

## Chapter - 2

### Sale of Goods Act, 1930



PAGE NO.

DATE:

Sale

↳ transfer of ownership property

↳ Immediately → sale

↳ in future or upon fulfilment of certain condition → Agreement to sell.

+

Transfer of possession  
delivery

Goods:

any kind of movable property but does not include money in circulation and actionable claims and includes - shares and stock

- growing crops  
- grass

- anything attached to land which can be severed.

Types of Goods

Existing Goods

Future Goods

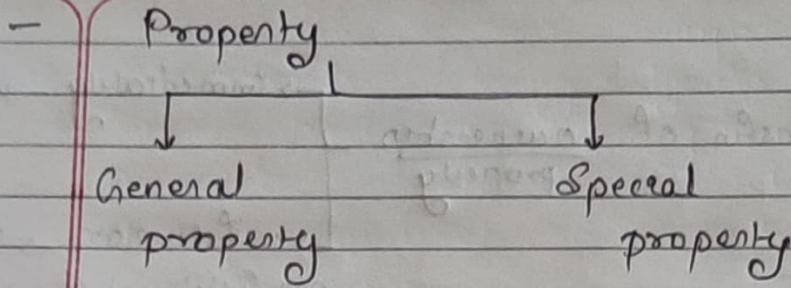
Contingent Goods

Specific

Ascertained

Unascertained





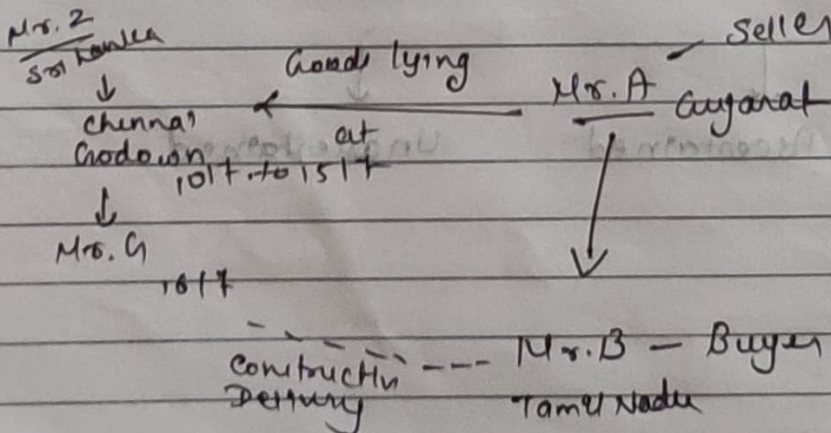
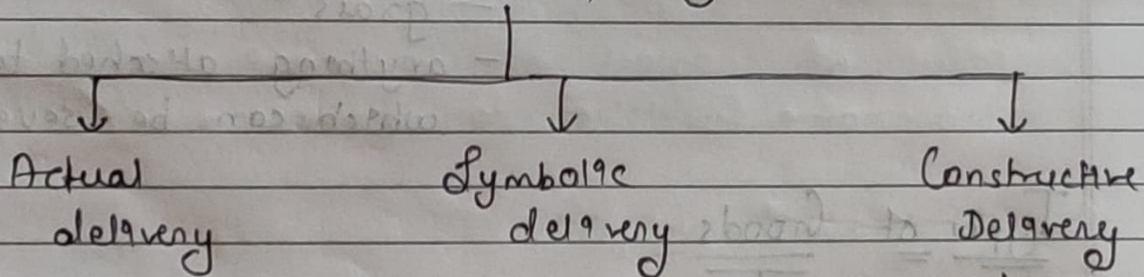
- Document of title

- Document showing title

⇒ Delivery

- voluntary transfer of possession from one person to another.

Types of Delivery







→ Seller - A person who sells or agrees to sell goods.

→ Buyer - A person who buys or agrees to buy goods.

→ Price - money consideration for sale of goods.

→ Formation of Contract of Sale.

- offer to buy or sell & acceptance thereof.

- Immediate delivery + Immediate Payment  
Eg. Cash sales

- Immediate Delivery + Later Payment  
Eg. Credit sales

- Later Delivery + Immediate Payment  
Eg. Prepaid purchase

- Later Delivery + Later Payment  
Eg. Cash on Delivery

- Instalment Delivery or Payment

⇒ Essential elements of a valid contract of sale.

