

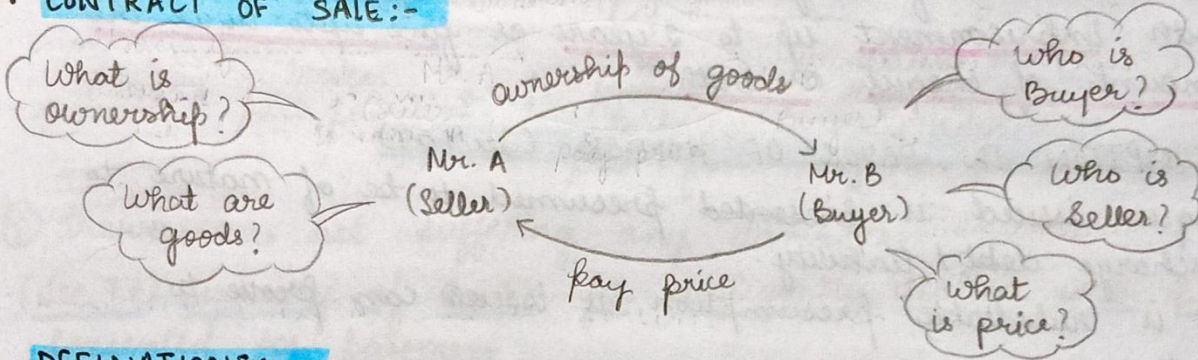
SALES OF GOODS ACT, 1930



BACKGROUND:-

- deals with the laws relating to sales of goods in India.
- Came into force from 1st July, 1930.
- extends to whole of India.

CONTRACT OF SALE:-



DEFINITIONS:-

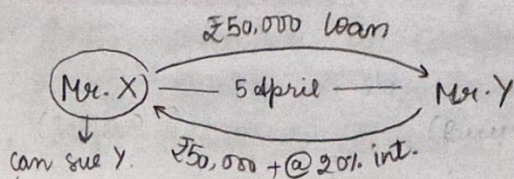
(1) Goods (Section 2[7]) → solid, gas, water

'Goods' means every kind of movable property, other than actionable claims and money; and includes stocks & shares, growing crops, grass and things attached to or forming a 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.

→ 'goods' include both tangible & intangible goods.

Example of actionable claim :-



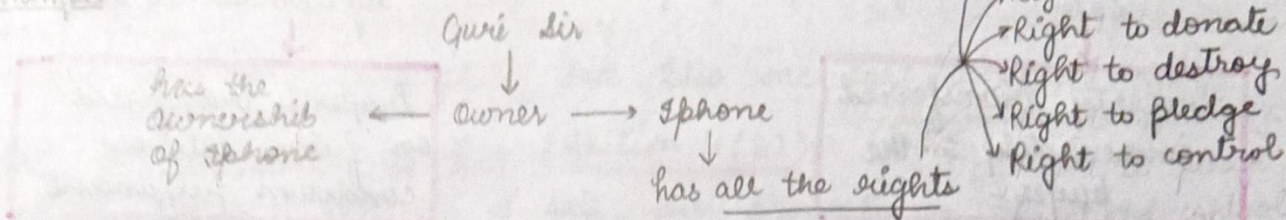
{ Here, £60,000 (50,000 + 20%) is a debt & it is not a movable property or goods. }

→ This right to recover the amt. is called actionable claims.

(2) Property (Section 2[11])

'Property' means 'ownership' or 'general property.'

Example:



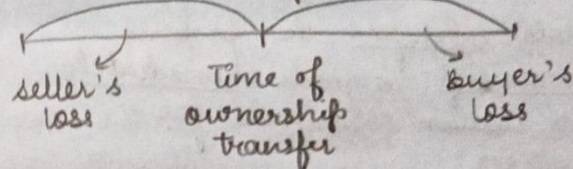
When the owner of goods transfer any of his rights in goods to another person but not all the rights, then that other person has 'special property' in goods.

Ownership vs. Possession of goods

Possession of goods refers to physical custody or control over the goods whereas property in goods means ownership over the goods.

"RISK FOLLOWS OWNERSHIP"

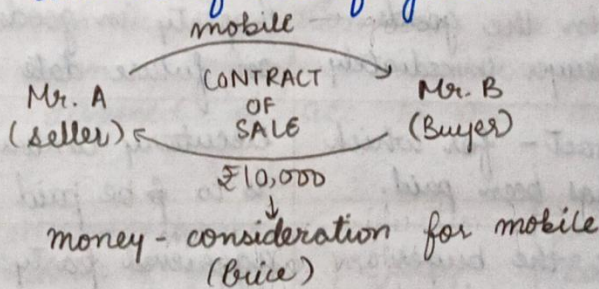
(जिती ownerशिप उता risk)



(3) Price (Section 2[10])

Price means the money consideration for the sale of goods. It is the value of goods expressed in monetary terms. Price can be money & in kind but not wholly in kind. It is the essential requirement to make a contract of sale of goods.

Example:-



(4) Buyer (Section 2[1])

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

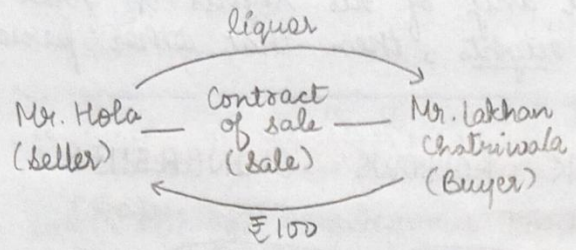
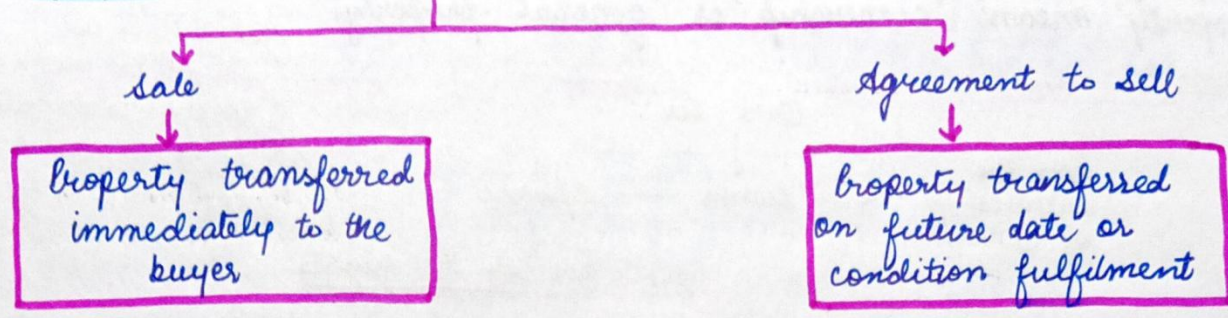
(5) Seller (Section 2[13])

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

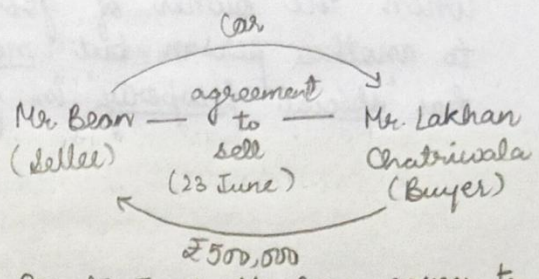
→ 'Buyer' & 'Seller' are complementary

→ represents the two parties to a contract of sale of goods.

