

THE SALES OF GOODS ACT, 1930

ONE STOP SOLUTION NOTES

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SOGA



The Act came into force from 1st July 1930 and extends to whole of India.



- **Not applicable for the sale of immovable properties** like land, fields, shop or house etc. For immovable property, Transfer of Property Act, 1882 is applicable.
- The **general provisions of the Indian Contract Act, 1872** apply to a **Contract of Sale of Goods** as far as they are not inconsistent with the express provisions of the Sale of Goods Act.

Unit 1

3.1 Concept

Buyer means a person who buys or agrees to buy goods.

Seller means a person who sells or agrees to sell goods.

Goods means every kind of **movable property**

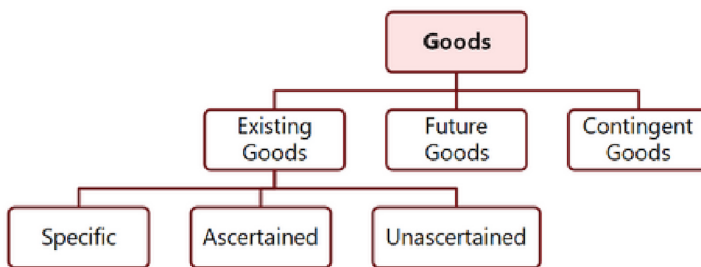
Excludes - Actionable claims, Money in circulation

Includes - Stock & Shares, Growing crops, Grass, and Things attached to or forming part of land which agreed to be severed

Delivery



➤ Classification of Goods



'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods.

Even the **Fixed Deposit Receipts (FDR)** are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

"Goods" include both **tangible goods** and **intangible goods** like goodwill, copyrights, patents, trademarks etc.

☛ **EXISTING GOODS [Sec 6]** are such goods as are in existence at the time of the contract of sale.

The existing goods may be of **following kinds**:

- **SPECIFIC GOODS [Sec 2(14)]** 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.
- **UNASCERTAINED GOODS** are the goods **not specifically identified or ascertained** at the time of making of the contract.

☛ **FUTURE GOODS [Sec 2(6)]** means goods to be **manufactured or produced or acquired** by the seller **after making the contract of sale**.

☛ **CONTINGENT GOODS** the **acquisition** of which by the seller **depends upon an uncertain contingency** (uncertain event). The property does not pass to the buyer at the time of making the contract.

[Sec 6(2)]



➤ DELIVERY – ITS FORMS AND DERIVATIVES:

☛ Delivery means voluntary transfer of possession from one person to another.

FORMS OF DELIVERY:

(i) ACTUAL DELIVERY: When the goods are **physically delivered** to the buyer.

(ii) 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).

(iii) SYMBOLIC DELIVERY: Delivery of goods in the course of transit may be made by **handing over document of title to goods**, like bill of lading.



Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)].

➤ DOCUMENT OF TITLE TO GOODS:

☛ Including bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's 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.**



➤ MERCANTILE AGENT:

☛ An agent having **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

➤ PROPERTY

☛ Property here means '**OWNERSHIP**' or **general property (Special Property)**

➤ INSOLVENT:

☛ When he **ceases to pay his debt or cannot pay his debt** as they become due.

➤ PRICE

☛ The **money consideration** for a sale of goods.



➤ QUALITY OF GOODS:

☛ State or condition.

3.2 Concept

➤ SALE AND AGREEMENT TO SELL (SECTION 4)

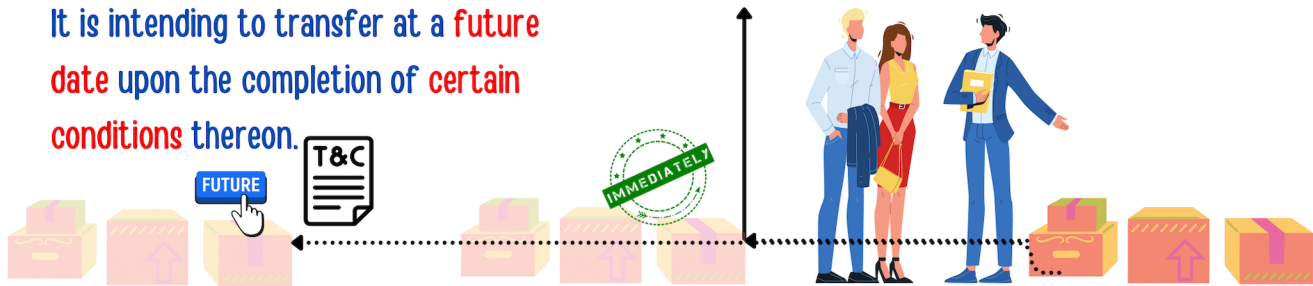
☛ CONTRACT OF SALE OF GOODS

- According to section 4(1), "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price".
- There may be a contract of sale between one part-owner and another.
- A contract of sale may be absolute or conditional. [Section 4(2)]

☛ AGREEMENT TO SALE: The ownership of the goods is **not transferred immediately**.

It is intending to transfer at a **future date** upon the completion of **certain conditions** thereon.

☛ SALE: In sale, the property in goods is **transferred from seller to the buyer immediately**.



☛ AGREEMENT TO SALE → SALE An agreement to sell becomes a sale when the **time elapses or the conditions are fulfilled** subject to which the property in the goods is to be transferred



☛ THE FOLLOWING ELEMENTS MUST CO-EXIST SO AS TO CONSTITUTE A CONTRACT OF SALE OF GOODS:

1. There must be **at least two parties**, the seller and the buyer.
2. The subject matter of the contract must necessarily be **goods covering only movable property**.
3. A price in **money (not in kind)** should be paid or promised. **Can be partly cash and kind**.
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 the **essential elements of a valid contract** must be present in the contract of sale. (Contract Act).



➤ DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

Basis of difference	Sale	Agreement to sell
TRANSFER OF PROPERTY	Immediately	Future date or fulfilment of some condition.
NATURE OF CONTRACT	It is an executed contract .	It is an executory contract .
REMEDIES FOR BREACH	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.
LIABILITIES OF PARTIES	Liability of buyer	Liability of seller
BURDEN OF RISK	Buyer	Seller
NATURE OF RIGHTS	Creates Jus in rem (against whole world)	Creates Jus in personam (against particular person)
In case of insolvency of seller	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.
In case of insolvency of buyer	The official assignee will have control over the goods.	The official assignee will not have any control over the goods.

