

Sales of Goods Act

1930

• Sale of Goods Act, 1930 is an Act to define and amend the law relating to the sale of goods.

- movable property

Rule - risk follows ownership

- follows movable property

- doesn't follow immovable property.

Contract of Sales (Sec 4) - Sale of goods Act

- A contract of sale is contract whereby ~~the~~

The seller → Transfer or — Agree to transfer → The property in goods

For consideration of money called the price.

←————→ To buyer

• Essentials:-

1) Two parties :-

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Seller

(A person who sell or agrees to sell goods)

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Buyer

(A person who buys or agrees to buy goods)

2) Transfer of property :- The ownership of goods transfer from seller to the buyer.

3) Goods 2(7)

- Goods means every kind of movable property.

It includes



- Stock & Shares
- Growing crops
- Grassland
- Things attached to or forming part of the land

It doesn't include

- Actionable claims and
- Money

eg:- Debt, Mortgage of immovable property, Pledge of movable property

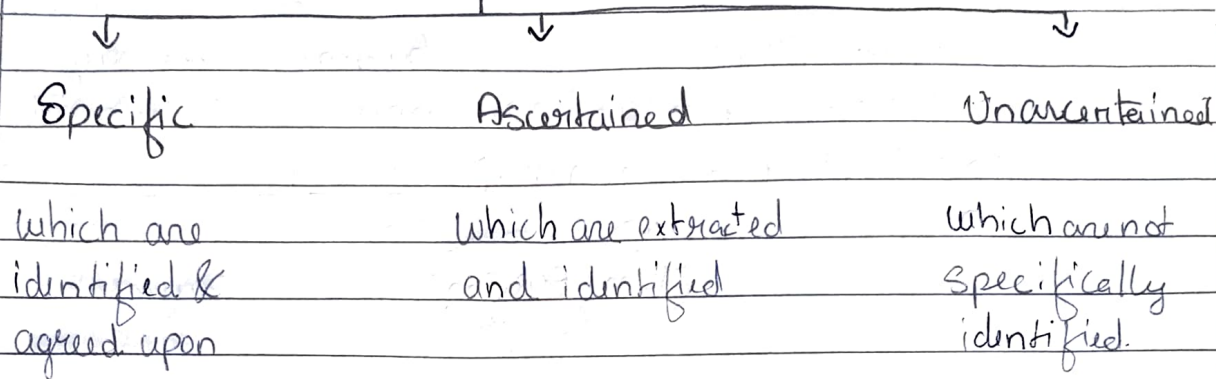
34) Price :- Price means monetary consideration. Price important to sale goods without price sale cannot be take place.

5) Essentials of valid contract :- It includes all essentials of valid contract i.e. major, sound mind and contract which is enforceable by law.

Classification of Goods

1) Existing Goods :- are goods which are exist at the time of contract or at the time of sale are called as existing goods.

Existing Goods



2) Future Goods:- Those goods which are yet to be manufactured or produced after making the contract of sale are called "Future goods".

3) Contingent Goods:- Those goods which are acquired by the seller on the happening of something which may or may not happen. (It is subtype of future goods in the sense that in contingent goods the actual sale is done in the future.)

eg:- A seller may agree to sell a buyer some specific goods that are due to arrive on particular ship.

• Delivery

- Means Voluntary transfer of possession from one person to another.

Forms of Delivery -

(i) Actual delivery:- When goods are physically delivered to the buyer.

(ii) Constructive delivery^o - The seller agrees that he holds the goods on behalf of the buyer or the buyer has possession of the goods under a hire-purchase agreement and become owner on making the final payment.

(Credit agreement,
You hire an item and pay an agreed amt in monthly payment

Emi System

(iii) Symbolic delivery^o - It occurs when something representing the transferred property is physically transferred.

eg^o - When A Contract to sell timber and make bundles thereof the goods will be in a deliverable state after A has put the goods in such a condition.

~~o~~ "Document of title to goods"

- Document of title to goods means any bill of lading, dock warrant, warehouse keeper's certificate, and warrant or order for the delivery of goods, and other document used in the ordinary course of business as proof of the possession or control of goods either by endorsement or by delivery or receive goods thereby represented.

o Mercantile Agent Section 2(9)

- A person who in the ~~customary~~ ^{customary} course of business has an agent's authority either to sell or consign the goods for the purpose of sale or to buy goods or to raise money on the security of goods.