TYPES OF CONTRACT OF SALE:- (SQA applications)



Mr. Hola transfers the property or ownership in goods immediately to Mr. Lakhan Chatriwala for price ₹100.



On 23 June, Mr. Bean, agrees to transfer the property (ownership) in car (goods) to Mr. LC (buyer) for ₹5 lacs (price) on 3 July.
 → On 3 July, agreement of sale will become sale.

DISTINCTION BETWEEN SALE & AGREEMENT TO SELL:-

Basis	Sale	Agreement to sell
<u>Transfer of Property</u>	The property in the goods passes to the buyer immediately.	Property in goods passes to buyer on future date or cond. fulfilment.
<u>Nature of Contract</u>	executed contract - for which consideration has been paid.	executory contract - consideration is to be paid on future date.
<u>Remedies for breach</u>	seller can sue the buyer for the price of goods.	aggrieved party can sue for damages only & not for the price.
<u>Liability of parties</u>	subsequent loss or destruction of goods is liability of buyer.	Such loss or destruction is liability of seller.
<u>Burden of risk</u>	Buyer - risk follows ownership	seller
<u>Nature of Rights</u>	Tus in rem - right against the whole world.	Tus in personam - rights against particular party to the contract.
<u>Right of Resale</u>	seller can't resell the goods.	seller can resale - ownership with him
<u>In case of Insolvency of seller</u>	official assignee can't take over the goods - will recover the price from buyer.	official assignee will have control over the goods but cannot recover the price.

CONTRACT OF SALE OF GOODS (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 btw one part-owner & another.

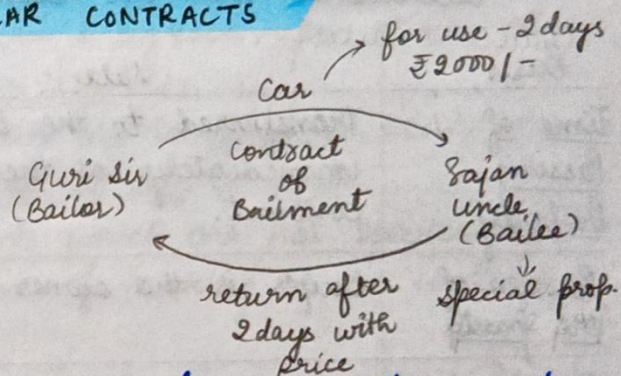
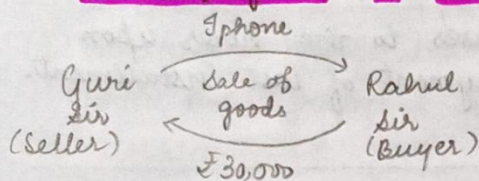
SALE & AGREEMENT TO SELL (Section 4(3))

→ where under a contract of sale, the property in the goods is transferred from the seller to the buyer immediately is called a sale,

→ but where the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an agreement to sell.

SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

(1) Sales of goods VS Bailment



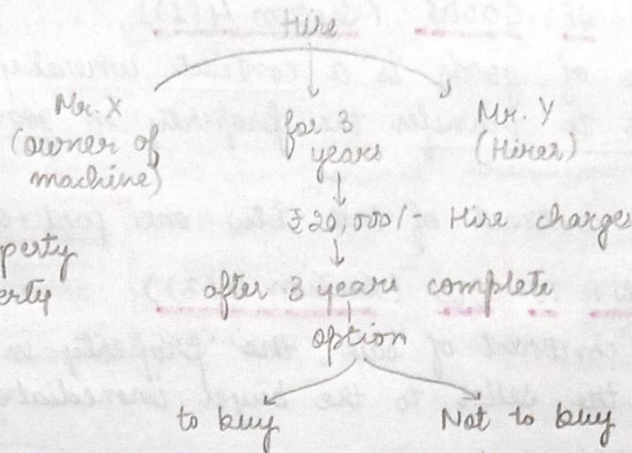
→ Transfer of general prop. from Guri Sir to Rahul Sir.

→ 'Bailment' is delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned when the purpose is accomplished to the bailor or are to be disposed of acc. to the directions of bailor.

Basis	Sale	Bailment
Transfer of Property	Seller → buyer. Transfer of general property.	possession of goods Bailor → Bailee (for specific reason, transfer of special prop.)
Return of goods	not possible.	Bailee must return the goods to bailor on accomplishment of purpose.
Consideration	price in the terms of money.	may be gratuitous or non-gratuitous. → with or without consideration

(2) Sale of goods V/s Hire - Purchase

Example of Hire - Purchase :-



Mr. X - General Property
Mr. Y - Special Property

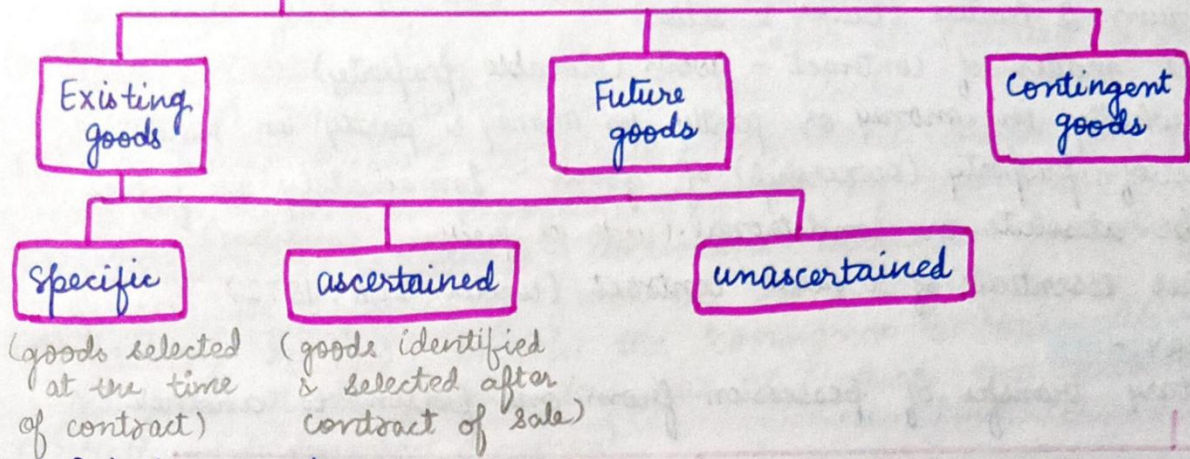
→ Hire - Purchase agreements are governed by Hire - Purchase Act, 1972.
↳ means an agreement under which goods are let on hire & under which the hirer has an option to purchase them in accordance with the terms of the agreement.