3.3 Concept

➤ SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS A. HIRE PURCHASE



☛ Means an agreement under which **goods are let on hire** and under which the hirer has an **option to purchase** them in accordance with the terms of the agreement and includes an agreement under which:

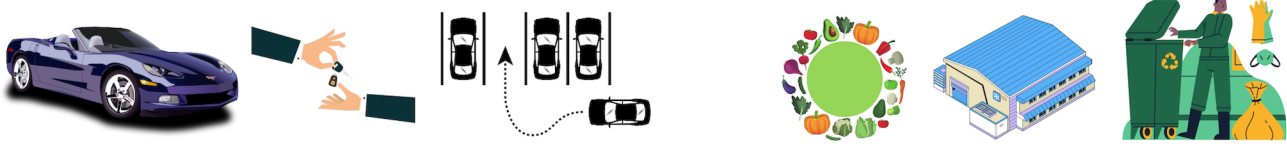
- Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and**
- The property in the goods is to pass to such person on the payment of the last of such installments, and**
- Such person has a right to terminate the agreement at any time before the property so passes.**



Hire purchase agreements are governed by the Hire-purchase Act, 1972

BASIS	SALE	HIRE- PURCHASE
TIME OF PASSING PROPERTY	Immediately	Upon the payment of last instalment
POSITION OF THE PARTY	Buyer as a owner	The position of the hirer is that of a bailee till he pays the last installment.
TERMINATION OF CONTRACT	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 installments.
BURDEN OF RISK OF INSOLVENCY OF THE BUYER	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 installment, the owner has right to take back the goods.
TRANSFER TO TITLE	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.
TRANSFER TO TITLE	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.
RESALE	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

B. BAILMENT



A 'bailment' is the **delivery of goods for some specific purpose** under a contract on the condition that the same **goods are to be returned to the bailor or are to be disposed off** according to the directions of the bailor

BASIS	SALE	BAILMENT
TRANSFER OF PROPERTY	Transferred from seller to buyer	There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
RETURN OF GOODS	Not possible	The bailee must return the goods to the bailor on the accomplishment of the purpose
CONSIDERATION	Is the price in terms of money	May be gratuitous or non- gratuitous.



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: (Sec 5)

☛ The contract of sale may be made in any of the following modes:

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

➤ CONTRACT OF SALE HOW SUBJECT MATTER OF CONTRACT OF SALE: (Sec 6)

☛ Existing or future goods (section 6):

- (1) The goods which form the subject matter of a contract of sale may be either **existing goods** that are acquired, owned or possessed by the seller, **or future goods.**
- (2) 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.
- (3) There may be a contract of sale, where the seller purports to effect a present sale of future goods, such 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** that they no longer answer to their description given in the contract.

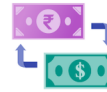
Goods perishing before sale but after agreement to sell (Section 8): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged that they no longer answer to their description in the agreement before 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 & 10)

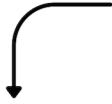


The **money consideration** for a sale of goods.



Section 9, the price in the contract of sale may be-

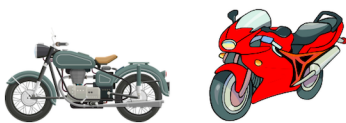
- fixed > contract, or
- agreed to be fixed in a manner > contract, e.g., by a valuer, or
- determined by the course of dealings between the parties.



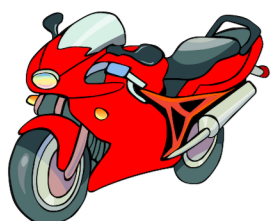
☛ Agreement to sell at valuation (Section 10)

Determination of price by a third party.

1. Agreement to sell goods on the terms that price has to be fixed by the third party **and** he either **does not or cannot make such valuation, the agreement will be void.**
2. In case the **third party is prevented** by the **default of either party** from fixing the price, the party at fault will be **liable to the damages** to the other party who is not at fault.
3. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.



3.4 Concept



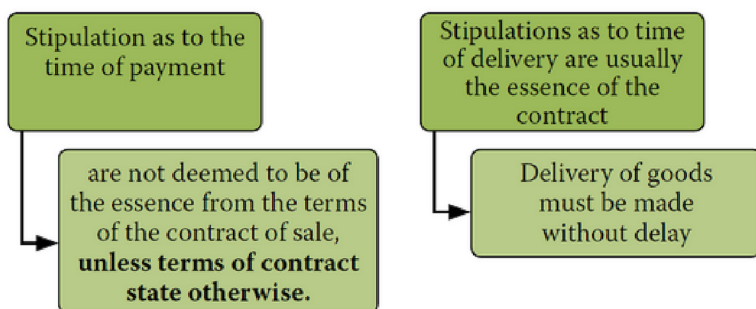
What is Stipulation?

- 1 Statements
- 2 Representations

to induce the buyer to purchase the goods



➤ Stipulation as to time of Payment and time of delivery [Section 11]



➤ INTRODUCTION - CONDITIONS AND WARRANTIES (Sec 12)

Conditions - Significant stipulations contained in a contract of sale of goods. [Sub Sec (2)]

Warranties - Less significant stipulation [Sub Sec (3)]

Condition	Warranty
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.	is a stipulation co-lateral 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.

POINT OF DIFFERENCES	CONDITION	WARRANTY
MEANING	A condition is essential to the main purpose of the contract	It is only collateral to the main purpose of the contract.
RIGHT IN CASE OF BREACH	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition	The aggrieved party can claim only damages in case of breach of warranty.
CONVERSION OF STIPULATIONS	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

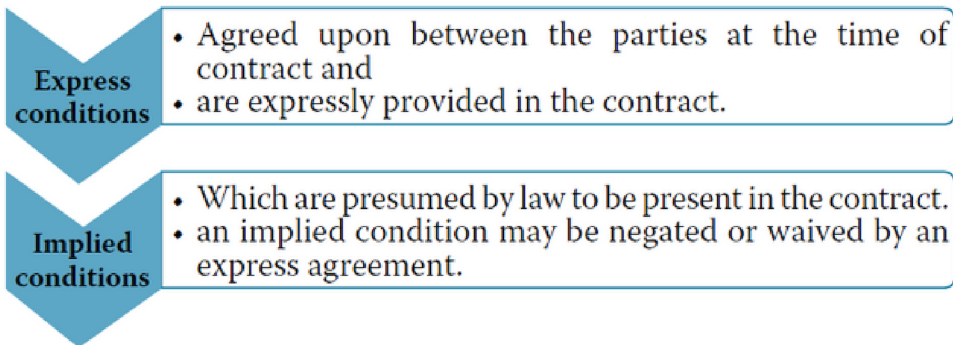
➤ WHEN CONDITION IS TO BE TREATED AS WARRANTY

