

# UNIT -1: FORMATION OF THE CONTRACT OF SALE

## Introduction -

It extends to the whole of India. It came into force on 1st July, 1930.

## Scope -

- sale of goods which means movable properties.
- The Act is not applicable for the sale of immovable properties like land, shop or house etc

## Definitions

1. **Buyer and Seller:** 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. 'Seller' means a person who sells or agrees to sell goods.

2. Goods and other related terms:

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

Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt  
The Fixed Deposit Receipts (FDR) are considered as goods.

Goods" include both tangible goods and intangible goods like goodwill, copyrights, patents, trademarks etc. Stock and shares, gas, steam, water, electricity and decree of the court are also considered to be goods

a) **EXISTING GOODS** are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed or acquired by the seller at the time of contract of sale

- Specific goods means goods identified and agreed upon at the time a contract of sale is made
- Ascertained Goods are those goods which are identified in accordance with the agreement **after** the contract of sale is made.

When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

- Unascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description or sample

b) **FUTURE GOODS** means goods to be manufactured or produced or acquired by the seller after making the contract of sale

A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a person cannot transfer what is not in existence

- c) **CONTINGENT GOODS**: The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods'

3. **Delivery - its forms and derivatives**: It means voluntary transfer of possession from one person to another

#### **Forms of delivery**

1. **Actual delivery**: When the goods are physically delivered to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer
2. **Constructive delivery**: When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement)

Constructive delivery takes place when a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on buyer's behalf.

3. **Symbolic delivery**: When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer. Where actual delivery is not possible, there may be delivery of the means of getting possession of the goods.
4. **"Document of title to goods"** includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or is for authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented

The list is only illustrative and not exhaustive.

There is a difference between a 'document showing title' and 'document of title'. A share certificate is a 'document' showing title but not a document of title. It merely shows that the person named in the share certificate is entitled to the share represented by it, but it does not allow that person to transfer the share mentioned therein by mere endorsement on the back of the certificate and the delivery of the certificate.

5. **Mercantile Agent** [Section 2(9)]: It means an agent who in the customary course of business has, 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 the goods.

6. Property - 'Property' here means 'ownership' or general property.  
The property in the goods means the general property i.e., all ownership right of the goods. It is quite possible that the general property in a thing may be in one person and a special property in the same thing may be in another e.g., when an article is pledged. The general property in a thing may be transferred, subject to the special property continuing to remain with another person i.e., the pledgee who has a right to retain the goods pledged till payment of the stipulated dues.
7. Insolvent [Section 2(8)]: A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not
8. Price [Section 2(10)]: Price means the money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.
9. Quality of goods includes their state or condition.

Elements must co-exist so as to constitute a contract of sale of goods under SOGA -

1. There must be at least two parties.
2. subject matter of the contract must be Movable Goods.
3. A price in money (not in kind) should be paid or promised
4. A transfer of property in goods from seller to the buyer must take place
5. A contract of sale may be absolute or conditional.
6. All other essential elements of a valid contract must be present in the contract of sale

### Sales Vs Agreement to sale

Basis of difference	Sale	Agreement to sell
<b>Transfer of property</b>	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
<b>Nature of contract</b>	It is an executed contract i.e. contract for which consideration has been paid.	It is an executory contract i.e. contract for which consideration is to be paid at a future date.
<b>Remedies for breach</b>	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
<b>Liability of parties</b>	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
<b>Burden of risk</b>	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
<b>Nature of rights</b>	Creates Jus in rem	Creates Jus in personam
<b>Right of resale</b>	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
<b>In case of insolvency of seller</b>	The official assignee will not be able to take over the goods but will recover the price from the buyer.	The official assignee will acquire control over the goods but the price will not be recoverable.
<b>In case of insolvency of buyer</b>	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.

## Sale vs Hire Purchase

Basis of difference	Sale	Hire- Purchase
<b>Time of passing property</b>	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment.
<b>Position of the party</b>	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
<b>Termination of contract</b>	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
<b>Burden of Risk of insolvency of the buyer</b>	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an instalment, the owner has right to take back the goods.
<b>Transfer of title</b>	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser.
<b>Resale</b>	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

## Sale Vs BAILMENT

Basis of difference	Sale	Bailment
<b>Transfer of property</b>	The property in goods is transferred from the seller to the buyer. So, it is transfer of general property.	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc. So, it is transfer of special property.
<b>Return of goods</b>	The return of goods in contract of sale is not possible.	The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
<b>Consideration</b>	The consideration is the price in terms of money.	The consideration may be gratuitous or non-gratuitous.

**Sale and contract for work and labour:** A contract of sale of goods is one in which some goods are sold or are to be sold for a price. But where no goods are sold, and there is only the doing or rendering of some work of labour, then the contract is only of work and labour and not of sale of goods.