(F) Property Section 2(11);

- Means the ownership of goods, is different from 'possession of goods' which means the physical custody or control of the goods. The transfer of property in the goods from the seller to the buyer is the essence of a contract of sale.

- Insolvent [Section 2(8)]: A person is said to be insolvent when he cannot pay his debts as they become due.
- Price Quality of goods :- The quality of goods includes the state of or condition in which the goods are expected or promised to be delivered.

Difference betⁿ sale & agreement to sale

Points	Sales	Agreement to sales
(ii) Transfer of ownership	Transfer of ownership takes place immediately	Transfer of ownership takes place on future date or after completion of some conditions
(iii) Executed/ Executory	It is an executed contract	It is executory contract
(iii) Nature	It is absolute in nature	It may be conditional
(iv) Risk	Risk of loss of goods is immediately transferred to buyer	Risk of loss of goods is not transferred to buyer.
(v) Right against seller though one in his possession	Seller can sue the buyer for price even though the goods are in his possession	Seller can sue the buyer only for damages

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6/ Rights of buyer against the seller	Buyer can sue seller for damages as well as for the third third party who bought those goods i.e. he can claim property remedy as well	Buyer can sue the seller for damages only.
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Difference betⁿ Sale & Hire purchase agreement

Basis	Sale	Hire - Purchase
i) Nature	It is contract of sale	It is a contract of hiring agreement to sale.
ii) Possession	Possession of goods need not necessarily be transferred immediately.	Possession transfer immediately.
iii) Ownership	Transfer of ownership from seller to buyer is must immediately	Ownership is transferred time of payment of last instalments.
iv) Termination of Right	The buyer has a right to terminate the contract of Sale	The hirer has right to terminate the contract before payment of last installment.
v) Written agreement	Sale agreement may or may not be written	Hire purchase agreement must be written.

Difference between Sale & Bailment

Point	Sale	Bailment
1 Meaning	Sale involves transfer of property in goods from seller to buyer for a buyer for	A Bailment is a transaction under which goods are delivered by one person (bailor) to the another person (bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished.
2 Ownership	Transfer of ownership in must	It doesn't involves transfer of ownership. It involves transfer a possession.
3 Possession	Transfer of possession of goods from seller to buyer is not mandatory.	Possession is transferred from bailor to bailee.
4 Governed by	Sales of Goods Act 1930	Indian Contract Act 1872 (Section 148)

Contract of Sale ^{its} Now made (Section 5)

- Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.
- immediate delivery of goods
- immediate payment of price but delivery at some future ^{date} goods
- ~~immediate~~ ^{delivery} payment of total made in installments.

Subject matter of Contract of Sale.

- 1 It may be either existing goods that are acquired owned or possessed by the seller, or future goods
- 2 The acquisition of which by the seller depends upon a contingency which may or may not happen
- (3) The seller purport to effect a present sale of future goods.

(a) Goods perishing before making of contract (Section 7)



then contract is void

(b) Goods perishing after making of contract agreement



then contract is void

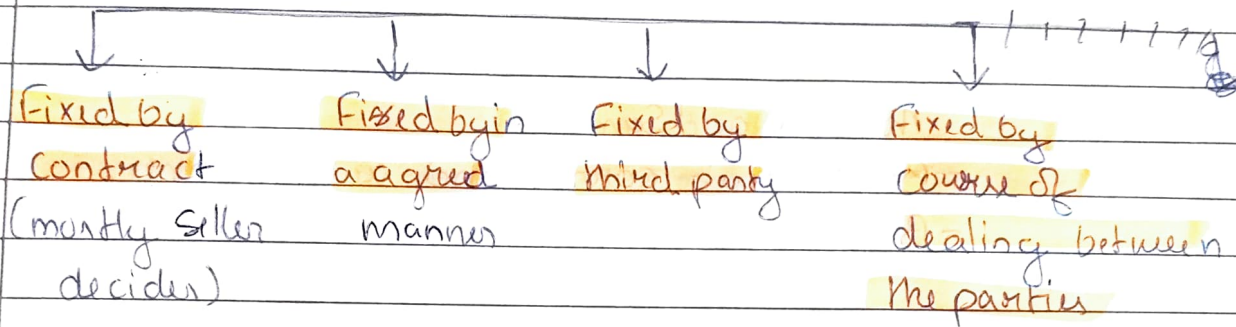
(c) Perishing of future goods.