1. There must be buyer and seller. (at least two parties)
2. There must be transfer of property in goods from seller to buyer (legal relationship)
3. The subject matter of contract must be goods (if any kind of movable property) (compe





Legal formalities  
4  
consideration

- 5. The contract of sale maybe absolute or conditional
- 5. A price in money should be paid for goods, maybe partly in money and partly in kind.
- 6. All other essential elements of valid contract must be present in contract of sale

Unit :- 2

Condition and Warranty :

↓  
main stipulation  
to the contract

↓  
collateral stipulation  
to the contract

Breach of  
condition

~~Breach~~ Breach of  
warranty

↓  
Rescind the contract  
+ claim damages

↓  
Claim damages

can be treated as  
Breach of warranty

cannot be treated as  
Breach of condition

Eg. Car suitable for  
touring purpose.

Eg. If there is mfg.  
effect defect in the  
car, buyer cannot  
reject the car but  
can get it repaired.

If it is not then  
buyer is entitled  
to reject the car and  
claim refund.

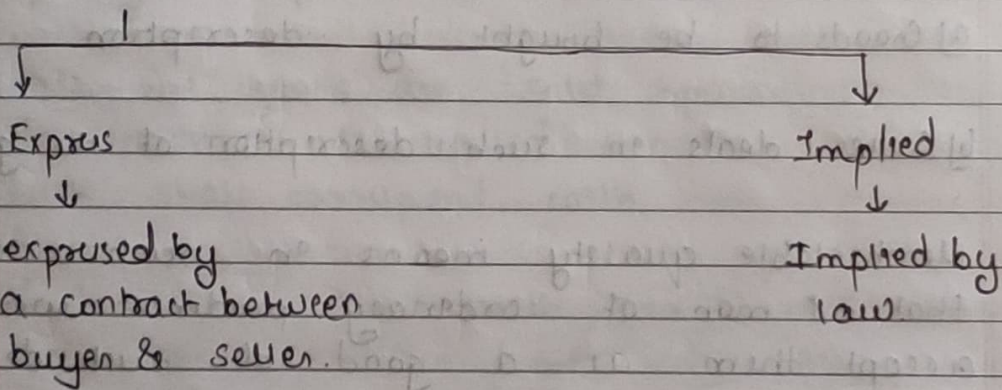




⇒ When Breach of Condition is treated as Breach of Warranty.

1. Buyer altogether waives off the performance of condition (voluntary waiver)
2. Buyer elects to treat the breach of condition as breach of warranty and claim damages
3. when the contract is of non-severable nature and the buyer has accepted whole or part of the goods.
4. when the fulfilment of any condition or warranty is required by law.

⇒ Condition



- Following are the Implied Conditions:

1. Condition as to Title

- seller to pass good title to the buyer, not a defective title, otherwise buyer claim refund.





2. Condition as to quality or fitness:

- Following conditions must be fulfilled:-

a) Buyer must have made known the purpose to the seller.

b) Buyer ~~real~~ relies on skills & judgement of seller.

c) <sup>the</sup> Seller deals in such description of goods

3. Condition as to merchantability

- Two conditions must be fulfilled.

a) Goods to be bought by description

b) Seller deals in such description of the goods.

- Merchantable quality means in such a condition that a man of ordinary prudence would accept them as a good of such description.

4. Condition as to wholesomeness

- In case of eatables, it is implied condition that the good must be wholesome.





### 5. Sale by Sample

- Following condition must be satisfied :-

a) bulk shall correspond with sample in quality.

b) buyer to have a reasonable opportunity to compare bulk with the sample.

c) goods must be free from hidden defect.

### 6. Sale by description

- The goods when sold by description shall correspond to the description otherwise <sup>buyer may</sup> rejected. it.

### 7. Sale by Sample & description

- When the goods are sold by sample as well as description, it is implied condition that the goods/bulk shall correspond with both.

- If bulk correspond with sample and not description or vice-versa, the buyer may reject the goods.





## → Implied Warranty

1. Implied warranty as to undisturbed possession.
2. Implied warranty that goods are free from encumbrances / charges.
3. Implied warranty as to fitness or quality (by usage of trade)
4. Disclosure of dangerous nature of goods.

