

1. FORMATION OF THE CONTRACT OF SALE

The Sale of Goods Act, 1930 deals with the laws relating to sale of goods in India. This Act is mainly based on English Sale of Goods Act, 1893. Before the Sale of Goods Act, 1930, all the provisions relating to sale of goods was covered under the Chapter VII of Indian Contract Act, 1872. The Act came into force from 1st July 1930 and extends to whole of India. 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.

Essential Elements for a Contract of Sale:

- (i) There must be **at least TWO PARTIES**, the seller and the buyer. A person cannot be both the seller and the buyer and sell his goods to himself.
- (ii) The **subject matter of the contract of sale must be GOODS** covering only movable property. It may be either existing goods or future goods.
- (iii) A **TRANSFER OF PROPERTY** in goods from seller to the buyer **must take place**. As per sec. 2(11), 'Property' means 'ownership'.
The property in the goods means the **general property** i.e., all ownership right of the goods. Note that the 'general property' in goods is to be distinguished from a 'special property'. e.g., when an article is pledged, the special property gets transferred and not the general property.
- (iv) The consideration for the sale of goods must be in the form of **MONEY (not in kind)**. But there is nothing to prevent the consideration from being partly in money and partly in kind.
- (v) A contract of sale **may be absolute or conditional**.
- (vi) **All the essential elements of a VALID CONTRACT** must be present in the contract of sale, e.g. free consent of parties, competency of parties, legality of object and consideration, etc.

Definition of Goods:

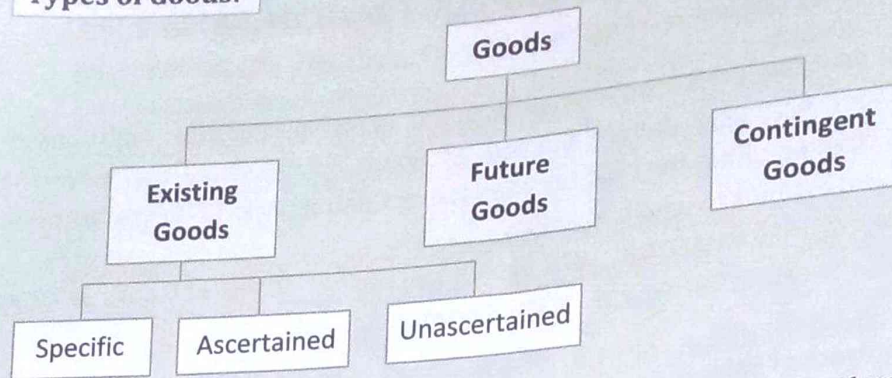
As per Sec. 2(7), 'Goods' means-

- ◆ Every kind of movable property
- ◆ other than actionable claims and money; and
- ◆ includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed from the land before sale or under the contract of sale.

Note:

- ◆ 'Goods' include **only movable properties**.
- ◆ 'Goods' include **both tangible and intangible** goods like goodwill, copyright, patent, trademark, etc.
- ◆ **Stock and shares, gas, steam, water, electricity and decree of the court** are also considered to be goods.
- ◆ '**Actionable claims**' are claims which can be enforced only by an action or suit, e.g., debt. So, **debt is not goods**. But, the **Fixed Deposit Receipts (FDRs) are considered as goods** u/s 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

Types of Goods:



(i) **EXISTING GOODS** are such goods which **are in existence at the time of the contract of sale and owned or possessed by the seller** at the time of contract of sale (Sec. 6).

The existing goods may be of following kinds:

- (a) **Specific goods** mean goods **identified and agreed** upon at the time when the contract of sale is made. [Sec. 2(14)].
- (b) **Ascertained Goods** are those goods which are identified in accordance with the agreement after the contract of sale is made. When out of a lot or out of large quantity of unascertained goods, the **number or quantity contracted for is identified**, such identified goods are called ascertained goods.

Example:

A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection, the goods become ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

It may be noted that before the ascertainment of the goods, the contract was for the sale of unascertained goods.

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

Examples:

- ◆ If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soon as a particular packet is separated from the lot, it becomes ascertained or specific goods.
- ◆ X has ten horses. He promises to sell one of them but does not specify which horse he will sell. It is a contract of sale of unascertained goods.

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

A contract for the sale of future goods is always an **agreement to sell**. It is not sale because a person cannot transfer what is not in existence.

Examples:

- ◆ P agrees to sell to Q all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.
- ◆ T agrees to sell to S all the oranges which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

(iii) **CONTINGENT GOODS:** The acquisition of goods which **depends upon an uncertain contingency** (uncertain event) are called 'contingent goods' [Section 6(2)].

A contract for sale of Contingent goods is always an **agreement to sell** and not a 'sale'. In other words, like the future goods, in the case of contingent goods also, the property does not pass to the buyer at the time of making the contract.

Examples:

- ◆ A agrees to sell to B a Picasso painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.
- ◆ P contracts to sell 50 pieces of particular article provided the ship which is bringing them reaches the port safely. This is an agreement for the sale of contingent goods.