<u>Basis</u>	<u>Sale</u>	<u>Hire - Purchase</u>
<u>Time of Passing Property</u>	transferred to the buyer immediately at the time of contract.	passes to the hirer upon payment of last installment.
<u>Position of the party</u>	Buyer is the owner of goods.	Hirer is a bailee till he pays the last instalment.
<u>Termination of contract</u>	Buyer cannot terminate the contract - bound to pay the price of goods.	Hirer may terminate the contract by returning the goods to owner - without any liab. to pay remaining instalments
<u>Burden of risk of insolvency of the buyer</u>	Seller takes the risk of any loss.	If the hirer fails to pay any instalment, the owner has the right to take back the goods.
<u>Transfer of title</u>	Buyer can transfer the title to a bona fide purchaser from him.	Hirer cannot pass any title even to a bona fide purchaser until he pays the last instalment.
<u>Resale</u>	Buyer can resell the goods.	Hirer cannot resell the goods

(3) Sale vs Contract for Work & Labour

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.

TYPES OF GOODS :-



(1) Existing goods

→ those owned or possessed or acquired by the seller at the time of contract of sale.

(i) Specific goods means goods identified & agreed upon at the time a contract of sale is made. (Section 2(14))

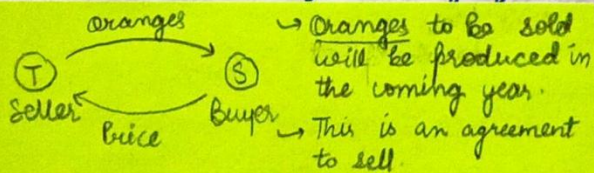
(ii) Ascertained goods are those goods which are identified in accordance with the agreement after the contract of sale is made.

(iii) Unascertained goods are those goods which are not specifically identified or ascertained at the time of making of the contract.

(2) Future goods (Section 2(6))

→ means goods to be manufactured or produced or acquired by the seller after making the contract of sale.

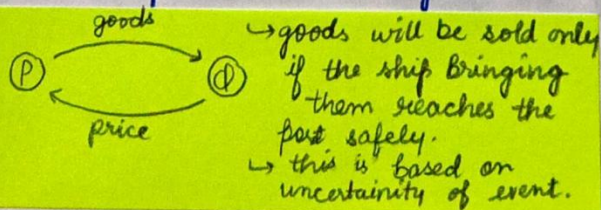
→ A contract of sale of future goods is always an agreement to sell.



(3) Contingent goods (Section 6(2))

→ The acquisition of goods which depends upon an uncertain contingency (uncertain event) are called 'contingent goods'.

→ also operates as 'an agreement to sell.'

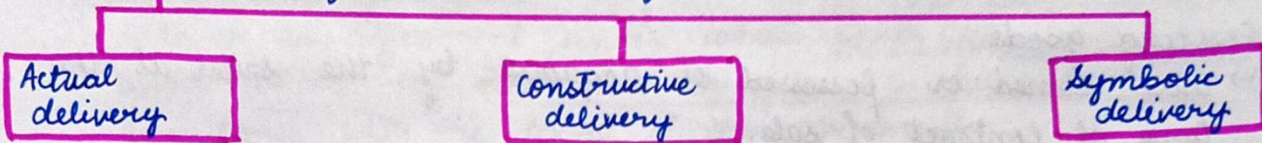


ELEMENTS OF CONTRACT OF SALE OF GOODS

- Minimum 2 parties (Buyer & seller)
- subject matter of contract - goods (movable property)
- Price - wholly in money or partly in money & partly in kind
- Transfer of property (ownership) of goods - Immediately or future
- may be absolute or conditional. (with or without condition)
- all other essentials of a valid contract (under ICA, 1872)

DELIVERY:-

→ voluntary transfer of possession from one person to another.

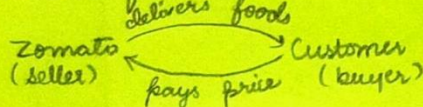


(i) Actual delivery

→ takes place when the seller transfers the physical possession of goods to the buyer.

Example:-

Food ordered from Zomato.



(ii) Constructive delivery

→ transfer of goods is effected without any change in the custody
→ delivery by attornment (acknowledgement).



Mr. Gabbar calls Mr. Thakur that now the goods in warehouse belongs to Mr. Kalia.

Mr. Thakur agrees that now he is holding goods on behalf of Kalia.

(iii) Symbolic delivery

→ when there is a delivery of a thing in token of transfer of something else.
→ handing over document of title.
→ Eg:- key of a warehouse containing the goods is handed over to buyer.

DOCUMENT OF TITLE OF GOODS

→ unconditional undertaking (promise) to deliver the goods to the holder of the document.

Examples are as follows:-

- (1) Bill of lading - detailed list of a ship's cargo in the form of a receipt given by the master of the ship.
- (2) Dock-warrant - certifies that the holder is entitled to goods imported and warehoused in the docks.
- (3) Warehouse keeper's certificate - document issued in favour of the owner or depositor of goods by the warehouse keeper.
- (4) Wharfingers' certificate - document issued in favour of the owner or depositor of goods by the wharfinger.
- (5) Railway receipt - entitles the consignee to take delivery of the goods at the private terminal at which the train terminates.
- (6) Multimodal transport document.

DOCUMENT SHOWING TITLE

→ document that shows who is the true owner of goods.
Eg:- share certificate.

MERCANTILE AGENT

→ agent who in the customary course of business has any of the following authorities:-

- 1) Sell goods
- 2) Buy goods
- 3) Consign goods
- 4) Pledge goods

INSOLVENT

→ 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.

QUALITY OF GOODS - includes their state or condition. (Section 2(12))

SUBJECT MATTER OF CONTRACT OF SALE

Existing or future goods (Section 6)

→ subject matter of a contract of sale may be either existing goods 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.

Goods perishing before making of contract (Section 7)

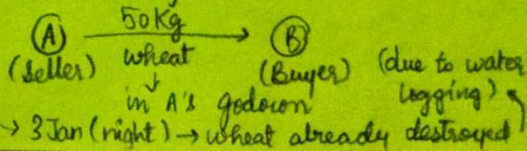
where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished.

→ Initial impossibility (impossible from beginning)

At the time of contract neither parties were aware of the fact.