## ⇒ Rule of Caveat Emptor :

"Let the Buyer Beware"

- When the seller display their goods for sale, it is upto buyer to make proper choice or selection of the goods.
- The seller is not responsible to disclose the defects in the goods.
- The seller is not responsible for the defective choice of the buyer.
- But there can be certain exceptions :- (Seller is responsible)





## 1. Condition as to quality or fitness

Case law: Prest vs. Last

### 1. Fitness as to quality or use

- Following condition must be fulfilled :-

a) Buyer must have made known the purpose to the seller

b) Buyer relies on skills & judgement of seller

c) The seller ~~must~~ deals in such description of goods

Case law :- Prest v/s Last

## 2. Goods of merchantable quality

- When the goods are sold by description it is implied condition that the goods must be merchantable, otherwise seller is responsible

## 3. Trade usage

- when the goods are sold for a purpose and if it deviates from it, seller is responsible.

## 4. Sale by sample

## 5. Sale by description

## 6. Sale by sample & description





7. Seller guilty of fraud or misrepresentation

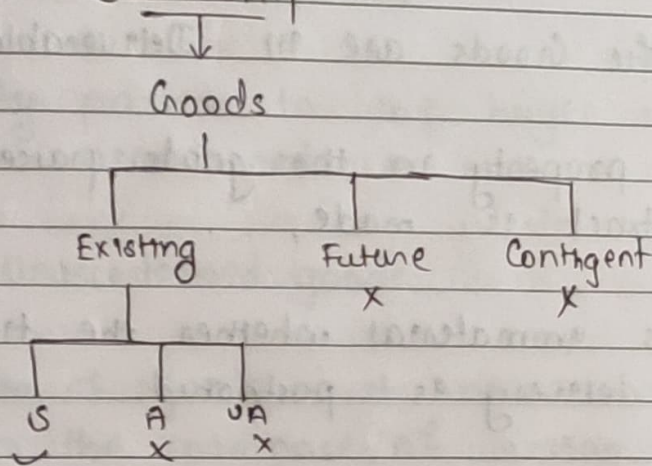
- If the seller <sup>has</sup> made some misrepresentation or is guilty of any fraud, and the buyer could not discover it by ordinary diligence then rule of caveat emptor is not applicable.

8. When the goods are sold under a brand name or a patent, there is no implied condition that the goods shall be fit for a particular purpose.





# Property Transfer of Ownership



- Transfer of ownership means all the rights, liabilities or risk attached to the goods from seller to buyer.

- Rules related to transfer of property depends on two basic factors:

1. Identification of the Goods.

- Buyer can get ownership of the goods only when they are specific and ascertained.

2. Intention of parties.

- The property in goods is transferred when parties intend to do so. The intention of the parties can be determined as follows:

i) As per the terms of contract.

ii) As per conduct of the parties. and

iii) As per circumstances of the case.





⇒ Rules related to passing of property in goods.

1. Specific Goods are in Deliverable state.

- The property in the goods passes when the contract is made,

It is immaterial whether the time for payment or delivery is postponed.

2. Specific goods are to be put in Deliverable state

- When the seller is bound to do something to put <sup>the</sup> goods into deliverable state,

Property in the goods does not pass until the goods <sup>are</sup> put into deliverable state and buyer is informed thereof.

3. Specific goods are in deliverable state, but something is to be done to ascertain the price.

- when the seller is bound to measure or weigh or test or do something to ascertain the price,

the property in the goods does not pass until such thing is done and buyer is informed thereof.





#### 4. Goods must be ascertained

- No property passes to the buyer until the goods are ascertained.

#### 5. Sale of Unascertained goods.

- Appropriation of goods - it means selection of goods for the purpose of using them in the performance of contract.

#### - Essential elements.

i) Contract for sale of unascertained or future goods.

ii) The goods must correspond with the description and quality stated in the contract.

iii) Goods must be in deliverable state.

iv) Goods must be unconditionally appropriated either by way of delivery to buyer or his carrier or his agent.

v) Appropriation must be made by

- a) Seller with the assent of buyer.
- b) buyer with the assent of seller.

- assent may be express or implied.
- ~~assent~~ Assent may be given either before or after appropriation.