Sale and Agreement to sell [Sec. 4]:

As per sec. 4(1),

- ◆ A contract of Sale of goods is a contract whereby
- ◆ the seller
- ◆ **transfers or**
- ◆ **agrees to transfer**
- ◆ the property in the 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. [Sec. 4(2)]

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a **sale**, but where the transfer of the 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**.

[Sec. 4(3)]

Sale: In Sale, the property in goods is transferred from seller to the buyer **immediately**. The term sale is defined in the Sec. 4(3) as –

'Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.'

Agreement to Sell: In an agreement to sell, the ownership of the goods is **not transferred immediately**. It is intending to transfer **at a future date or upon the completion of certain conditions**.

The term is defined in Sec. 4(3) as –

'Where the transfer of the 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.'

Distinction between Sale and an Agreement to sell

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately .	Property in the goods passes to the buyer on future date or on fulfilment of some condition.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller .
Liability of parties	Any subsequent loss or destruction of goods is the liability of the buyer .	Such loss or destruction is the liability of the seller .
Nature of rights	Creates jus in rem means right against the whole world.	Creates jus in personam means rights against a particular person.
Nature of contract	It is an executed contract as the ownership has been passed at the time of contact.	It is an executory contract as the ownership is to pass at a future date.
Right of seller for resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.
Remedies for breach by buyer	The seller can sue the buyer for the price of the goods because the property has been passed to the buyer.	The seller can sue only for damages and not for the price, unless the price was payable at a stated date.
In case of Insolvency of seller	The official assignee will not be able to take over the goods from the buyer but can recover the price.	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 .

Sale distinguished from other similar Contracts:

Sale and Hire Purchase:

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

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

- (a) Possession of goods is delivered to a person on condition that such person pays the agreed amount in periodical instalments, and
- (b) Property in the goods is to pass to such person on the payment of last of such instalments, and
- (c) Such person has a **right to terminate** the agreement at any time before the property so passes.

The main points of distinction between the 'sale' and 'hire-purchase' are as follows:

Basis of difference	Sale	Hire-purchase
Time of passing property	Property in goods is transferred to buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last instalment .

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Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last instalment.
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 liability to pay remaining instalments.
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 instalment, the owner has right to take back the goods.
Transfer of 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 until he pays the last instalment.
Resale	The buyer in sale can resell the goods.	The hire purchaser cannot resell unless he has paid all the instalments.

Sale and Bailment:

A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that the goods shall be returned or to be disposed off according to the directions of the bailor. Provisions related to bailment are regulated by the Indian Contract Act, 1872.

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

Ascertainment of Price [Sec. 9 & 10]:

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

Agreement to sell at valuation [Sec. 10]:

Section 10 provides for the **determination of price by a third party:**

1. Where there is an 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 for 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**.

Example: 'A' is having two bikes. He agrees to sell both the bikes to B at a price to be fixed by Q. He gives the delivery of one bike immediately. Q refuses to fix the price. As such 'A' asks B to return the bike already delivered while B claims for the delivery of the second bike too. In this case, the buyer S shall pay a reasonable price to 'A' for the bike already taken. As regards the Second bike, the contract can be avoided as the third party Q refuses to fix the price.

Document of Title to goods:

It includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business **as proof of the possession or control of goods** or for authorizing by endorsement or by delivery, **the possessor of the document to transfer or receive goods** thereby represented. [Sec. 2(4)]

A document amounts to a document of title only where it **shows an unconditional undertaking to deliver the goods to the holder of the document**.

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

2. CONDITIONS AND WARRANTIES

Conditions and Warranties:

A representation made by the seller in respect of the goods which forms a part of the contract of sale and affects the contract is called a **stipulation**.

A stipulation in a contract of sale with reference to goods which are the subject thereof **may be a condition or a warranty**. [Sec. 12(1)]

Condition [Sec. 12(2)]:

A **condition** is a stipulation which is **essential to the main purpose** of the contract. The breach of condition gives the aggrieved party a **right to repudiate** the contract.

Example: Buyer B wants to purchase a car from S, which can have a mileage of 20 km/litre. S pointing at a particular vehicle says "This car will suit you." B buys the car, but later on finds that the car has a top mileage of only 12 km/litre. This is a breach of condition because the seller made the stipulation which forms the essence of the contract. In this case, the mileage was a stipulation that was essential to the main purpose of the contract and hence its breach gives the buyer B a right to repudiate the contract.

Warranty [Sec. 12(3)]:

A **warranty** is a stipulation which is **collateral to the main purpose** of the contract. The breach of warranty gives the aggrieved party a **right to claim for damages but not a right to reject** the goods and treat the contract as repudiated.

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

Example:

Differences between Condition and Warranty:

Point of differences	Condition	Warranty
Meaning	A condition is a stipulation essential to the main purpose of the contract.	A warranty is a stipulation 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 [Sec. 13]:

Section 13 specifies the cases where a breach of condition be treated as a breach of warranty due to which the buyer loses his right to rescind the contract and can now claim only damages.

- (i) Where the buyer **altogether waives** the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer **elects to treat the breach of condition, as a breach of warranty**. That is to say, he elects to claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.