→ Agreement is void.

4 Jan (morning)



Goods perishing before sale but after agreement to sell (Section 8)
 where there is an agreement to sell specific goods, & subsequently the goods without any fault on the part of the seller or buyer perish, the agreement is thereby avoided or is void.

4 Jan (Morning)
 Mr. A (Seller) → 50kg wheat → Mr. B (6 Jan delivery)
 5 Jan → wheat destroyed
 → Valid → Void

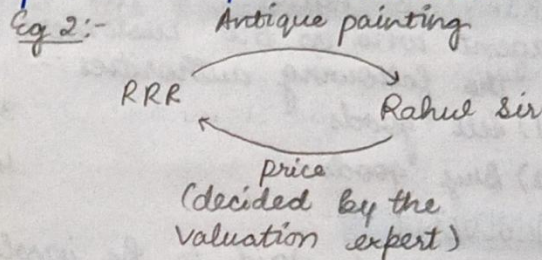
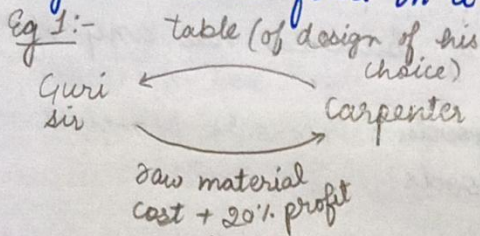
→ Supervening impossibility
 → Impossible after contract

ASCERTAINMENT OF PRICE :-

Ascertainment of price (Section 9):-

Price in the contract of sale may be -

- fixed by the contract (negotiation done before entering the contract)
- agreed to be fixed in a manner provided by the contract



method of calculation of price stipulated in contract

→ Course of dealings between the parties

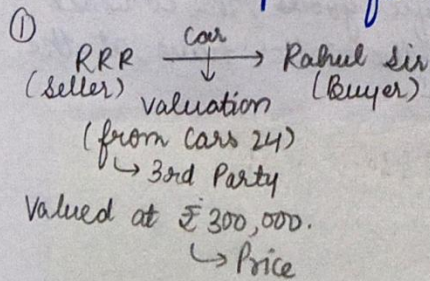
Agreement to sell at valuation (Section 10):-

Determination of price by a third party -

→ Where there is an agreement to sell goods, price has to be fixed by the third party and he cannot make such valuation, the agreement will be void.

→ In case the 3rd party is prevented from fixing the price, the party at fault will be liable to the damages to the other party who is not at fault.

→ A buyer who has received & appropriated the goods must pay a reasonable price for them in any eventuality.



② Called Valuer (3rd Party)
 RRR (seller) not present.
 ↳ default
 • Buyer can treat the contract as cancelled.
 • Claim damages from seller.

③ 3rd Party (Valuer)
 Rahul sir (Buyer) not present - default
 • Seller can treat the contract as cancelled
 • Claim damages from buyer.



MODES OF CONTRACT OF SALE

- Immediate delivery & immediate payment (cash sales)
- Immediate delivery & payment in future (credit sales)
- Immediate payment & delivery in future (advance payment)
- Payment & delivery both in future (agreement to sell)
- Delivery & payment both in instalments. (EMI system)

unit - 2

WHAT IS STIPULATION?

- A representation which forms a part of the contract of sale and affects the contract, is called a stipulation.
- Every stipulation is not of equal importance.
- The more significant stipulations contained in a contract of sale of goods have been called as 'Conditions', while the less significant stipulations have been given the name 'Warranties'.

CONDITION (Section 12(2))

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. (cancel)

WARRANTY (Section 12(3))

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. ^{→ less important}

HOW TO DETERMINE CONDITION OR WARRANTY?

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. (Sec 12(4))

STIPULATION AS TO TIME (Section 11)

- Time for payment of price, is not deemed to be of the essence of a contract of sale.
- But delivery of goods must be made without delay. Stipulation as to time of delivery are the essence of the contract. (unless a different intention appear from the contract)

WHEN CONDITION IS TO BE TREATED AS WARRANTY? (Section 13)

Condition can be treated as warranty but warranty cannot be treated as a condition.

In the following cases, a contract is not avoided even on account of a breach of condition:-

VOLUNTARY WAIVER

- (i) Where the buyer altogether waives the performances of the condition. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the cond. as a warranty.

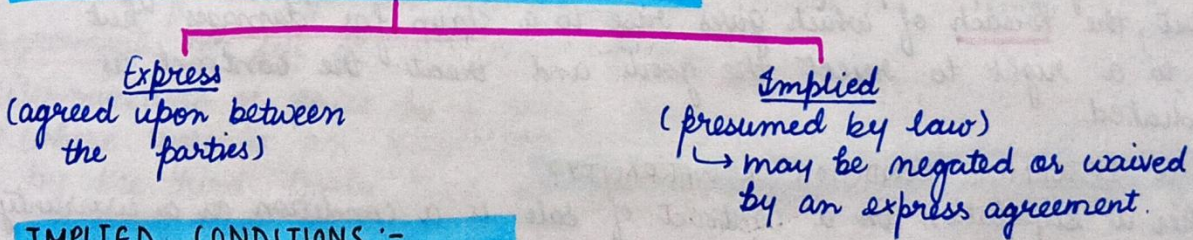
COMPULSORY WAIVER

- (iii) Where the contract is non severable and the buyer has accepted either the whole goods or any part thereof. *→ not severable*
- (iv) Fulfillment is excused by law by reason of impossibility or otherwise.

DIFFERENCE BTW CONDITIONS AND WARRANTIES -

Basis	Condition	Warranty
<u>Meaning</u>	Cond. is a stipulation essential to the main purpose of contract.	Warranty is a stipulation collateral to the main purpose of contract.
<u>Right in case of breach</u>	aggrieved party can repudiate the contract or claim damages or both.	aggrieved party can claim only damages.
<u>Conversion of stipulation</u>	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as breach of condition.

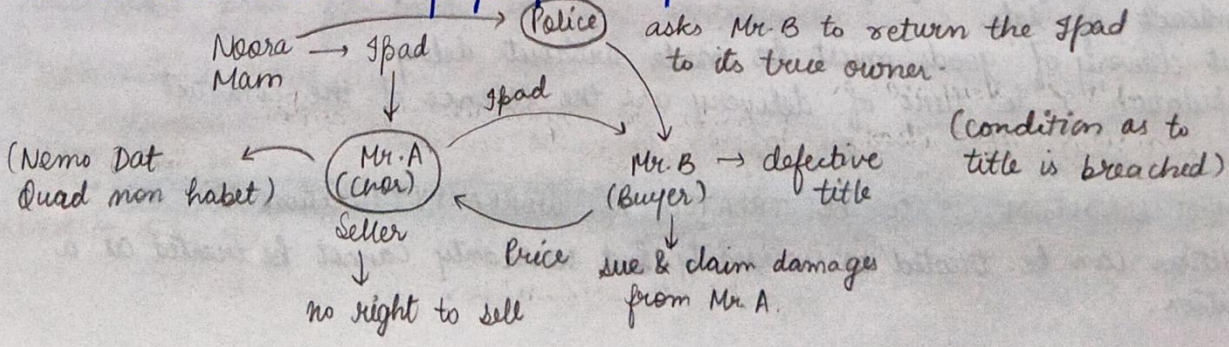
TYPES OF CONDITIONS AND WARRANTIES :-



IMPLIED CONDITIONS :-

(1) CONDITION AS TO TITLE (Section 14(a))

- In case of sale, the seller has the right to sell the goods.
- In case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.