## 6. Goods sent on approval basis

- When the goods are delivered on sale or return or sale on approval basis, then the property in the goods is passed to the buyer:

i) when he signifies his approval or acceptance

ii) when the time fixed for the return of goods expires and the buyer retains the goods.

iii) when the buyer adopts the transaction, i.e. does something which shows his acceptance for the goods.

### 6(a) Sale on cash only

- when the goods are delivered on sale or return with a condition that the property in goods will pass to the buyer when price is paid,

The property does not pass until the price is paid.





## 7) Reservation of rights of disposal

- When the seller reserve has right of disposal of goods to secure the payment of price before the property is passed to the buyer.
- The seller may reserve the right of disposal showing that the property shall not pass to the buyer until the condition is fulfilled, even if the goods have been delivered to the buyer or his carrier.

⇒

## 8. Risk follows ownership

- Generally the risk follows ownership i.e. if the goods are transferred to the buyer in respect of property, whether delivery made or not, the risk remain with the buyer.

This rule is subject to two qualifications:-

- i. Delivery delayed at the fault of buyer or seller, goods shall be at the risk of party<sup>in</sup> default.
- ii. The duties and liabilities of the seller or buyer as bailee of the goods continue even if the property has passed.





## 9. Transfer of ownership by Non-owners.

"Nemo Dat quod non habet."

- Generally a seller can sell the goods of which he is an absolute owner.
- i.e. That is the seller cannot transfer to the buyer the better title than he himself has.
- If the seller is not the owner of the goods the buyer will not become the owner of the goods.
- If the seller's title is defective then buyer will not get the good title on the theory that no one can transfer what he has not got.
- However, this rule is subject to certain exceptions:
  - i. Sale by merchantable agent
    - Authorized to sell in ordinary course of business
    - Having possession of goods with the consent of owners (seller).
    - Buyer has acted in good faith.
  - ii. Sale by joint owners
    - whenever the goods are under the co-ownership buyer gets a good title if he has acted in good faith.



i, ii, iii  
|  
others

iv, v, vi  
|  
S/B

vii, viii, ~~ix~~  
|  
Contract

ix  
|  
Other



PAGE NO.

DATE:

### iii. Sale by Third party on Estoppel.

- If the sale of goods has taken place by the representation / conduct of by any person as a owner of goods than the owner is stopped from denying the seller's authority to sell.

### iv. Sale by unpaid seller.

- Whenever the seller has not received the price, and who has exercised the right of lien or stoppage in transit, resells the goods, the buyer gets the good title against the original buyer.

### v. Goods owned by buyer, possessed by seller.

- "Sale by a seller who has already sold the goods but continues to have possession of the goods".
- If such person sells the goods to the third party who acts in good faith & without the notice of previous sale, obtains the good title of the goods.

### vi. Goods owned by seller, Possessed & sold by buyer.

- "Sale by a buyer who obtain possession before the ownership".
- If the buyer sells the goods to the third party who acted in Good Faith, the goods which are





under the ownership of seller, third party gets a good title.

vii. Sale under a voidable contract.

- If the person who obtains the possession of the goods on the grounds of coercion, undue influence, fraud or misrepresentation, contract is voidable thereof and sells the goods to the buyer then it will be considered valid if such voidable contract has not been rescinded until the time of sale.

viii. Sale under the Quasi Contract.

- The buyer who buys the goods from the finder of goods gets a valid title.

ix. Any other case

a) Sale by liquidator of the company.

b) In case of pledge, pawnee <sup>[bank]</sup> can sell the goods.

✍





## ⇒ Transfer of Possession / Delivery of Goods.

- Rules related to delivery of goods.

1. Delivery - access of goods.

- Delivery can be made by doing anything which has the effect of putting the goods in possession of the buyer, or any person authorized to act on behalf of buyer.

2. Buyer to demand access:

- Seller not bound to deliver until the buyer demands for the sale, unless otherwise agreed.

3 (When) Time to demand access.

- Buyer to demand delivery at reasonable hour, otherwise ineffectual.

4. Time for delivery

- Seller is bound to deliver the goods at agreed time or within reasonable time.

5. Place of delivery

- Seller bound to deliver the goods at the place specified in the contract.

- If not specified

i. In case of sale - place of sale.

ii. In case of agreement to sell - place of agreement to sell.

iii. If goods not in existence - place of manufacture.