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then contract is void.

Example (a) :- A agrees to sell B 50 tonnes of wheat stored in the B's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The agreement is void.

Example (C & B) :- A agrees to sell B 1000 strawberries of tomatoes grown on his land next year. But the crop failed due to some disease in plants and A could only deliver 80 tons of tomatoes to B. It was held A was not liable as the performance of contract become impossible due to supervening impossibility.

Ascertaintment of price (Section 9 & 10)



Stipulation as to time (Section 11)

- Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.
- Stipulation as to time of delivery are usually the essence of the contract.

*** Conditions** :- Which is essential for main performance of the contract. (Condition fulfill karo tabhi sale hoga)

Conditions as to title Sec 14(a)

- who has ownership only he can sale the goods
- if breach

Cancel the contract Claim the damages.

2] Condition as to Description (Section 13)

- Goods must be correspond with the description
- mean - 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]

- Buyer should have opportunity to compare the bulk and Sample.
- Bulk must correspond with sample.
- Bulk must be at a good quality.

4] Sale by Sample as well as by description [Section 15]

- Goods must be correspond with description
- Buyer should have opportunity to compare the bulk & Sample.
- Bulk must correspond with sample.
- Bulk must be at a good quality.

5] Condition as to merchantable quality Sec 16(2)

- Goods must be of goods quality and by description
- Goods must be free from defect.

6] Condition as the wholesomeness:-

- It is applicable to eatable product which are for human consumption
- 'Wholesomeness' means 'purity'
- Eatable product must be free from impurity they should be pure.

- ... on fitness:-
- When buyer is reliable to seller's skill or judgement.
 - If buyer buys goods under the brand name then seller is innocent.

WARRANTY

- A warranty is a stipulation collateral 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".

Implied Warranties :-

- Which is collateral to the main performance of contract
- If breach then only claim for damages, undisturbed

1. Warranty as to title/possession Section 14(b):-

- If ownership is yours then possession is also yours.

2. Warranty as to non-existence of encumbrances Sec 14(c)

- Goods must be free from encumbrances or charges.

3] Warranty as to disclose dangerous nature of goods:-

- If goods are of dangerous nature and seller knows it then seller should disclose it to buyer.

- If breach → claims damages

4] Warranty as to quality or fitness by usage of trade Sec 16(3)

- A particular purpose may be annexed by the usage of trade.

* CAVEAT EMPTOR ("let the buyer beware")

- ~~Sot~~ Sometimes buyer himself have to choose or select the goods

- "It is the duty of the buyer to be careful, while purchasing goods of his requirement and it absence of any enquiry from the buyer, The seller is not bound to disclose every defect in goods of

which he may be aware"

Exeptions - 1) Seller makes false representation

2) Seller actively conceals a defect

3)

Exeptions

1) Fitness as to quality or use

- Where the buyer ^{may implied} makes known to the Seller the particular purpose for which the goods are required.

It is the seller duty to supply such goods which are fit for the purpose

(2) Goods purchased under patent or brand name,

- There no implied condition that the goods shall be fit for any particular purpose. Here the buyer is relying on the particular brand name.

3) Goods sold by description

- Where the goods are sold by description there is an implied condition that the goods shall correspond with the description. If is not so, then seller is responsible.

4) Goods of Merchantable Quality

- Goods are free from latent defects
- Goods marketable at their full values
- Goods that are subject to consumer sale

5) Sale by sample

- That the bulk shall correspond with the sample in quality

6) Goods by sample as well as description

- goods ~~should be~~ ^{shall} correspond with sample and description.