(2) SALE BY DESCRIPTION (Section 15)

- Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with the description.
- If you contract to sell peas, you cannot compel the buyer to take beans.

Ordered iPhone

→ Amazon → deliver 'one plus'

{ Description does not match with the goods.
Contract can be repudiated. }

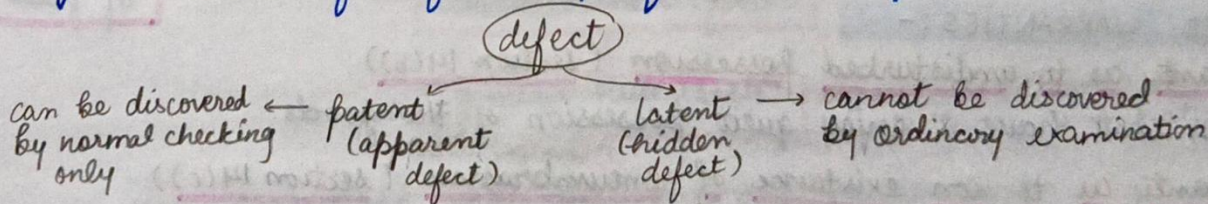
(3) CONDITION AS TO MERCHANTABILITY (Section 16(2))

- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
- Requirements for this condition to apply -
 - Goods should be bought by description.
 - Seller should be a dealer of in goods of that description.
- 'Merchantable Quality' means goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description.

(4) SALE BY SAMPLE (Section 17)

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.
- Goods shall be free from any defect rendering them unmerchantable.



(5) SALE BY SAMPLE AS WELL AS DESCRIPTION (Section 15)

- The implied condition is that the bulk of the goods supplied shall correspond both with the sample & the description.

sample ✓ description ×
sample × description ✓
sample × description × } buyer can repudiate the contract

(6) CONDITION AS TO WHOLESOMENESS

→ fit for consumption

→ In the case of eatables & provisions, there is another implied condition that the goods shall be wholesome.

(7) CONDITION AS TO QUALITY OR FITNESS (Section 16(1))

↳ General rule - There is no implied cond. as to quality or fitness of goods for any particular purpose.

↳ Reason - Doctrine of Caveat Emptor - 'let the buyer beware'

↳ Exception to the implied cond. is as follows:-

i) Buyer should've made known to the seller the particular purpose for which goods are required.

ii) Buyer should rely on the skill & judgement of seller.

iii) Goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

• DOCTRINE OF CAVEAT EMPTOR

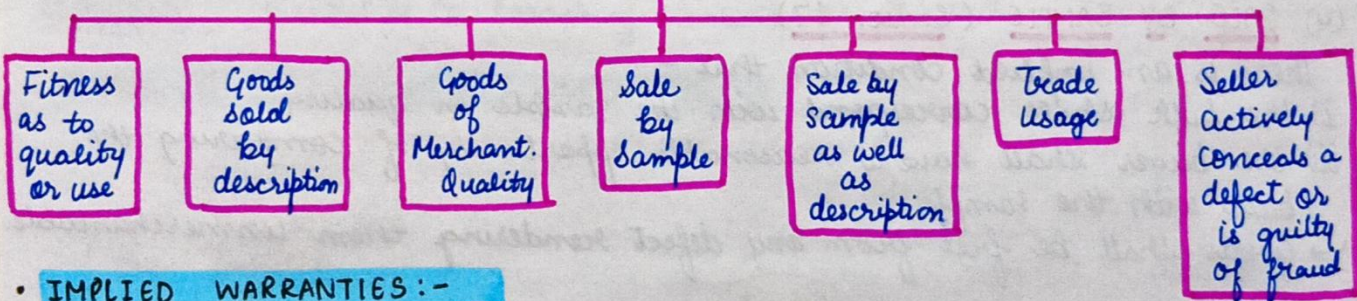
↳ let the buyer beware.

↳ When sellers display their goods in open market, it is for the buyers to make a proper selection of goods.

↳ If goods turn out to be defective, he cannot hold the seller liable.

↳ seller is no way responsible for bad selection of buyer.

Exceptions



• IMPLIED WARRANTIES:-

(1) warranty as to undisturbed possession (Section 14(b))

↳ buyer shall have & enjoy quiet possession of the goods.

(2) warranty as to non existence of ^{charge/debt} encumbrances (Section 14(c))

↳ goods shall be free from any charge in favour of any 3rd party not declared or known to the buyer.

(3) warranty as to quality or fitness by usage of trade (Section 16(3))

↳ warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade. (eg:- ready made garments)

(4) Disclosure of dangerous nature of goods

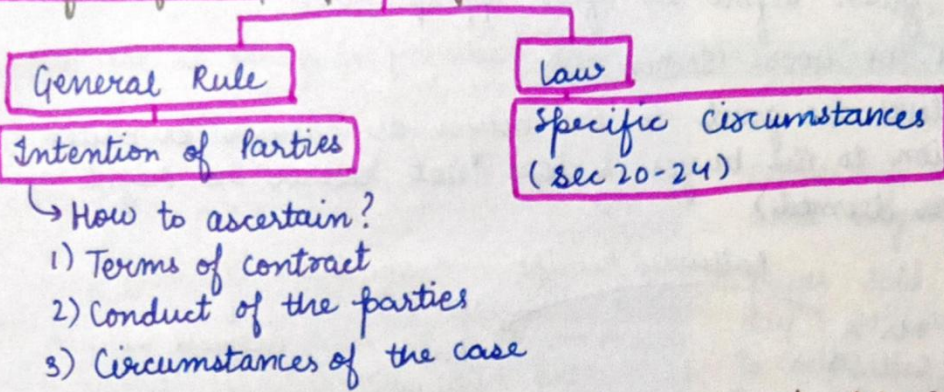
↳ Where the goods are dangerous in nature & the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