## CONTRACT OF SALE HOW MADE (SECTION 5)

1. an offer to buy or sell goods for a price and acceptance of such offer
2. may be immediate delivery
3. There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date
4. may be immediate delivery of the goods and an immediate payment of price
5. may be agreed that the delivery or payment or both are to be made in instalments
6. may be agreed that the delivery or payment or both are to be made at some future date

## SUBJECT MATTER OF CONTRACT OF SALE

**Existing or future goods (section 6):** May be either existing goods that are acquired, owned or possessed by the seller, or future goods.

There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Whereby a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

**Goods perishing before making of contract (Section 7):** Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

**Goods perishing before sale but after agreement to sell (Section 8):** Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided or becomes void.

**Perishing of future goods:** If the future goods are specific, the destruction of such goods will amount to supervening impossibility and the contract shall become void.

### **Ascertainment of price (Section 9):**

'Price' means the monetary consideration for sale of goods [Section 2 (10)]. By virtue of Section 9, the price in the contract of sale may be-

- fixed by the contract,
- fixed in a manner provided by the contract
- determined by the course of dealings between the parties.

### **Agreement to sell at valuation (Section 10):**

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party and such third party cannot or does not make such valuation, the agreement is thereby avoided: Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in default.

## Unit 2 : CONDITIONS & WARRANTIES

### STIPULATION AS TO TIME (SECTION 11) -

Time for the payment of price unless stipulated is not deemed to be of the essence of a contract of sale. But delivery of goods must be made without delay.

### CONDITIONS AND WARRANTIES

At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods, and about their fitness for buyer's purpose

A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. The more significant stipulations contained in a contract of sale of goods have been called as "Conditions", while the less significant stipulation have been given the name "Warranties".

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated".

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated"

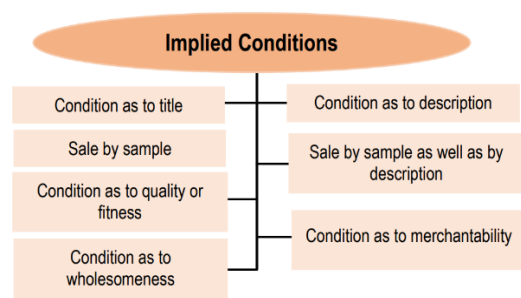
Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

### WHEN CONDITION TO BE TREATED AS WARRANTY (SECTION 13)

cases where a breach of condition be treated as a breach of warranty - buyer loses his right to rescind the contract and can claim damages only.

1. voluntary waiver by buyer.
2. claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof
4. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise

### EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)



**1. Condition as to title** - The condition implied is that the seller has the right to sell the goods at the time when the property is to pass. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

**2. Sale by description** - Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description. Buyer can reject goods if it is not as per description.

Rule - "if you contract to sell peas, you cannot compel the buyer to take beans.

The Act, however, does not define 'description'.

- where the class or kind to which the goods belong has been specified, e.g., 'Egyptian cotton', "java sugar", etc., and
- where the goods have been described by certain characteristics essential to their identification, e.g., jute bales of specified shipment, steel of specific dimension.

**3. Sale by sample** - In a contract of sale by sample, there is an implied condition that-

- the bulk shall correspond with the sample in quality.
- the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample. This condition is applicable only with regard to defects, which could not be discovered by an ordinary examination of the goods. If the defects are latent, then the buyer can avoid the contract. This simply means that the goods shall be free from any latent defect i.e. a hidden defect.

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

Where the goods are sold by sample as well as by description the implied condition is that the bulk of the goods supplied shall correspond both with the sample and the description. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.

**5. Condition as to quality or fitness ( Section 16 ) -**

There is no implied condition as to the quality or fitness of the goods sold for any particular purpose.

However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods

This implied condition will not apply if the goods have been sold under a trademark or a patent name.

There is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- The buyer should have made known to the seller the particular purpose for which goods are required.

- The buyer should rely on the skill and judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

6. Condition as to Merchantability [Section 16(2)]

two requirements for this condition to apply:

- Goods should be bought by description.
- The seller should be a dealer in goods of that description.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

7. Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome

Implied Warranties: implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

1. **Warranty as to undisturbed possession** [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. **Warranty as to non-existence of encumbrances** [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
3. **Warranty as to quality or fitness by usage of trade** [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.
4. **Disclosure of dangerous nature of goods**: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

## CAVEAT EMPTOR

'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers 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.