6. Delivery to the carrier or agent of the

- When the goods are delivered to carrier for the purpose of transmission to the buyer, it is deemed delivery to the buyer.

7. Goods in possession of third party

- whenever the goods are in possession of third party who acknowledges to the buyer that he holds goods on behalf of the buyer, it is considered as Constructive delivery.

8. Expense for Delivery

- The expenses for putting the goods into deliverable state shall be borne by the seller, unless otherwise agreed.

9. Instalment delivery

- The buyer is not bound to accept the goods delivered to him in instalments, unless otherwise agreed.

10. Effect of part delivery

- where the part delivery is made in progress of whole delivery, treated as delivery of whole and ownership of the whole quantity is transferred.



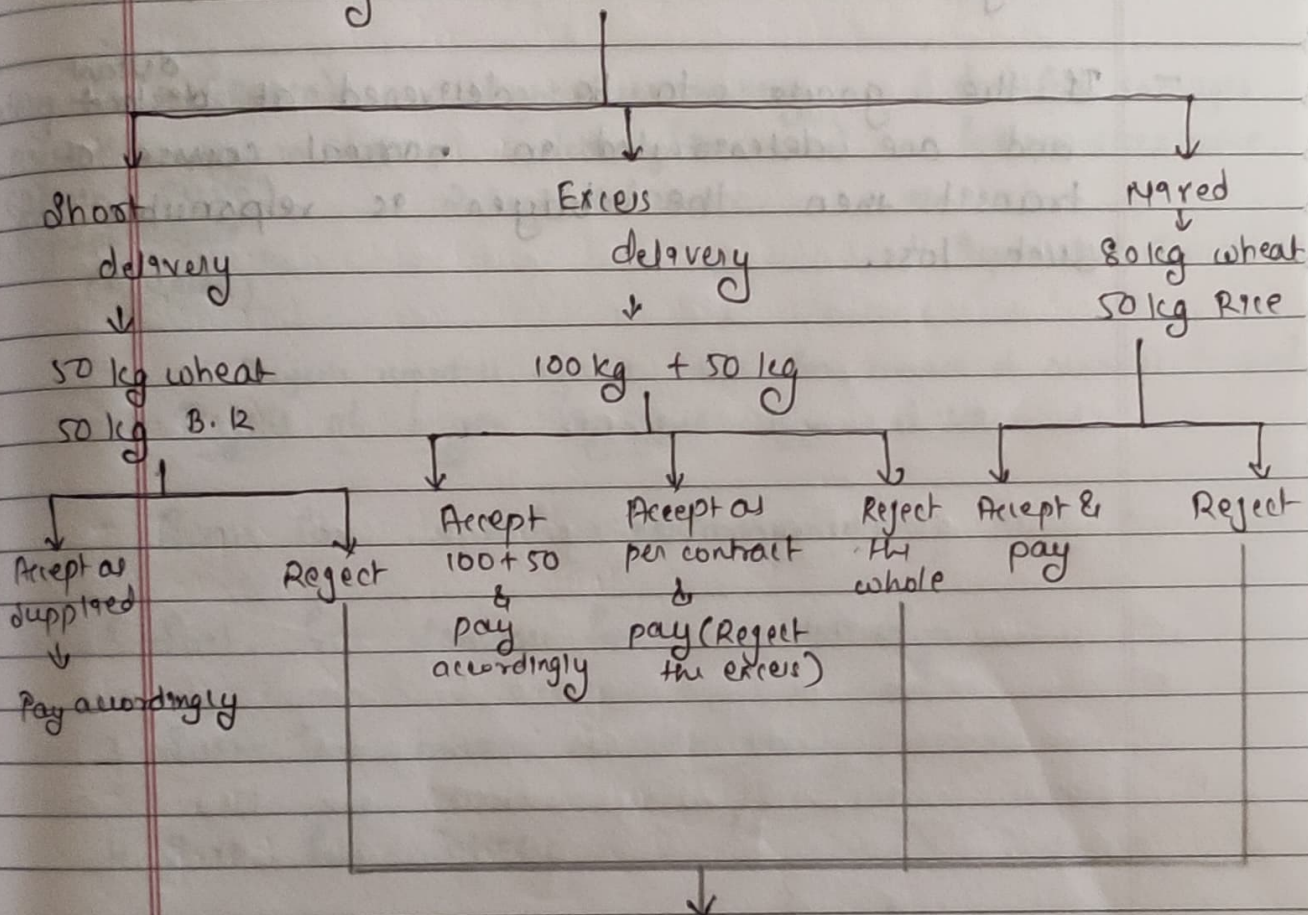


- Where the part delivery is made with the intention of separating it from the whole lot, not treated as delivery of whole.