(SECTION 13)

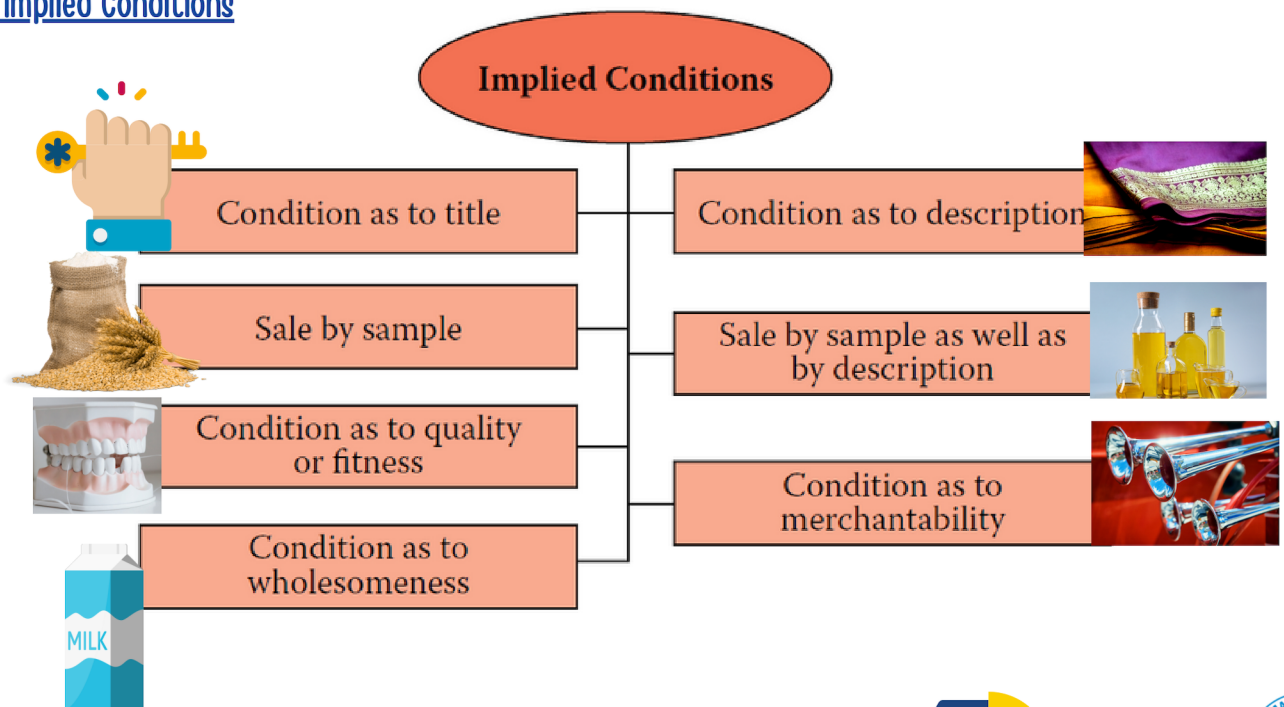
☛ As a result of which the buyer loses his right to rescind the contract and can claim damages only.

Voluntary Waiver	Compulsory Waiver
<p>Waives performance of contract Buyer altogether waives the performance of the condition. For his own benefit.</p>	<p>Non-severability of contract Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. For Eg. If basmati rice and lower quality rice mixed together, the contract becomes non severable.</p>
<p>Elect to treat condition as warranty</p> <ul style="list-style-type: none"> • Buyer elects to treat the breach of the conditions, as one of a warranty. He may claim only damages. • Not waived the condition but decided to treat it as a warranty. Example: Sugar A (650 kg) but supplied B Quality (600 kg) - Claim damage 50 	<p>Fulfilment of conditions excused by law Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.</p>

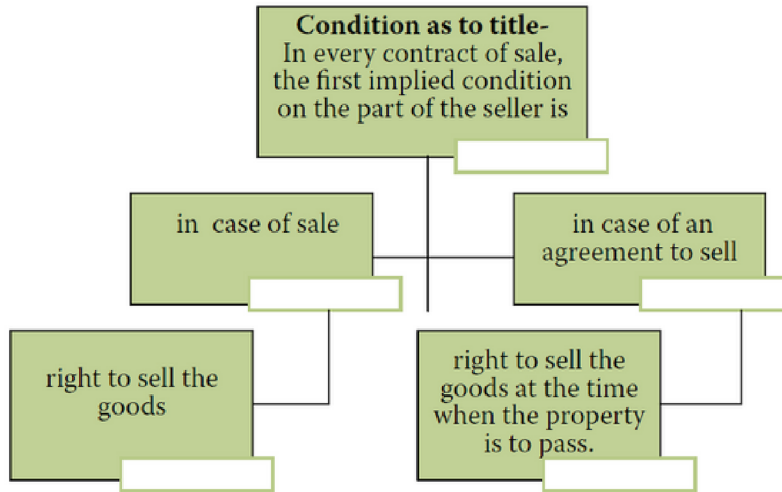
➤ EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)



1. Implied Conditions



1. Condition as to title [Section 14 (a)]



Ex: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

2. Sale by description [Section 15]

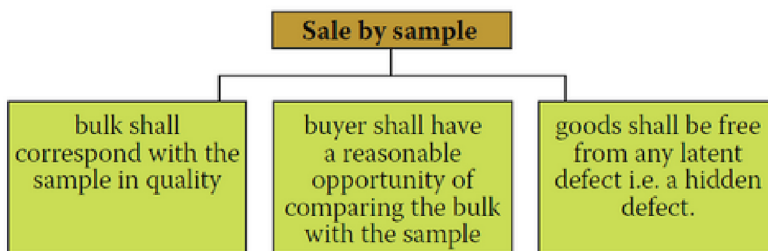


there is an implied condition that

Ex: A ship was contracted to be sold as "copper-fastened vessel" but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

The buyer is not bound to accept and pay for the goods which are not in accordance with the description of goods.