7) Trade Usage

- There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

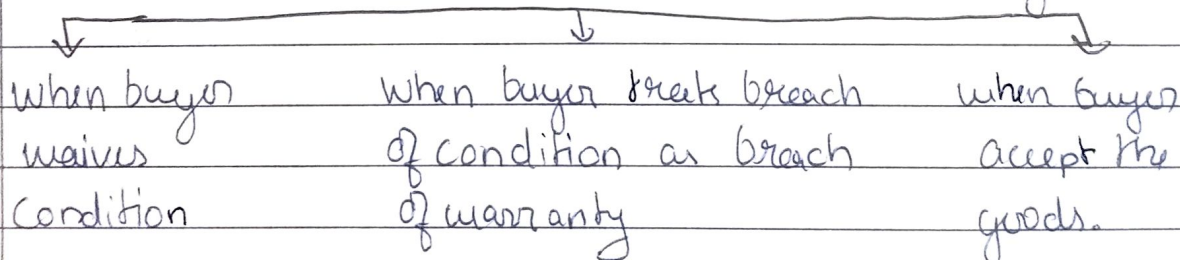
8) Seller actively conceals a defect or is guilty of fraud.

- Where the seller sells the goods by making some misrepresentation or for fraud and the buyer relies on it.

* Difference between condition & Warranty

Points	Condition	Warranty
1) Meaning	Which is essential for the main performance of the contract	Which is collateral to the main performance at the contract.
2) Significance	It is essential for every performance of contract that its non-performance may be considered as failure to perform the contract.	It is not treated as failure to perform the contract.
3) Consequence of breach	The party may conclude repudiate the aggrieved contract.	The aggrieved party cannot repudiate the contract, can only claim damages.
4) Treatment vis-a-vis	A breach at condition may be treated as breach of warranty	A breach of warranty, can never be treated as breach of condition.

* When will condition be treated as warranty?



* Passing of property of transfer of ownership

It is important to determine the exact point when the ownership transfers from seller to buyer.

The rule regarding transfer of property in goods.

a) Identification of goods :-

- The buyer can get the ownership of right on the goods only when the goods are specific and ascertained.

b) Intentions of parties :-

- The property in good transferred to the buyer at such time as the parties to the contract intend it to be transferred.

- (i) Terms of contract
- (ii) Contract of the parties
- (iii) Circumstances of the cases.

A) Property passes when intended to pass (Section 19):

§ Stages of goods while passing of property :-

1) Specific goods are in delivery state.

- Then ownership transfers

↓

When the contract is made

* When Specific goods to be put in deliverable state (Sec. 21)

When goods become of deliverable state & Buyer has notice of it.

* Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

When the weighing & measuring of specific goods is done & Buyer has notice of it.

* Transfer of ownership of unascertained goods.

- when goods becomes ascertained by appropriation of goods

- Appropriation of goods means when goods identified by seller or buyer by mutual consent of the seller or the buyer.

1) Sale of unascertained goods by description and Appropriations. [Section 23 (1)]

- There is a contract and with the mutual consent of the seller and the buyer.

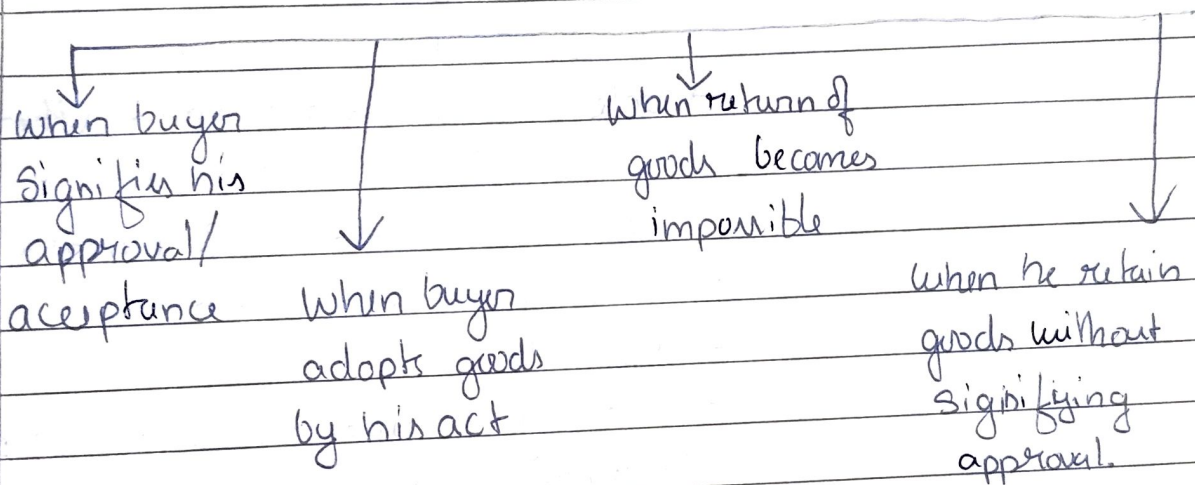
(A) The assent may be express or implied

