Right to claim damages only.

↓  
 Breach of warranty can not be treated as breach of condition.

↓  
 Branch of contract

Condition and Warrantee may be

Expressed

Decided by parties / Agrmnt

More powerful than implied

Implied

Imposed by law

Implied conditions & warrantee may be changed by expressing different conditions & warrantee

- When condition to be treated as warranty:  
(Contract cancellation not allowed even though condition not fulfilled)
- ① Buyer waives the performance of condition.
- ② Buyer elects to treat breach of condition as breach of warranty.
- ③ Where contract is non-severable and buyer already accepted whole or part of contract
- ④ Where condition can not be fulfilled due to impossibility.

IMPLIED

Conditions

Warranties

① Condition as to title

① Warranty as to undisturbed possession.

② Sale by Description (sec. 15)

Buyer shall get away possession of goods if it is disturbed due to fault of seller then buyer can sue for damages.

③ Sale by Sample (sec. 17)

② Warranty as to non-existence of encumbrance.

(Free from any lien/charge)  
- cannot sue if seller already informed buyer about encumbrance.

④ Sale by sample as well as description (sec. 15)

③ Disclosure of dangerous nature of goods (should be disclosed by seller)

⑤ Condition as to quality or fitness (sec. 16)

④ Warranty as to quality or fitness annexed with usage of trade [sec. 16 (4)]

⑥ Condition as to wholesomeness.

In case of of eatable products  
Eatable products must be eatable

⑦ Condition as to merchantability.

Terminology  
This cond<sup>n</sup> is applicable  
If it is not eatable then it may be returned  
Goods must be capable of serving basic purpose & if it is unable to serve that purpose then it is not merchantable

- CAVEAT EMPTOR:

Let the buyer beware.

- Buyer is responsible to make proper selection of goods and later he cannot hold seller, for defective goods. responsible
- Seller is not responsible to disclose defects in goods which he sell.

- Exceptions: (where seller is responsible)

- ① Sale by Sample
- ② Sale by description
- ③ Sale by sample as well as description
- ④ Condition as to Quality or fitness
- ⑤ Warranty as to Quality or Fitness annexed with wage of trade
- ⑥ Where goods are sold by seller by fraud and misrepresentation.

- If goods are purchased under patent / brand name then seller is not responsible.

## • UNPAID SELLER. (Section 45 (a))

- Seller is treated as unpaid if whole amount is not received from buyer or cheque / B.O.E. given by buyer is dishonoured.

When seller shall be treated as unpaid:

① IF credit period was given :- After completion of credit period.

② IF cheque or B.O.E. is given: Once it is dishonoured.

③ In case of insolvency: When buyer declared as insolvent by court...

④ In other case: Immediately when goods are sold.