### **Exceptions:**

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 judgment 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. Case law - Priest vs. Last
2. **Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
3. **Goods sold by description:** Where the goods are sold by description there is an implied condition that the goods shall correspond with the description [Section 15]. If it is not so, then seller is responsible.
4. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not applicable. This rule shall apply if the defects were such which ought to have not been revealed by ordinary examination.
5. **Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.
6. **Goods by sample as well as description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition.
7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.
8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case the buyer has a right to avoid the contract and claim damages.

## **UNIT - 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS**

Risk prima facie passes with the property. In case where goods are lost or damaged, the burden of loss will be borne by the person who is the owner at the time when the goods are lost or damaged.

### **PASSING OF PROPERTY (SECTIONS 18 - 26)**

Passing of property implies passing of ownership. 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.

Depends upon two basic Factor -

- **Identification of Goods:** Section 18 provides that 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.
- **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.  
Section 19(2) further provides that for the purpose of ascertaining the intention of the parties regard shall be:
  - terms
  - conduct of the parties
  - circumstances of the case

The primary rules determining the passing of property from seller to buyer are as follows:

1. Property (Specific or ascertained goods) passes when intended to pass (Section 19):

For intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Unless a different intention appears, the rules contained in **Sections 20 to 24** are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

- **Specific goods in a deliverable state ( Sec 20 )** - 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.
- **Specific goods to be put into a deliverable state (Section 21):** The property does not pass until such thing is done and the buyer has notice thereof.
- **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 22):** 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.

2. Goods must be ascertained

No property in the goods is transferred to the buyer unless and until the goods are ascertained. [Section 18]

The rules in respect of passing of property of unascertained goods are as follows:

1. **Sale of unascertained goods by description - ( Sec 23 )**

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 [Section 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.

### 3. Goods sent on approval or "on sale or return" (Section 24)

The property therein passes to the buyer-

- signifies his approval or acceptance to the seller
- retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time;
- does something to the good which is equivalent to accepting ( Pledging )

### Sale for cash only or Return

Unless cash is paid for property Sale for cash only or Return

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

To secure that the price is paid before the property in goods passes to the buyer.

Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled.

In such a case in spite of the fact that the goods have already been delivered to the buyer or to a carrier or other bailee for the purpose of transmitting the same to the buyer, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

### **Circumstances under which the right to disposal may be reserved:**

1. If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.
2. Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

## **RISK PRIMA FACIE PASSES WITH PROPERTY (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

However, It provides that where delivery of the goods has been delayed through 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

## **TRANSFER OF TITLE BY NONOWNERS (SECTIONS 27 - 30)**

Sale by person not the owner (Section 27) - The seller can sell only such goods of which he is the absolute owner. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller. 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.

Exceptions: In the following cases, a non-owner can convey better title to the bona fide purchaser of goods for value.

1. **Sale by a Mercantile Agent** : Good Title will be passed in following cases -
  - possession of the goods or documents with the consent of the owner
  - sale in the ordinary course of business
  - buyer had acted in good faith & 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 purposes of sale, or to buy goods, or to raise money on the security of goods

2. **Sale by one of the joint owners** (Section 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 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 - CUFM
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
8. **Sale under the provisions of other Acts**
  - Official Receiver or Liquidator
  - Purchase of goods from a finder of goods
  - A sale by pawnee can convey a good title to the buyer

### **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.

Delivery means voluntary transfer of possession from one person to another. For delivery, physical possession is not important. The buyer should be placed in a position so that he can exercise his right over the goods.

If the possession is taken through unfair means, there is no delivery of the goods.

Delivery of goods is of three types: Actual , Actual , Constructive

**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 (Section 32):** 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 (Section 33-41)**

1. **Delivery (Section 33):** Anything which has effect of putting goods in possession of buyer or any other person concerned
2. **Effect of part delivery:** A delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of

the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder. (Section 34)

3. **Buyer to apply for delivery:** Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. (Section 35)
4. **Place of delivery:** Goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or if not then in existence, at the place at which they are manufactured or produced. [Section 36(1)]
5. **Time of delivery:** If time fixed - Within time otherwise Reasonable Time
6. **Goods in possession of a third party:** : Where the goods at the time of sale are in possession of a third person, there is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods. [Section 36(3)]
7. **Time for tender of delivery:** Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is reasonable hour is a question of fact.
8. **Expenses for delivery:** The expenses of and incidental to putting the goods into a deliverable state must be borne by the seller in the absence of a contract to the contrary.
9. **Delivery of wrong quantity :**
  - Delivered Goods < Contracted for** - Buyer May entire reject them but if accepts then pay for whole
  - Delivered Goods > Contracted for** - the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
  - Goods mixed with different description** - The buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole.
10. **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments
11. **Delivery to carrier:** Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer
12. **Deterioration during transit:** Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller may agree to deliver at his own risk.
13. **Buyer's right to examine the goods:** Buyer has reasonable opportunity to examine goods so that they are in conformity with the contract.