(B) The assent may be given either before or after appropriation

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

- The seller delivers the goods to the buyer or to a carrier for the purpose of transmission to the buyer and deemed to have unconditionally appropriated the goods to the contract.

C) Goods sent on approval or 'on sale or return' (Sec 24)



(D) Reservation of right of disposal (Sec 25)

- Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract the seller may, by the terms of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled.

* Transfer of Title by non-owners (Section 27-30)

• Sale by person not the owner

• General rule :- nobody can pass a better title than he himself has.

Exceptions

- Sale by merchantile agent
- Sale by joint owner
- Sale by person in possession of goods under voidable contract
- Sale by seller in possession after sales
- Sale by buyer in possession of goods before the transfer of ownership
- Sale by unpaid seller
- Estoppel
- Sale by pawnee on default of pawnor to repay loan
- Sale by artificial assignee / receiver
- Sale by finder of goods

When goods are perishable and owner is not found

When lawful charges are not given by owner but damages should be $\frac{2}{3}$ rd of price of goods

Performance of the contract of sale (Sec 31-44)

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- The POCOS 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.

* Rules of delivery of acceptance

- When transfer of possession from one person to another person is called delivery.

Symbolic

When delivery of goods takes place

Symbolically

Actual

When goods are actually transferred & physically handed over

Delivery

Constructive

delivery of goods by acknowledgement

- Modes of delivery (Sec 33)

- Delivery should have the effect of putting the buyer in possession.
- By doing anything to which parties have agreed.
- possession may give to buyer or his agent.

- Payment & delivery to be Concurrent (Sec 32)

- Payment & delivery should be concurrent
- The ~~the~~ seller should give possession to buyer and the buyer should repay for it at the same time

- Buyer should apply for delivery (Sec 35)

- Buyer should apply for delivery of goods
- The seller is not bound to deliver the goods until the buyer applies for the delivery of the goods

- Effect of part delivery:

- When intension of giving the delivery of goods as whole will amt to delivery of whole with respect to ownership of goods
- When part delivery is not with intension to delivery as whole then it is not amt to whole delivery.

- Time of delivery (Sec 36(2))

- Delivery should be given at the time when parties have agreed upon
- If contract cannot specified the time of delivery then it is considered at reasonable time.

- Expenses for delivery
- Delivery of wrong quantity
- Buyer's right to examine the goods

- Instalment deliveries
- Delivery to carrier
- Deterioration during transit

Date: / /

- Goods in possession of a third party: [Section 36(3)]
 - When the goods are in possession of third person at the time of sale then, that person acknowledge the buyer that he holds goods on behalf of the seller.
- When demand delivery is treated as ineffectual [Sec 36(4)]

(Time for kind of delivery)

 - Demand delivery is treated as ineffectual when it is done at any other time than reasonable business hours.
 - The buyer cannot reject the goods of negligible shortage or excess of goods.
 - The mixing of goods with inferior quality should not be treated as mixing of goods.
- When the seller becomes unpaid? (Sec 45)
 - Who's whole price has not been paid
 - Or tendered
 - and conditional payment made by bills of exchange or any other instrument
 - and instrument has been dishonored.
- Rule related to Acceptance of Delivery of goods (Sec 42)
 - intimates to the seller that he had accepted the goods or
 - does any act to the goods, which is inconsistent with the ownership of the seller; or
 - retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them

- Buyer not bound to return rejected goods (Section 43)
- Liability of buyer for neglecting or refusing delivery of goods.

Unpaid Seller

~~- Rights of unpaid seller against the goods & against the buyer.~~

• Unpaid Seller

- The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of an unpaid seller

- Right of unpaid seller against the goods & against the buyer.
- Right to lien:- Right to lien means right to retain the goods in possession until whole payment is made

Rights of an unpaid seller against the goods.