3. Sale by sample [Section 17]:



Ex: A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.

The goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample

4. Sale by sample as well as by description [Section 15]:

Sale by sample as well as by description 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, buyer **can repudiate the contract.**

Ex: A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil. B can reject the goods.

5. Condition as to quality or fitness [Section 16(1)]:

the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the stated **Condition as to quality or fitness 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

Ex: 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

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

Condition as to Merchantability

- Goods should be bought by description.
- The seller should be a dealer in goods of that description.
- **Exception:** If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

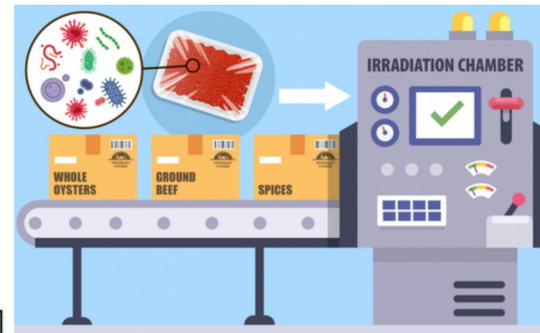
- The state of being fit for market
- Ready to be bought or sold

Ex: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

7. Condition as to wholesomeness

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.



Ex: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Implied Warranties

Implied Warranties

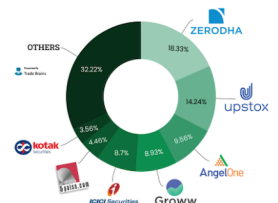


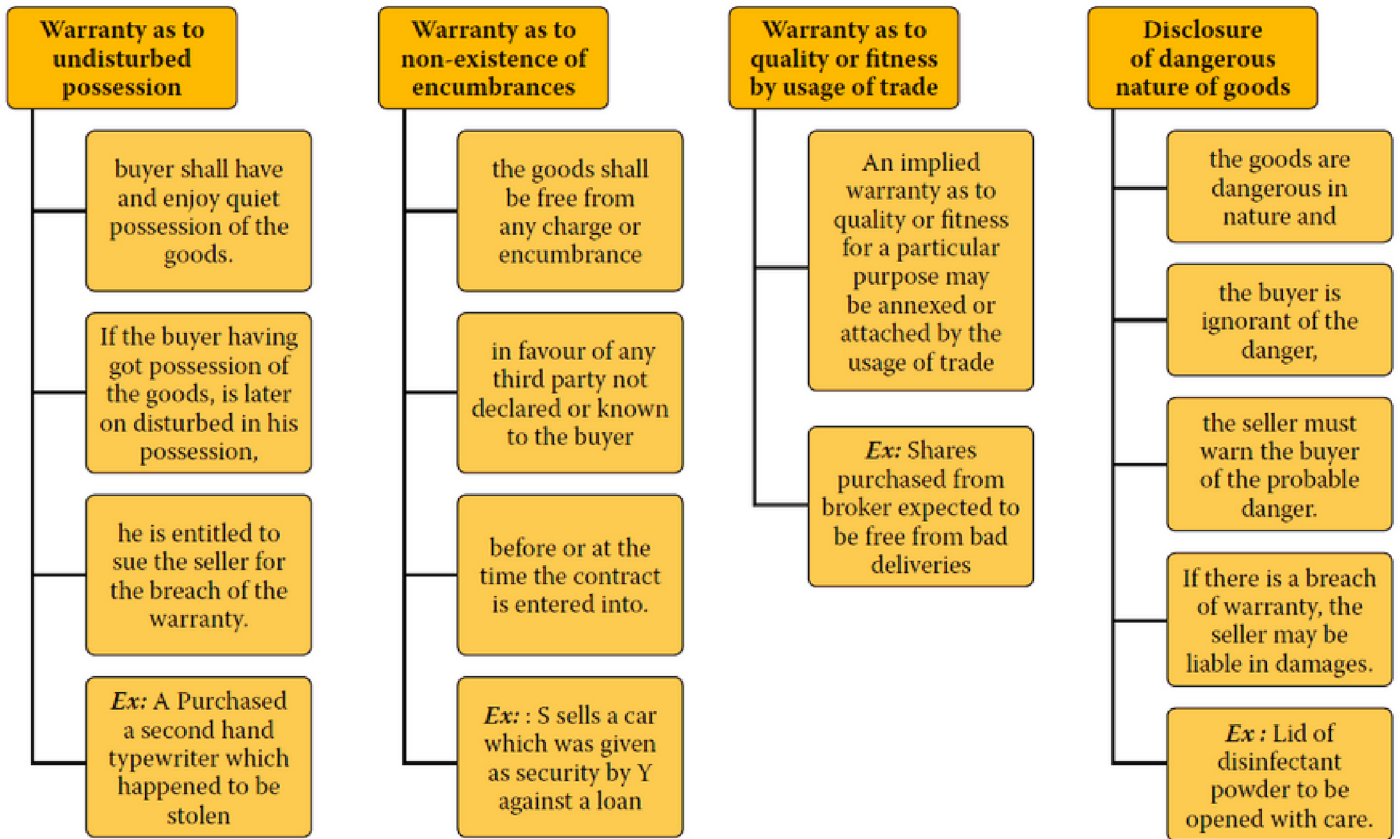
warranty as to undisturbed possession

warranty as to quality or fitness by usage of trade

Warranty as to non-existence of encumbrances

disclosure of dangerous nature of goods





➤ CAVEAT EMPTOR (SECTION 16)



- Caveat Emptor 'means 'let the buyer beware'
- It is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them

Conditions to be satisfied

- Buyer had made known to the seller the purpose of his purchase, and
- buyer relied on the seller's skill and judgement, and
- seller's business to supply goods of that description

EXCEPTIONS

- Fitness as to quality or use
- Goods purchased under patent or brand name
- Goods sold by description
- Goods of Merchantable Quality
- Sale by sample
- Goods by sample as well as description
- Trade Usage
- Seller actively conceals a defect or is guilty of fraud



Priest vs. Last,

Facts of the case

P, a draper, purchased a hot water bottle from a retail chemist. P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when hot water was poured into it and injured his wife

Decision

It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle.

Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.



Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad

Timber was purchased for the express purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.

GOODS

3.5 Concept

A contract of sale of goods involves transfer of ownership in three stages:



The general rule is that risk prima facie passes with the property

➤ PASSING OF PROPERTY (SECTIONS 18 – 26)

Most important element and fact, to decide legal rights and liabilities of sellers and buyers.

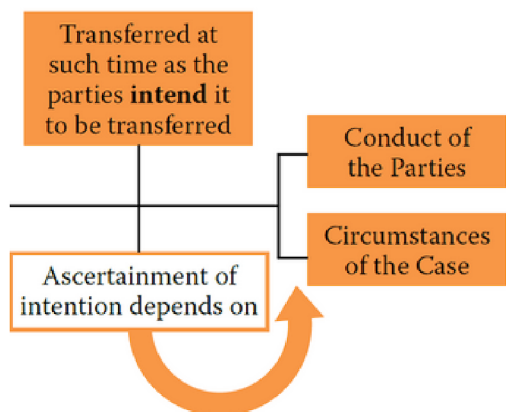
The rules regarding transfer of property in goods from the seller to the buyer depend on two basic factors:

1. Identification of Goods (Sec 18) The buyer can get the ownership right on the goods only when the goods are **specific and ascertained**.
2. Intentions of parties [Sec 19(1)]: The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
 - (i) To the **terms** of the contract
 - (ii) To the **conduct** of the parties and
 - (iii) To the **circumstances** of the case

Passing of property

- ◆ Specific or Ascertained Goods
- ◆ Passing of Unascertained Goods
- ◆ Goods sent on approval or "on sale or return"
- ◆ Transfer of property in case of reservation of right to disposal.

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



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

STAGES OF GOODS WHILE PASSING OF PROPERTY:

SPECIFIC GOODS IN A DELIVERABLE STATE (Section 20)

The property in the goods passes to the buyer when the contract is made, **immaterial of payment**.

SPECIFIC GOODS TO BE PUT INTO A DELIVERABLE STATE (Section 21)

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

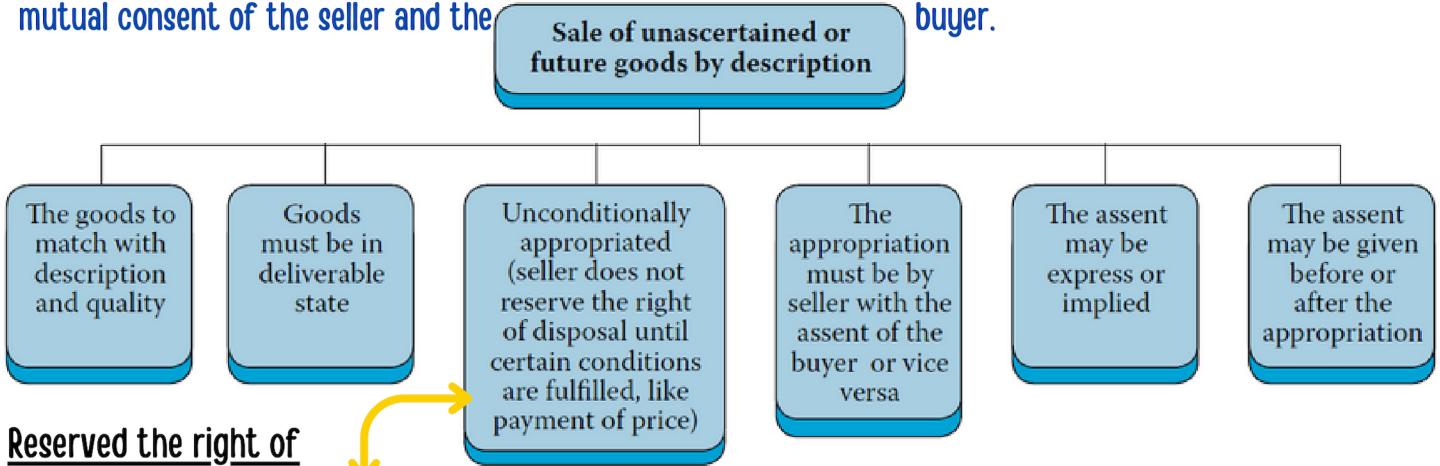
SPECIFIC GOODS IN A DELIVERABLE STATE, WHEN THE SELLER HAS TO DO ANYTHING THERETO IN ORDER TO ASCERTAIN PRICE (Section 22)

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 thing is done and the buyer has notice thereof.

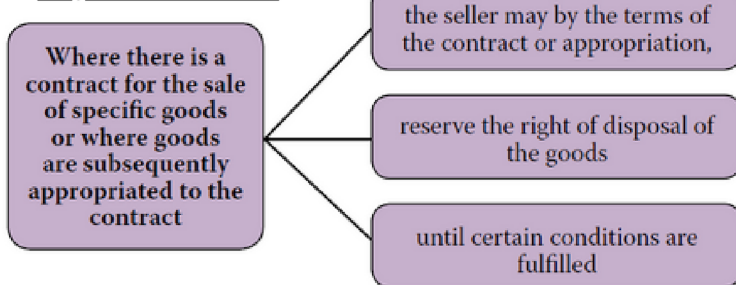
B. Unascertained goods

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**. [Section 18]

1. Sale of unascertained goods by description and Appropriation [Section 23 (1)]: Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.



Reserved the right of disposal (Sec 25)

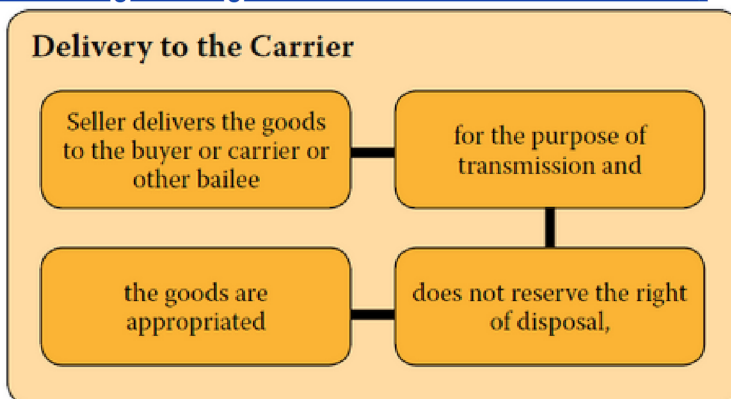


Example: X sends furniture to a company by a truck and instructs the driver not to deliver the furniture to the company until the payment is made by company to him. The property passes only when the payment is made.