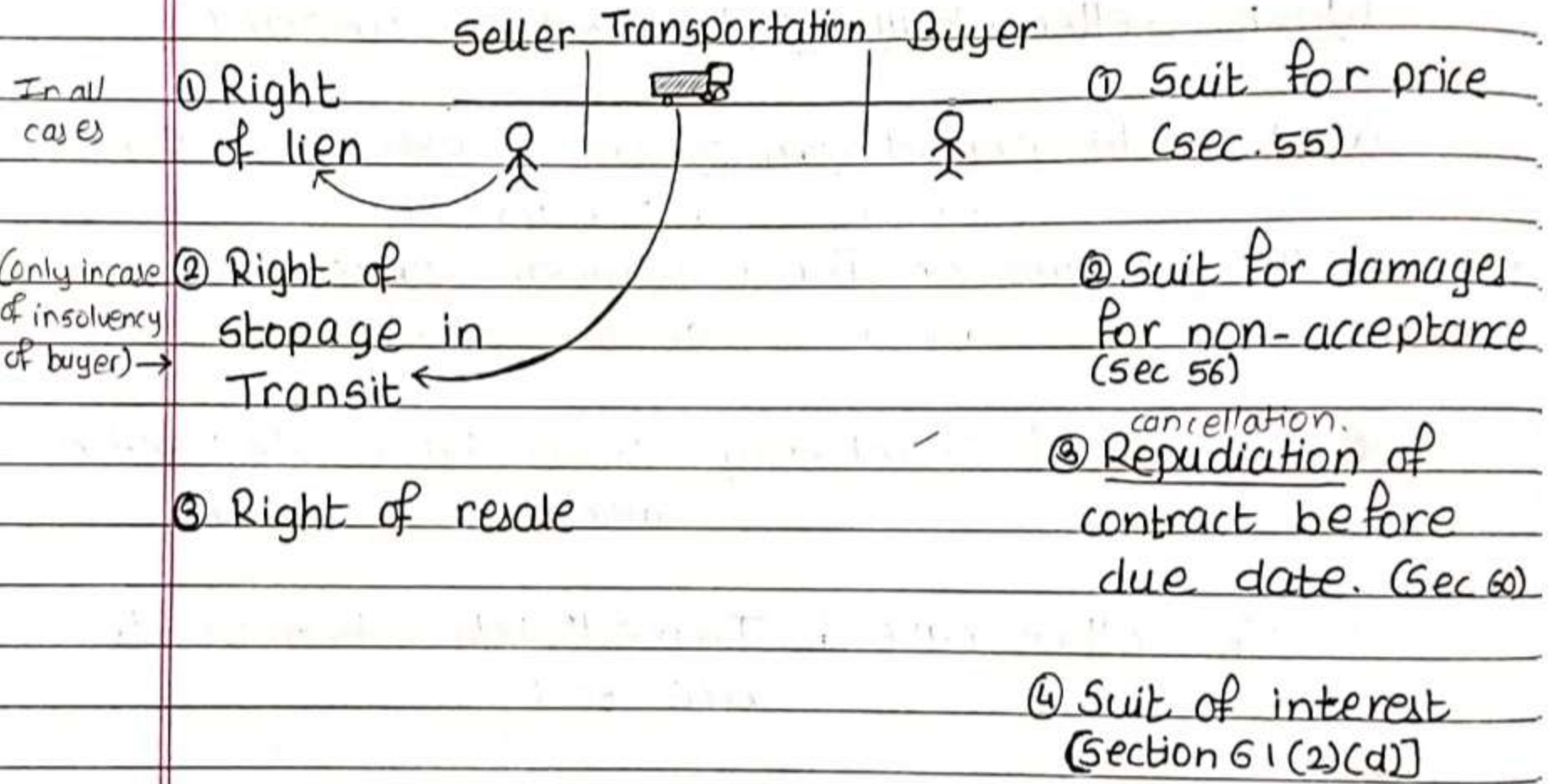
\* Seller includes his agent.



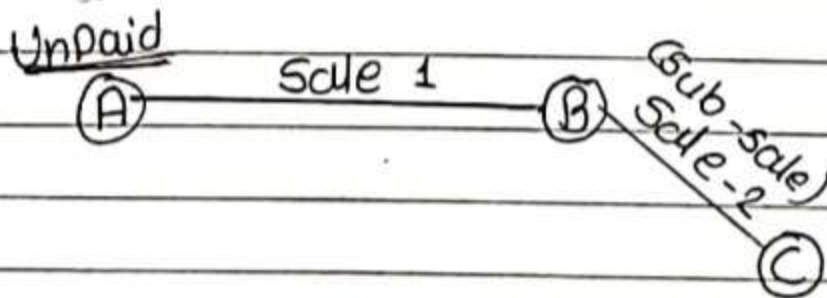
## Rights of Unpaid Seller

Right against goods

Rights against buyer



### Sub-Sale.



### EFFECT OF SUB-SALE:

Generally right of unpaid seller is not affected except :- (Right → lien or stoppage in transit)

- ① Sub-sale / Pledge made with consent / assent of seller.
- ② Sub-sale / Pledge is effected by transfer of document of title.

- Buyers Rights against seller;

- ① Suit for Non-Delivery
- ② Suit for specific performance.
- ③ Suit for damages for Breach of warranty.
- ④ Suit for recovery of price.

- AUCTION SALE:

## Sale of Goods Act 1930

### Formation of Contract of Sale

1. A sells a laptop computer to B with a stipulation that payment should be made within 3 days. B makes the payment after 7 days of the contract.
2. A agrees to sell two of his cars to B at a price to be fixed by C. He immediately gives delivery of first car. C refuses to fix the price. A asks for the return of the car already delivered while B claims the delivery of the second car too. Decide.

### Conditions & Warranties

3. For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930? (RTP May 2019)
4. Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. What remedy Ram is having now under the Sale of Goods Act, 1930? (RTP Nov 2018)

### Transfer of Ownership

5. A agreed to purchase 100 bales of cotton from B from his large stock. A sent his men to take delivery of goods. They could pack only 70 bales. Then there was accidental fire and the entire stock was destroyed, including the 70 bales that were packed. Who will bear the loss and to what extent.
6. A delivered some jewellery to B on sale or return basis. B pledged the jewellery with C. A want to claim back the goods from C. Advice.

### Rights of Buyer & Rights of Unpaid Seller

7. Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.  
Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different. If the dues were not settled in cash and are still pending? (6 Marks) (Nov 2018)

8. Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. State the position and rights of Mr. D as per the Sale of Goods Act, 1930. (6 Marks) (May 2018)
  
9. Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. (RTP May 2019)