## 11. Delivery of wrong quantity:

Eg. 80 kg wheat

50 kg Brown Rice



When the buyer rejects the whole quantity, the contract is not treated as cancelled and the seller has a chance to deliver the right quantity, but the buyer can claim for damages for delay.





12. Buyer has a chance to examine the goods.

- The buyer who has not previously examined the goods has a chance to examine the goods in order to confirm that the goods delivered are as per the contract.

13. Damages for Deterioration in transit

- If the goods to be delivered at <sup>distant</sup> distant place and are deteriorated in normal course of transit then the buyer is responsible for such loss.





Unpaid Seller

Rights against Goods

Rights against Buyer

[Seller's remedies against buyer for breach of contract of sale]

Property has passed

Property has not passed

- 1. Right of Lien (Retain)
- 2. Right of Stoppage in Transit (Regain & Retain)
- 3. Right of Resale (to Resell)

- 1. Right of withholding delivery (Quasi Lien)
- 2. Right of Resale.

2. Suit for Interest

3. Suit for damages for non-acceptance.

4. Repudiation of contract

[Buyer's remedies against seller for breach of contract of sale]  
Rights of buyer against the seller.

- 1. Suit for specific performance.
- 2. Suit for damages for non-delivery.
- 3. Suit for breach of warranty.
- 4. Suit for Interest
- 5. Repudiation of Contract.





## 1. Right of Lien :-

↓  
Right to Retain the goods.

↓  
- Unpaid seller having possession of the goods can exercise lien.

- Exercise of Lien :

a) when the goods are sold without <sup>[condition]</sup> stipulation of credit & price is not paid, OR

b) when the goods are sold on credit & credit term has expired, OR

c) Buyer becomes insolvent.

### → Effect of Part Delivery.

- whenever the part delivery of goods is made, the seller may exercise his right of lien on remainder goods. Unless the part delivery has been made to show that the lien does not exist.

### → Termination of Lien.

a) Buyer or his agent lawfully obtain the possession of the goods.

b) Goods are delivered to carrier of buyer or his bailee without reserving the right of disposal.

c) By waiver of Lien.





d) By estoppel; seller conducts in a manner to represent that he has not exercised any lien.

⇒ Exception (Termination of Lien)

- The unpaid seller having a lien on goods does not lose his lien on receiving a <sup>[Judgement]</sup> decree of court for the price of goods.

2. Right of Stoppage in Transit:

↓  
Regain + Retain

Following condition to be satisfied.

- i. The seller must be unpaid.
- ii. Seller must have parted with the possession.
- iii. The goods must be in transit.
- iv. The buyer has become insolvent.

→ How transit comes to an end?

- a. When the buyer or other bailee obtains delivery.
- b. When the carrier obtains the delivery on behalf of buyer.
- c. When the goods are delivered to the ship hired or chartered by buyer.





- d. when the buyer obtains the delivery before the arrival of goods at destination
- e. when the goods are delivered to the carrier who acknowledges to the buyer that he holds goods unless the seller has reserved the right of disposal
- f. when the carrier wrongfully refuses to deliver the goods to the buyer.
- g. when the part delivery of goods have been made and remaining goods are still in the course of transmission, then transit will come to an end for such remaining goods.

→ How Stoppage in transit<sup>9s</sup> affected?

- when notice of stoppage in transit is given by the seller to the carrier of the goods, then the carrier shall re-deliver the goods to the seller or as per his directions. The expenses of the re-delivery shall be borne by the seller.