unit - 3

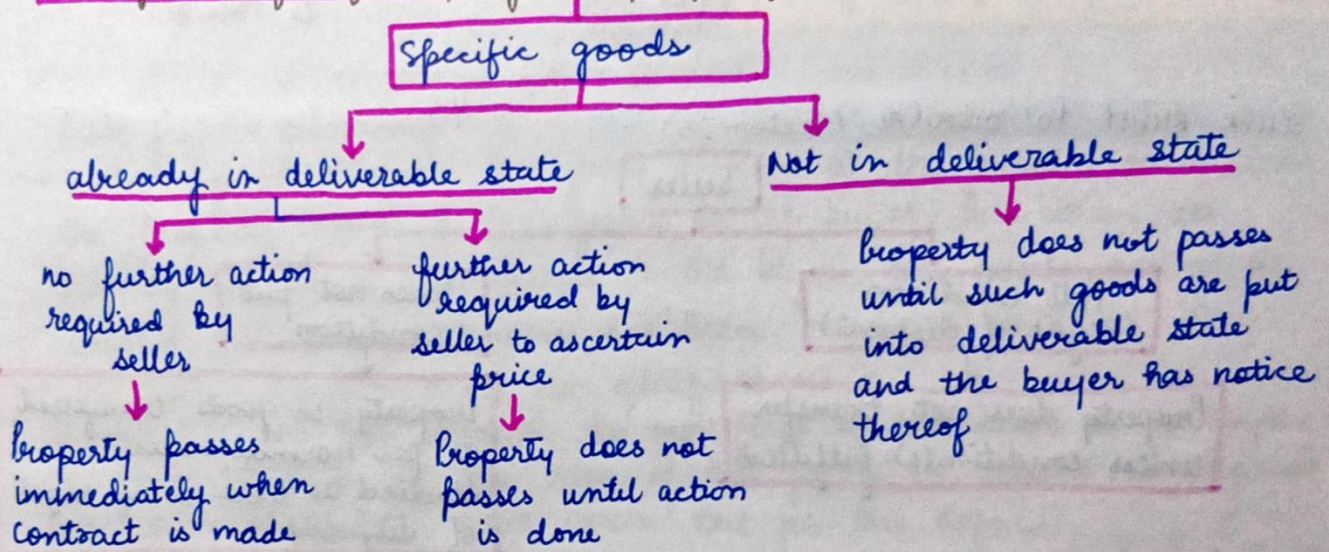


TIME OF TRANSFER OF PROPERTY (Section 19): -

Transfer of Property in goods



Time of Transfer of Property in specific goods (Sec 20, 21 & 22)



unascertained goods

general rule (Sec 18)

not transferred until the goods are ascertained

→ The process of selection of ascertain goods from the lot of unascertained goods is called 'appropriation of goods.'

ESSENTIALS OF APPROPRIATION OF GOODS (Section 23(1)) *

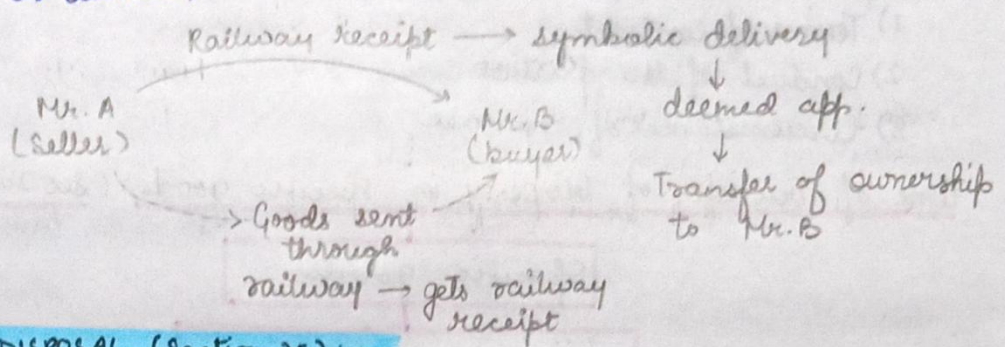
- (1) Sale of unascertained or future goods.
- (2) Goods should conform to the description & quality stated in the contract.
- (3) Goods must be in deliverable state.
- (4) Goods must be unconditionally appropriated.
- (5) Appropriation must be made by -



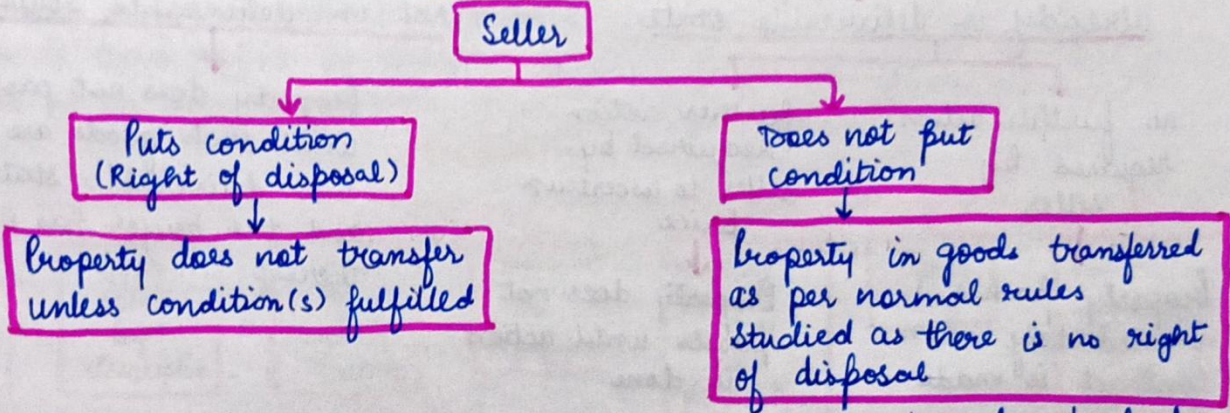
- seller with assent of buyer
- buyer with assent of seller
- (6) assent may be expressed or implied.
- (7) assent may be given before or after appropriation.

DEEMED APPROPRIATION OF GOODS (Section 23(2)) *delivery of goods to the carrier*

When the seller, deliver the goods to the buyer or carrier or bailee for the transmission to the buyer & does not reserve the right of disposal (actual or deemed)



SELLER - RIGHT TO DISPOSAL (Section 25): -



Note:- Delivery to buyer / carrier / agent / bailee will not transfer property in case right of disposal is there

GOODS SENT ON APPROVAL OR "ON SALE OR RETURN" (Section 24)

- The property passes to the buyer :- (Example 1)
- when he signifies his approval or acceptance to the seller.
 - he doesn't signify his approval but retain the goods without giving notice of rejection, 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
 - he does something to the good which is equivalent to accepting the goods.

SALE FOR CASH ONLY OR RETURN (Example 2)

The property therein does not pass to the buyer until the terms are complied with i.e cash is paid for.