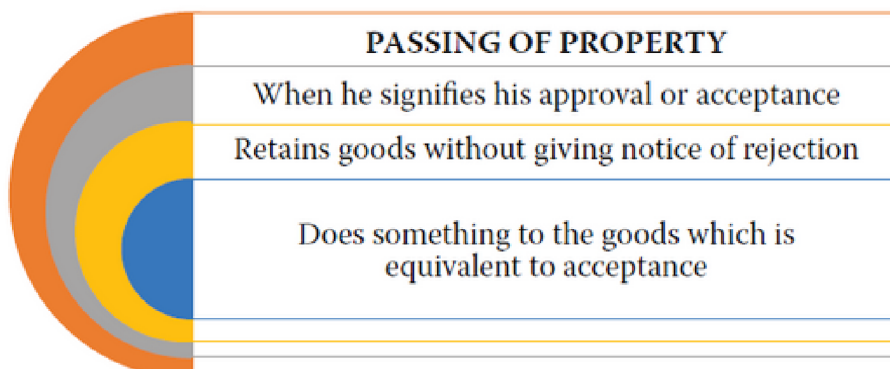
Seller is presumed to have reserved the right of disposal

The property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled

2. Delivery of the goods to the carrier [Section 23(2)]:



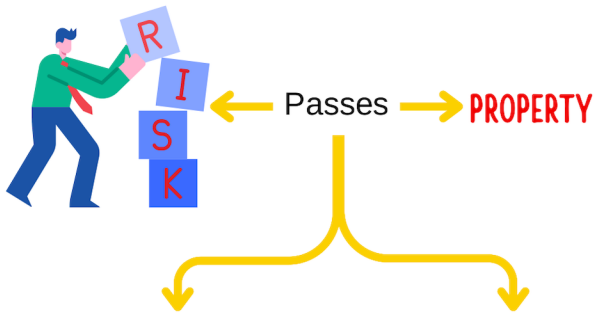
C. Goods sent on approval or "on sale or return" (Section 24)





Sale or return on the terms that the goods were to remain the property of the seller till they are paid for.

> RISK PRIMA FACIE PASSES WITH PROPERTY (SECTION 26)



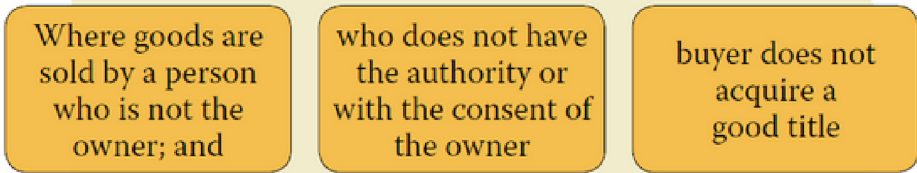
This rule is, however, subject to two qualifications:

(i) Delivery > delayed by the fault of the seller or buyer Risk of the party in default, as regards loss which might not have arisen but for the default.

Seller's risk-until the property passes to the buyer
Buyer's risk-after the property passes from the seller

(ii) Duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

> TRANSFER OF TITLE BY NON-OWNERS (SECTIONS 27 - 30)



To protect the interests of innocent buyers, a number of exceptions have been provided to this rule.

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) Possession of the goods or documents with the consent of the owner;
- (b) Sale > 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 (Proviso to Section 27).



2. Sale by one of the joint owners (Section 28)

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

3. Sale by a person in possession under voidable contract (Section 29).



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 (ground of coercion, fraud, misrepresentation or undue influence) and contract is not terminated until the time of sale.

4. Sale by one who has already sold the goods but continues in possession thereof [Section 30(1)]

The goods are sold to the third person, and such person obtains the delivery thereof in good faith and without notice of the previous sale, he would have good title to them.



5. Sale by buyer obtaining possession before the property in the goods has vested in him [Section 30(2)]

Buyer with the consent of the seller **sells, pledge or otherwise dispose** of the goods to a third person and third person **obtains the 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. (Lee Vs Butler)

Exception - Hire Purchase unless sale is made

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.

7. Sale by an unpaid seller

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

8. Sale under the provision of other act

- Sale by an Official Receiver or Liquidator
- Purchase of goods from a finder of goods
- A sale by pawnee

➤ PERFORMANCE OF THE CONTRACT OF SALE (SECTIONS 31 – 44)

Sec 31- 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.

Important points on Delivery

- Delivery means **voluntary transfer of possession** from one person to another [Sec 2(2)].
- 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.

Payment and delivery are concurrent conditions (Section 32)

Unless otherwise agreed, both things to be done at the same time.

➤ Rules Regarding Delivery of goods (Section 33-41)

- **DELIVERY:** Putting the goods in **possession of buyer**. [Sec 33]
- **EFFECT OF PART DELIVERY:** A delivery of **part of the goods, in progress** of the delivery of the whole has the **same effect**, for the purpose of passing the property in such goods, as **delivery of the whole**. [Sec 34] **Except - intention of severing it from the whole**
- **BUYER TO APPLY FOR DELIVERY:** Apart from any express contract **seller is not bound to deliver them until the buyer applies**. [Sec 35]
- **PLACE OF DELIVERY:** **Firstly** as specified in the **contract** express or implied, between the parties. Otherwise [Sec 36(1)]

Sale - Place at which they are at the time of sale,

Agreed to be sold - Place at which they are at the time of the agreement to sell

- **TIME OF DELIVERY:** If no time fixed then at **reasonable time**. [Sec 36 (2)]
- **GOOD IN POSSESSION OF A THIRD PARTY:** There will be no delivery unless and until such **third person acknowledge to the buyer** that he holds the goods on his behalf [Sec 36(3)].
- **TIME FOR TENDER OF DELIVERY:** Should be at **reasonable hour**. [Sec 36 (4)]
- **EXPENSES OF DELIVERY:** Borne by the seller unless contrary to the contract [Sec 36(5)].
- **DELIVERY OF WRONG QUANTITY [SEC 37]:**