#### **Rule related to Acceptance of Delivery of Goods (Section 42):**

Acceptance is deemed to take place when the buyer-

- intimates to the seller that he had accepted the goods; or
- does any act to the goods, which is inconsistent with the ownership of the seller; or
- retains the goods after the lapse of a reasonable time

**Buyer not bound to return rejected goods (Section 43):** buyer is not bound to return them to the seller, but it is sufficient if he intimates that he refused to accept them.

**Liability of buyer for neglecting or refusing delivery of goods (Section 44):** Buyer is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

## UNIT - 4: UNPAID SELLER

UNPAID SELLER - When

1. whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
2. BOE/NI 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 unpaid seller:

1. a lien on the goods for the price while he is in possession of them
2. 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;
3. a right of re-sale

### RIGHT OF UNPAID SELLER AGAINST THE GOODS

1. Seller's lien (Section 47) - UP 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, namely:-
  - Goods sold without stipulation of credit
  - Credit given but expired
  - Buyer become insolvent

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

**Part delivery (Section 48):** 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 (Section 49):** UPS loses lien when

- delivers the goods to a carrier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- when the buyer or his agent lawfully obtains possession of the goods;
- by waiver

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

### **2. Right of stoppage in transit (Section 50 to 52):**

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. 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 (Section 51):

1. **Goods deemed to be in transit** – Delivered to 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 been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

### How stoppage in transit is effected (Section 52)

1. By taking actual possession of Goods
2. By giving notice not to deliver goods

Where the 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.

Right of Lien	Right of Stoppage in Transit
retain possession	regain possession.
Seller should be in possession of goods	possession with carrier & buyer not acquired possession
Buyer may or may not be insolvent	Insolvent buyer
Before right of lien	begins when the right of lien ends.

**Effects of sub-sale or pledge by buyer (Section 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.

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

1. When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.
2. 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 proviso of sub-section (1) stipulates as follows:
  - If the last-mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated,
  - 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.



However, the pledgee may be required by the unpaid seller to use in the first instance, other goods or securities of the pledger available to him to satisfy his claims.

**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 [Section 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.

UPS can resell goods in following conditions -

1. Where the goods are of a perishable nature
2. 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

Seller has Right to -

- Diff between CP & Resale price
- Retain Profit - only when he has given notice of resale to buyer.

Thus if goods are resold W.O giving notice - Seller cannot recover loss , if profit then return to original buyer.

3. Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods - Acquires good title even if notice not given.
4. A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
  - No req of notice
  - Can sell on buyers default
  - Can recover damages from original buyer
5. Where the property in goods has not passed to the buyer

### **RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTIONS 55-61)**

1. Suit for price (Section 55)
  - the property in the goods has passed to the buyer and the buyer refuses to pay as per terms the seller may sue him for the price of the goods.
  - Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.
2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date (Section 60) : the seller may treat the contract as rescinded and sue damages for the breach - anticipatory breach of contract.
4. Suit for interest [Section 61] - Interest can be recovered only if specific agreement is there. If no specific agreement - the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

### REMEDIES OF BUYER AGAINST THE SELLER

#### Breach of contract by seller

Breach of contract by seller, where he-	Fails to deliver the goods at the time or in manner prescribed
Breach of contract by seller, where he-	Repudiates the contract
Breach of contract by seller, where he-	Deliver non-conforming goods and buyer rejects and revokes acceptance

If the seller commits a breach of contract, the buyer gets the following rights against the seller:

1. Damages for non-delivery [Section 57]:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

2. Suit for specific performance (Section 58):

The court can order for specific performance only when the goods are ascertained or specific.

This remedy is allowed by the court subject to these conditions -

- must be for the sale of specific and ascertained goods
- power of the court to order specific performance
- Court will order only when specific damages is not adequate remedy
- It will be granted as remedy if goods are of special nature or are unique

3. Suit for breach of warranty ( sec 59 ) - Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty. But he may -

- set up against the seller the breach of warranty in diminution or extinction of the price;
- sue the seller for damages for breach of warranty

4. Repudiation of contract before due date (Section 60)

- Other party may treat contract as valid & wait for delivery or,
- Treat as rescinded & sue for damages for breach

5. Suit for interest:

- Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages, in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed

- In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

### **AUCTION SALE (SECTION 64)**

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. When he sells, he is only the agent of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

Legal Rules of Auction sale: ( sec 64 )

1. Where goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
2. Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid
3. Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
4. Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer
5. Reserved price: The sale may be notified to be subject to a reserve or upset price; and
6. Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer

### **INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)**

The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed. Its upon parties to make an agreement to contrary.