- 1) if he was in possession of the goods or documents
- 2) when acting in the ordinary course of business as a mercantile agent
- 3) buyer had acted in good faith

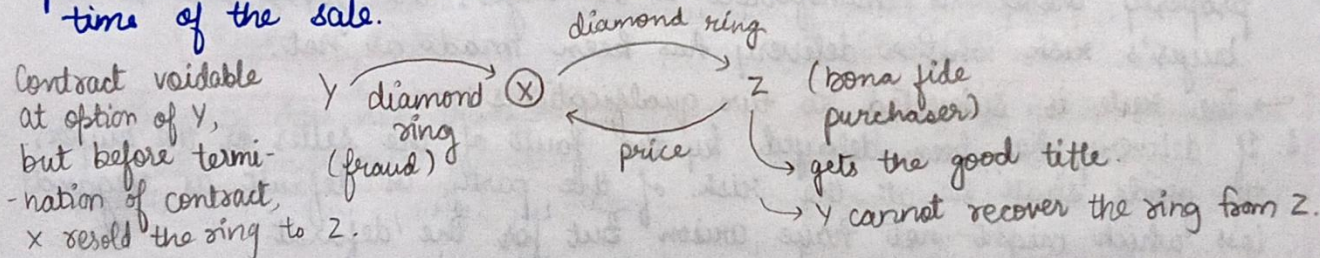
Mercantile agent means an agent having in the customary course of business as such agent authority, either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

(2) SALE BY ONE OF THE JOINT OWNERS (Section 28)

If one of the several joint owners of goods has the sole possession of goods 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.

(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 the seller who had obtained goods under a voidable contract provided that the contract had not been rescinded until the time of the sale.



(4) SALE BY ONE WHO HAS ALREADY SOLD THE GOODS BUT CONTINUES IN POSSESSION THEREOF (Section 30(1))

- If a person has sold goods but continues to be in possession of them or of the document of title to them, he may sell them to a third person.
- If such a 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))

When 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, if such person obtains delivery of the goods in good faith, he would

get a good title to them.

(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 (Section 54(3))

Where an unpaid seller resell the goods, the buyer acquires a good title to the goods as against the original buyer.

(8) SALE UNDER THE PROVISIONS OF OTHER ACTS

- 1) Sale by an official receiver or liquidator of the company
- 2) Purchase of goods from a finder of goods
- 3) A sale by pawnee can convey a good title to the buyer

PERFORMANCE OF THE CONTRACT OF SALE (Sec 31-44)

→ Duties of seller and buyer (Sec 31)

It is the duty of the seller to deliver the goods and the buyer to accept and pay for them.

→ Payment and delivery are concurrent conditions (Sec 32)

Unless otherwise agreed delivery of the goods and payment of the price are concurrent conditions.

→ Rules regarding Delivery of goods (Sec 33-41)

(1) DELIVERY (Sec 33)

Delivery of goods sold must be made by doing anything which the parties agree shall be treated as delivery.

(2) EFFECT OF PART DELIVERY (Sec 34)

A delivery of part of goods, in progress of the delivery of the whole has the same effect, as a delivery of the whole.

(3) BUYER TO APPLY FOR DELIVERY (Sec 35)

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

(4) PLACE OF DELIVERY (Sec 36(1))

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract.

(5) TIME OF DELIVERY (Sec 36(2))

No time for sending them is fixed, the seller is bound to send them within a reasonable time.

(6) GOODS IN POSSESSION OF A THIRD PARTY (Sec 36(3))

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.

(7) TIME FOR TENDER OF DELIVERY (Sec 36(4))

Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.

(8) EXPENSES FOR DELIVERY (Sec 36(5))

The expenses of 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 (Sec 37)

→ Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

→ Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, 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.

(10) INSTALMENT DELIVERIES (Sec 38)

Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

(11) DELIVERY TO CARRIER (Sec 39(1))

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 (Sec 40)

The liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk.

(13) BUYER'S RIGHT TO EXAMINE THE GOODS (Sec 41)

When goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract.

RULES RELATED TO ACCEPTANCE OF DELIVERY OF GOODS (Sec 42)

- 1) intimates to the seller that he had accepted the goods
- 2) does any act to the goods, which is inconsistent with ownership of the seller
- 3) 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 (Sec 44)

When the seller is ready and willing to deliver the goods & requests the buyer to take delivery, and the buyer does not take delivery of the goods, he is liable to the seller for any loss and also for a reasonable charge for the care and custody of the goods.

unit - 4

WHO IS UNPAID SELLER?

The seller of goods is deemed to be an 'unpaid seller' when -

(a) whole price not paid / tendered

(b) bill of exchange / negotiable instrument transferred but dishonoured

The term 'seller' here includes any person who is in the position of a seller, as for instance, an agent of the seller

RIGHTS OF UNPAID SELLER

Right against goods

- 1) Right of lien
- 2) Right of stoppage in transit
- 3) Right of Resale
- 4) Right of with holding delivery

Right against buyer

- 1) Suit for price
- 2) Suit for damages
- 3) Suit for interest

* Right against goods :-

(1) SELLER'S LIEN (Section 47)

The right can be exercised by him in the following cases only :-

- (a) where goods have been sold without any stipulation of credit (i.e. on cash sales)

(b) where goods have been sold on credit but the term of credit has expired or

(c) The buyer becomes insolvent.

Seller may exercise his right of lien even where he is in possession of the goods as agent or bailee for the buyer.

Part Delivery (Sec 48)

Where an unpaid seller has made part delivery of goods, he may exercise his right of lien on the remainder.

Termination of Lien (Sec 49)

(a) where he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

(b) where the buyer or his agent lawfully obtains possession of the goods.

(c) where seller has waived the right of lien

(d) by estoppel 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 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 50-52)

The right of stoppage in transit is exercised only when the following conditions are fulfilled :-

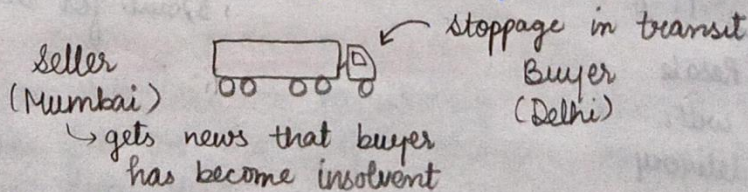
(a) The seller must be unpaid.

(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



When does the transit comes to an end?

(a) when the buyer or other bailee obtains delivery

(b) Buyer obtains delivery before the arrival of goods at destination.

(c) Carrier wrongfully refuses to deliver the goods

(d) goods are delivered to the carrier hired by the buyer

(e) the part delivery of the goods has been made to the buyer
 (f) goods are delivered to a ship chartered by the buyer

How stoppage in transit is effected (Section 52):

- by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee
- 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.