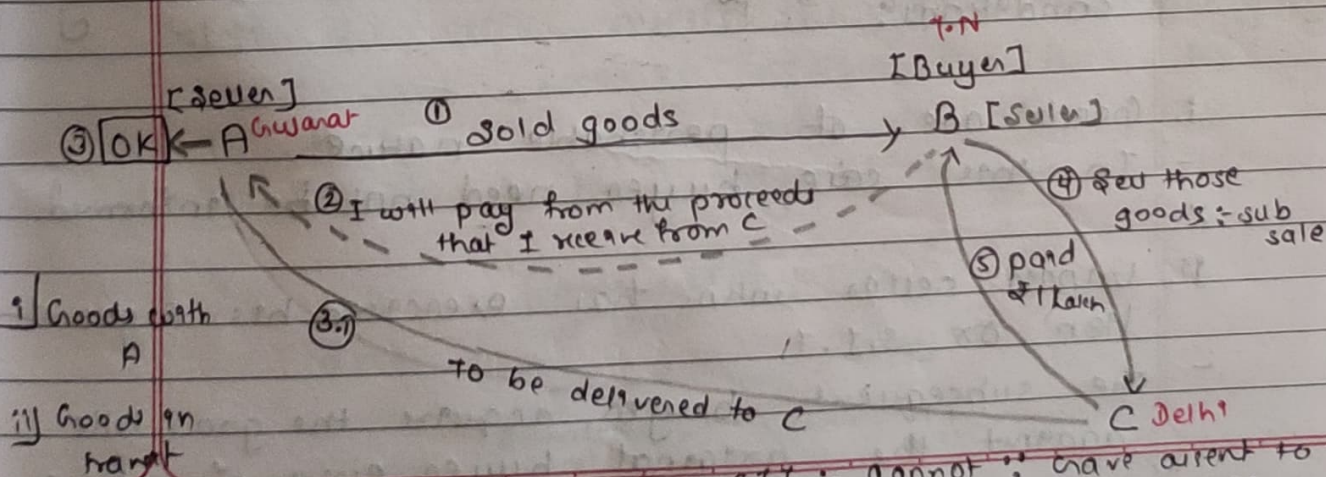
### 8. ⇒ Effect of Sub-sale or Pledge by buyer

- 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.
- This is on the principle that a second buyer cannot be in a better position than his seller (first buyer)
- The right of stoppage is defeated if the buyer has transferred the document of title or pledged the goods to a sub-buyer on good faith & for considerations.

Exceptions - where seller's right of lien & S.I.T are defeated.

i) when the seller has assented to the sale or mortgage or any other disposition of the goods.

Mount D. F. Ltd vs Jay & Jay (Provisions) Co. Ltd.



Can A exercise Lien or S.I.T :- cannot ∵ have assent to the sub-sale.





## ⇒ Right of Resale

ii) When the document of titles is transferred by the buyer to the sub-buyer who buys it in good faith & for price. then

a) If such transfer is by way of sale, then or S.I.T is defeated, or

b) If such transfer is by way of pledge, unpaid seller's right of lien or S.I.T may be exercised subject to the rights of the pledgee.

- However the unpaid seller may ask the pledgee to satisfy his claims from the other goods or securities available to him.

## 3. Right of Resale

- The unpaid seller can exercise his right of resale the goods under the following conditions:

1. Goods are of perishable nature

- In this case buyer need not be informed.

2.

ii. Unpaid seller who has exercised his right of lien or S.I.T.

- The subsequent buyer acquires the good title against the original buyer, even if notice





is not given by the seller to the original buyer.

iii. Where the property in goods has not passed.

- The unpaid seller has a right of withholding delivery of goods similar to lien, and is called Quasi-Lien.

iv. Expressly agreed in the Contract.

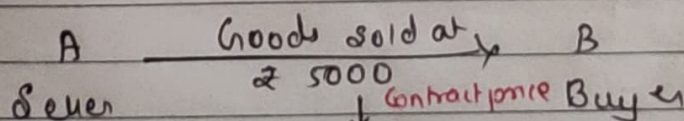
- It may be agreed between the seller & buyer that ~~but~~ in case the buyer makes default in payment of price seller is entitled to resell the goods.

v. Where notice to be given to the buyer for resale of goods.

a) If after the receipt of the notice, the buyer fails to pay the price then seller may resell the goods and retain the profit if resale price is higher than the contract price or recover the loss if otherwise.

b) If the seller resells the goods without giving notice then cannot recover the loss or if there is any profit on resale, must return it to the original buyer.

Eg:



Seller

Resale price

6000 (Profit) 4500 (Loss)

① Notice is given Retain Recover

② Notice is not given Restore (Return) Bear (cannot recover)