Less quantity - Buyer may reject them or accepts, he shall pay for them [Sub Sec 1]

More quantity - Buyer may accept as contracted and reject extra

He may reject the whole

Accept the whole and pay from whole.[Sub Sec 2]

Mix goods - Buyer may accept which are in accordance of contract and reject balance or whole (sub 3)

- **INSTALLMENT DELIVERIES:** Unless otherwise agreed, buyer is **not bound** to accept the delivery in instalments.[Section 38]
- **DELIVERY TO CARRIER:** Is **prima facie deemed to be delivered** to buyer unless otherwise agreed in contract. [Section 39(1)]
- **DETERIORATION DURING TRANSIT:** **Liability will fall on buyer**. [Section 40]
- **BUYER'S RIGHT TO EXAMINE THE GOODS:** Unless otherwise agreed, the **seller is bound**, on request, to **afford the buyer a reasonable opportunity of examining the goods**. [Section 41]

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

Acceptance is deemed to take place when the buyer-

(a) **intimates** to the seller that he had **accepted the goods**; or

(b) does any **act** to the goods, which is **inconsistent with the ownership of the seller**; or

(c) **retains** the goods after the lapse of a **reasonable time**, without intimating to the seller that he has rejected them.

➤ **Buyer not bound to return rejected goods (Section 43):**

He is not bound to return them to the seller, but it is **sufficient if he intimates** to the seller that he refuses to accept them.

➤ **Liability of buyer for neglecting or refusing delivery of goods (Section 44):**

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**.

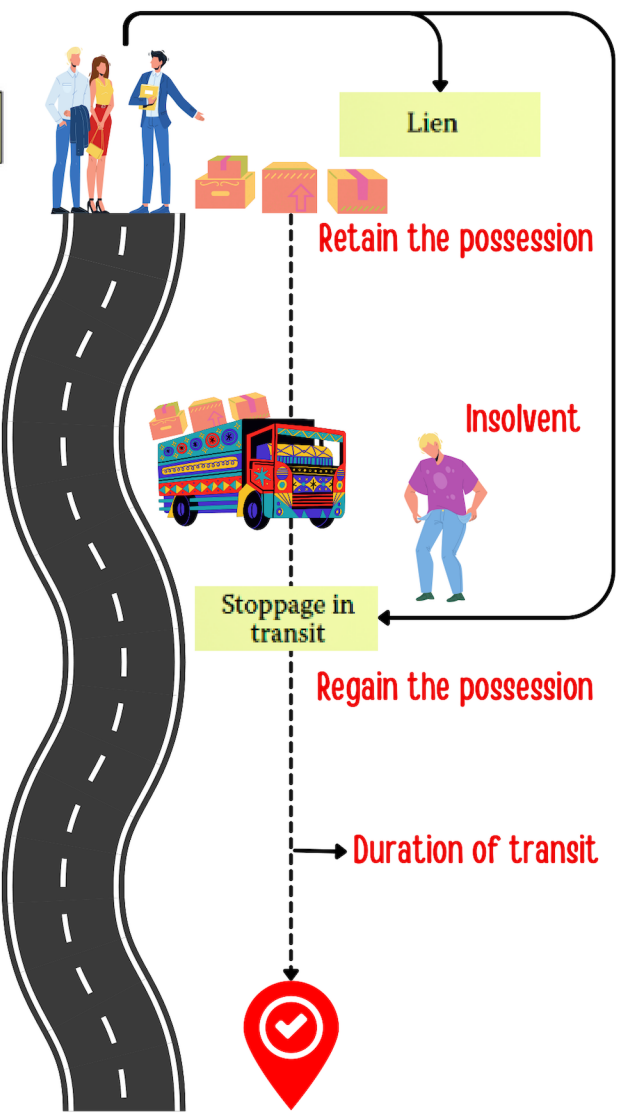
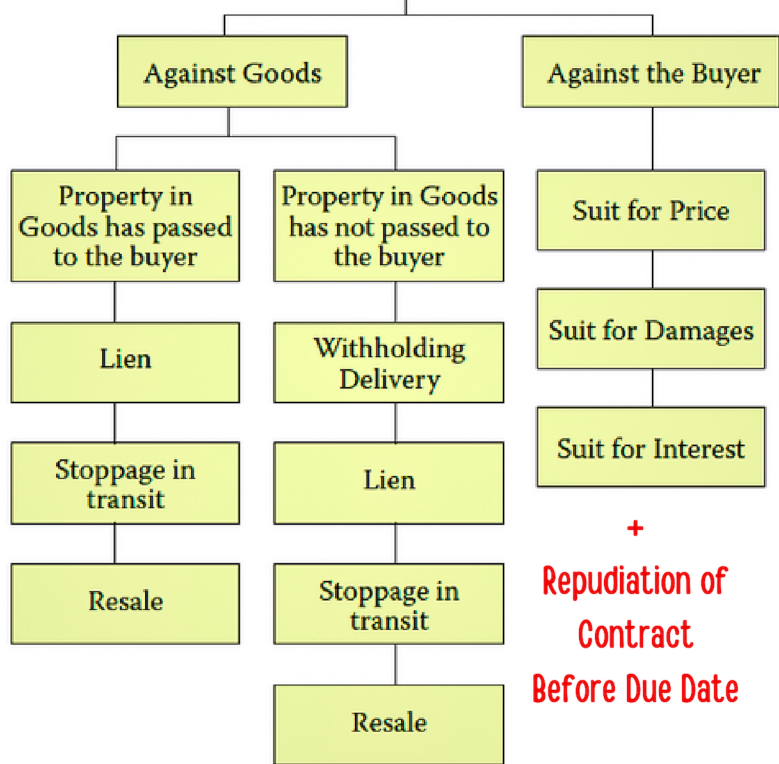
3.6 Concept

Unpaid Seller



- SECTION 45 (1)
- The **whole** of the price has not been paid or tendered and the seller had an **immediate right** of action for the price.
- When a **bill of exchange** or other **negotiable instrument** has been received as conditional payment, and the **condition** has not been fulfilled by the reason of the **dishonour** of the instrument or otherwise.