↓
Where the property in goods has passed to the buyers

↓
Where the property in goods has not passed to the buyers

When it is used?

- (i) when sold the goods without stipulation of credit
- (ii) when goods sold on credit but credit period has expired
- (iii) when buyer becomes insolvent.

Part delivery (Section 48)

- Where an 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.

Termination of lien (Section 49)

- Delivery to a carrier
- Possession ~~of~~ by the seller
- Seller waives his right of lien
- By Estoppel.

Right to Stoppage in Transit.

- Right to stoppage & transit means right to regain the possession of goods while transit and to retain them still the full price to the buyer.

When it is used?

- When the possession of goods is not with the seller
- When the possession of goods is not with the buyer -

When goods are in possession of the middle
 → men who can be courier service etc.

Conditions

- The seller is unpaid
- Seller do not have the possessions of goods
- The goods have not yet reached to the buyer
- Goods are in transit
- The buyer must have become insolvent
- The right is subject to provisions of the Act.

Duration of transit (Section 51)

- The buyer or his agent obtain delivery before the goods reach the destination, In such cases the transit ends once the delivery is obtained.
- When the buyer or other bailee obtains delivery
- If the carrier wrongfully refuses to deliver the goods to the buyer.
- Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end. [Section 51]

Right of Stoppage of goods in transit:

- The right of stoppage implies the right of stopping the good while they are with a carrier for the purpose transmission to the buyer.

- 1) when the buyer becomes insolvent
- 2) when the property has passed to the buyer
- 3) when the goods are in the course of transit

Distinction between Right of Lien and Right of Stoppage in Transit

Right of Lien	Right of Stoppage in transit
(i) The purpose of the right is to retain possession of the goods.	The purpose of this right is to regain the possession of the goods.
(ii) The Right can be exercised by the seller himself	The right can be exercised by the seller through the carrier or the other bailee
(iii) The Right can be exercised even when the buyer is solvent but refuses to pay the price.	The right can be exercised only when the buyer has become insolvent.
(iv) The Right comes to an end when the seller delivers the goods to the carrier	This Right commences only when the seller delivers good to a carrier.

Right of re-sale [Section 54]

→ If a buyer fails to pay the price within a reasonable time, the unpaid seller has the right of re-sell the goods -

- Where the goods are of perishable nature.
- Where the unpaid seller has exercised his right of lien or stoppage in transit and gives a notice to buyer of his intention of re-sell the goods.
- Where the unpaid seller has expressly reserved a right of re-sale if the buyer commits a default in making the payment.

Right of unpaid seller against the buyer (Section 55-61)

- An unpaid seller can enforce certain right against the goods as well as against the buyer personally

Right against the buyer ~~part~~

- He may sue for price [Sec 55]
- He may sue for the damages for non-acceptance of goods - Sec 56.
- He may sue Repudiation of contract before due date
- Suit for interest [Section 61]
- ~~The~~ He may sue the damages for the wrongful refusal to take the delivery.

Remedies of Buyer Against the seller.

Right of Buyer

1) Damages for non-delivery [Section 57]

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

2) Suit for specific performance (Section 58)

- A party to a contract who is damaged because the contract is breached by another party, has the option to file a suit for specific performance, compelling him to perform his part of the contract.

3) Suit for Breach of warranty (Section 59)

- The buyer has the right to enforce a breach of warranty claim as a defence against a seller's claim for the full price of the good.

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

- This section deals with the case
 - When the buyer puts an end to the contract before due date of delivery of goods, the seller may either:

5 Suit for interest

- The right of the seller or the buyer to recover int or special damages, in any case where the damage may be recoverable.

Auction Sale (Section 64)

- Sale of auction is the public sale where the goods are generally sold to the highest bidder.

Rule of Auction Sale

- Where goods are sold in lots
 - Each lot is prima facie deemed to be the subject of a separate contract of sale.
- Completion of the contract of sale
 - its completion by the fall of the hammer or in ~~the~~ other customary manner.
- Right to bid may be reserved
 - 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 a sale,

Date: / /

Reserved price :-

- The sale may be notified to be subject to a Reserve or upset price

Pretended bidding :-

- If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.