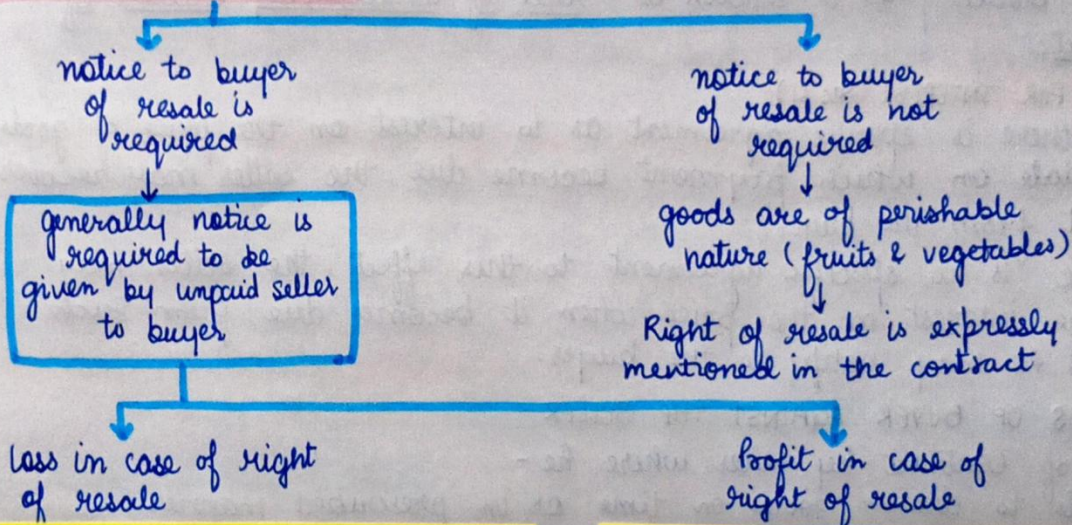
Effect of sub-sale or pledge by buyer (Section 53):

The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub-buyer in good faith and for consideration.

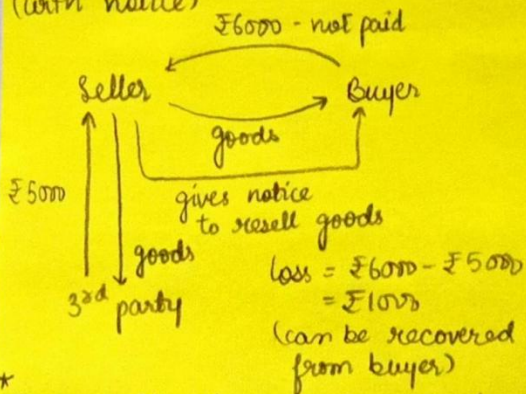
Effect of stoppage:

The contract of sale is not rescinded when the seller exercises his right of stoppage in transit.

(3) RIGHT TO RESALE

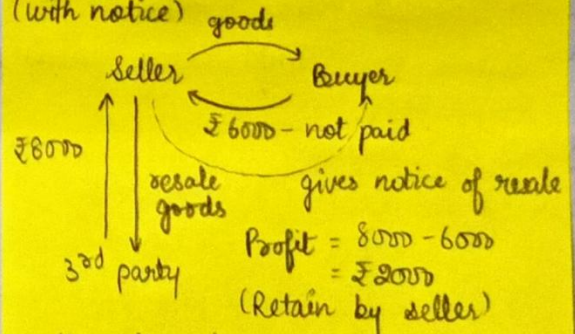


(with notice)



* If no notice of resale of goods is given to buyer, loss cannot be recovered from him.

(with notice)



* If seller does not give notice about resale of goods to the buyer, he will have to give the profit earned (£2000) to the buyer.

* Rights against buyer (Sec 55-61)

↳ Remedies for breach of contract or rules in Part II

(1) SUIT FOR PRICE (Sec 55)

Property transferred to buyer (Sale)

Buyer refuses to pay

(agreement to sell)

Property not transferred to buyer

Price payable on certain date

Buyer refuses to pay

(2) SUIT FOR DAMAGES FOR NON-ACCEPTANCE (Sec 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 (Sec 60)

Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as 'rule of anticipatory breach of contract'.

(4) SUIT FOR INTEREST (Sec 61)

Where there is specific agreement as to interest on the price of goods from date on which payment becomes due, the seller may recover interest from the buyer.

If 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.

• REMEDIES OF BUYER AGAINST THE SELLER

Breach of contract by seller, where he -

↳ fails to deliver goods on time or in prescribed manner

↳ repudiates the contract

↳ deliver non-conforming goods and buyer rejects and revokes acceptance.

* Rights of buyers

(1) DAMAGES FOR NON-DELIVERY (Section 57)

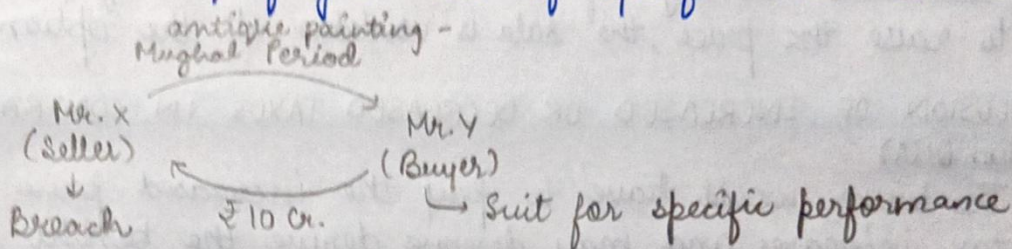
Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

(2) SUIT FOR SPECIFIC PERFORMANCE (Sec 58) Imp *

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.

Subject to these conditions:-

- Contract must be for sale of specific and ascertained goods.
- The power of the Court is subject to provisions of Specific Relief Act of 1963.
- Where damages would not be an adequate remedy.
- Granted as remedy if goods are of specific nature or are unique.



(3) SUIT FOR BREACH OF WARRANTY (Sec 59)

The buyer is not entitled to reject the goods only on the basis of breach of warranty. But he may sue the seller for damages for breach of warranty.

(4) REPUDIATION OF CONTRACT BEFORE DUE DATE (Sec 60)

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

(5) SUIT FOR DAMAGES INTEREST

→ same as discussed in rights of seller

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.

→ Legal Rules of Auction Sale :-

- Where goods are sold in lots - where goods are put up for sale in lots, each lot is 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. Until such announcement is made, any bidder may retract from his bid.

(c) Right to bid may be reserved - where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(d) 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. Any sale contravening this rule may be treated as fraudulent by the buyer.

(e) Reserved price - The sale may be notified to be subject to a reserve or upset price.

(f) 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 64(A)

→ The buyer would have to pay the increased price where the tax increases and may ~~derive~~ derive the benefit of reduction if taxes are curtailed.

→ The effect of provision can, however, be excluded by an agreement to the contrary.