Rights of an unpaid Seller



(1) Seller's lien (Section 47)

- An unpaid seller has a right of lien on the goods for the price while he is in **possession** (even as agent or bailee for the buyer) until the **payment or tender** of the price of such goods.
- The lien can be exercised as long as the **seller remains in possession of the goods**

Exercise of right of lien

- Where goods sold without stipulation as to credit (Cash Sales)
- Goods sold on credit, but terms of credit expired
- Buyer becomes insolvent (ceases to pay debt in the ordinary course of business)

When does the transit come to an end

Part Delivery (Sec 48)
Where 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

Where the buyer or his agent lawfully obtains possession of the goods.

For the purpose of transmission to the buyer without reserving the right of disposal of the goods.

Buyer or agent lawfully obtains the goods

By waiver

Where seller has waived the right of lien.

Delivers goods to carrier or bailee

Termination of Lien

By Estoppel (by conduct or behaviour)

By estoppels i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

EXCEPTION: The unpaid seller of the 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 (SIT) [Sec 50 - 52]

- The right of **stoppage in transit** means the right of stopping the goods while they are in transit, **to regain the possession and to retain them till the full price is paid.**

Right of stoppage in transit is exercised only when the following conditions are fulfilled [Section 50]

- (a) The seller must be **unpaid.**
- (B) He must have **parted with the possession of goods.**
- (C) The goods are **in transit.**
- (d) The buyer has become **insolvent.**
- (e) The right is **subject to provisions of the Act.**

Duration of transit (Section 51)

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.**

When does the transit comes to an end

- When the buyer or other bailee obtains **delivery / before destination (interception with or without the consent of the carrier)**
- Where the **carrier or bailee acknowledge 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 rights 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, there 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 by the buyer, the transit comes to an end.**

How stoppage in transit is effected (Section 52)

- Taking **actual possession of the goods, or by giving notice of his claim to the carrier or other bailee.**
- **Notice** → Person with **actual possession of the goods or to his principal (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.**

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

- When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer
Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd

Facts of the Case

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.

Conclusion

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

- 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 provision stipulates as follows:
 - (A) If the last mentioned transfer is by way of **sale**, **right of lien or stoppage in transit is defeated**, or
 - (B) 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 pledge.

Effect of stoppage:

Contract  not rescinded . The contract still remains in force and the buyer can ask for delivery of goods on payment of price.

(3) Right of re-sale [Section 54]

- Very valuable right.
- In the absence of this right, **Lien and SIT** 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 resell the goods under the following conditions:

1. **No Notice** - Where the goods are of a **perishable nature** - need not be informed of the intention of resale.
2. **Notice** - Where he gives notice to the buyer of his intention to re-sell the goods. If **Buyer fails** within a **reasonable time** to pay or tender the price, the seller may resell the goods.

Seller is also entitled to



Recover the difference between the contract price (1000) and resale price (850)

150

Retain the profit if the resale price (1100) is higher than the contract price (1000).

100

It may 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.



3. The subsequent buyer acquires the **good titles**.

4. Right of resale is expressly reserved in a contract of sale – Seller **not required** to give **notice** of resale.
– Can **recover damages** from original buyer.

5. Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of **withholding delivery of the goods**. This right is similar to lien and is called “**quasi-lien**”. This is the additional right used in case of agreement to sell.

➤ RIGHT OF UNPAID SELLER AGAINST THE BUYER (Section 55-61)

SUIT FOR PRICE (Section 55)

Sale – **Property in the goods passed** to the buyer and the buyer wrongfully neglects or refuses to pay the seller may sue him for the price of the goods.

Agreement to Sell – **Price is payable on a day certain** irrespective of delivery and the buyer **wrongfully neglects or refuses to pay** such price, the seller may sue him for the price although **property in goods has not passed and goods have not been appropriated**.

SUIT FOR DAMAGES FOR NON-ACCEPTANCE (Section 56)

– Where the buyer wrongfully neglects or refuses to accept and pay for the goods

REPUTATION OF CONTRACT BEFORE DUE DATE (Section 60) : If the buyer does this then the seller may treat the contract as rescinded and sue damages for the breach.

SUIT FOR INTEREST (Section 61):

- Where there is **specific agreement** as to interest on the price of the goods from the date on which payment **becomes due**, the seller may recover interest from the buyer.
- If however, there is **no specific agreement** to this effect, the seller may charge interest on the price when it becomes due from such **day as he may notify to the buyer**.

3.7 Concept

Breach of contract by seller

Fails to deliver the goods at the time or in manner prescribed

Repudiates the contract

Deliver non-conforming goods and buyer rejects and revokes acceptance

REMEDIES OF BUYER AGAINST THE SELLER

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

Seller wrongfully neglects or refuses to deliver the goods to the buyer may sue the seller for **damages for non-delivery. (Section 57)**

2. Suit for specific performance (Section 58):

Seller commits of breach, the buyer can appeal to the court for specific performance.

The court can order for specific performance only when the goods are ascertained or specific [SECTION 58].

3. Suit for breach of warranty (Section 59):

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

- (a) Sale of specific and ascertained goods. (b) Subject to provisions of Specific Relief Act of 1963.
- (c) It empowers where damages would not be an adequate remedy. (d) It will be granted as remedy if goods are of special nature/ unique

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

Breach of warranty or Buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the bases of such breach of warranty (Section 59)

- 1. But he may – (i) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (ii) sue the seller for damages for breach of warranty.

The other may either treat the contract as subsisting and wait the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach (Section 60)

5. Suit for interest:

- Nothing in this act shall affect the right of the seller or the buyer to recover interest or special damages, where recoverable.
- 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

➤ 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.**
- An auctioneer is an agent **governed by the Law of Agency.**

RULE OF AUCTION SALE

- **WHERE GOODS ARE SOLD IN LOTS:** Each lot is prima facie deemed to be subject of a **separate contract of sale.**
- **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.**
- **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.**
- **WHERE THE SALE IS NOT NOTIFIED BY 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 other person and any sale **contravening this rule may be treated as fraudulent by the buyer.**
- **RESERVED PRICE.** Upset price.
- **PRETENDED BIDDING:** If the **seller** does it 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 parties would become entitled to **read just the price of the goods accordingly.**
- The **buyer** would have to pay the **increased price** where the tax increases and may **derive the benefit of reduction** if taxes are curtailed.
- Provision can be **excluded by an agreement** to the contrary.
- It is **open** to the parties to **stipulate anything** regard to taxation.