Example: A agrees to supply B 10 bags of first quality sugar @ ₹ 625 per bag but supplies only second quality sugar, the price of which is ₹ 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, hence he may accept the second quality sugar and claim damages @ ₹ 25 per bag.

- (iii) 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.
- (iv) Where the **fulfillment** of any condition or warranty is **excused by law** by reason of impossibility or otherwise.

Implied Conditions and Warranties [Sec. 14-17]:

'Conditions' and 'Warranties' may be either express or implied.

Express conditions are those, which are **agreed upon between the parties** at the time of contract and are expressly provided in the contract.

Implied conditions, on the other hand, are those, which are **presumed by law** to be present in the contract. It should be noted that an implied condition may be negated or waived by an express agreement.

Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.

- (i) **Condition as to title [Sec. 14(a)]:** In every contract of sale, unless there is an agreement to the contrary, there is an implied condition on the part of the seller that -
 - (a) in case of a sale, **he has a right to sell** the goods, and
 - (b) in case of an agreement to sell, **he will have right to sell** the goods at the time when the property is to pass.

In simple words, the condition implied is that the seller has the right to sell the goods (means he should be the real owner) at the time when the property is to pass. If the seller's title/ownership turns out to be defective, the buyer has to return the goods and recover the price from the seller.

Examples:

- ◆ 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.
- ◆ If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this is proved to be an

infringement of N Company's trade mark, it will be a breach of implied condition that A had the right to sell. B in such a case will be entitled to reject the goods or take off the labels, and claim damages for the reduced value. If the seller has no title and the buyer has to make over the goods to the true owner, he will be entitled to refund of the price.

Sale by description [Sec. 15]: Where there is a contract for sale of goods by description, there is an implied condition that the **goods shall correspond with the description**. This rule is based on the principle that **"If you contract to sell peas, you cannot compel the buyer to take beans."** The buyer is not bound to accept and pay for the goods which are not in accordance with the description of the goods.

Examples:

- A at Kolkata sells to B twelve bags of "waste silk" on its way from Murshidabad to Kolkata. There is an implied condition that the silk shall be such as is known in the market as "Waste Silk". If it is not, the buyer B is entitled to reject the goods as they do not correspond the description.
- 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.

Sale by sample [Sec. 17]: In a contract of sale by sample, there is an implied condition that –

- (a) the **bulk shall correspond** with the sample in quality;
- (b) the buyer shall have a **reasonable opportunity of comparing** the bulk with the sample,

Example: In a case of sale by sample of two parcels of wheat, the seller allowed the buyer an inspection of the smaller parcel but not of the larger parcel. In this case, it was held that the buyer was entitled to refuse to take the parcels of wheat.

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

Example:

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.

Sale by sample as well as by description [Sec. 15]: Where the goods are sold by sample as well as by description, the implied condition is that the **bulk shall correspond both with the sample and the description**. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.

Example:

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 along with sunflower oil. Hence, B can reject the goods because the goods were as per sample but do not correspond to the description.

(v) **Condition as to quality or fitness [Sec. 16(1)]:** Ordinarily, there is **no implied condition** as to the quality or fitness of the goods sold for any particular purpose. As a general rule, it is the duty of the buyer to examine the goods before buying them to satisfy himself that the goods will be suitable for his purpose. This is known as **rule of Caveat Emptor** i.e. **"Let the buyer beware"**.

However, the condition as to the quality or fitness of goods for a particular purpose may be implied if:

- ◆ The buyer had **made known to the seller the particular purpose** for which goods are required,
- ◆ The buyer **relied on the skill and judgement of the seller** and
- ◆ The goods are of a description **dealt in by the seller**, whether as a manufacturer or otherwise.

In some cases, the purpose may be ascertained from the conduct of the parties or from the nature of the goods sold. Where the goods can be used for only one purpose, the buyer need not tell the seller the purpose for which he requires the goods.

Examples:

- ◆ '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.
- ◆ 'A' went to 'B's shop and asked for a 'Merit' sewing machine. 'B' gave 'A' the same and 'A' paid the price. 'A' relied on the trade name of the machine rather than on the skill and judgement of the seller 'B'. In this case, there is no implied condition as to fitness of the machine for buyer's particular purpose.

(vi) **Condition as to Merchantability [Sec. 16(2)]:** Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that **the goods shall be of merchantable quality**.

There are two requirements for this condition to apply:

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

Provided that, if the buyer has examined the goods, there is **no implied condition as regards those defects which such examination could reveal**.

The expression "merchantable quality", though not defined, connotes goods **of such a quality and in such a condition that a man of ordinary prudence would accept them** as goods of that description. It does not imply any legal right or legal title to sell.

Examples:

- ◆ If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as un-merchantable.
- ◆ 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.

(vii) **Condition as to wholesomeness:** In the case of **eatables and provisions**, in addition to the implied condition as to merchantability, there is implied condition that the goods shall be **wholesome (i.e. capable of being consumed)**.

Example: 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:

These are those warranties which the law implies into the contract of sale. Here, the law presumes that such warranties have been incorporated by parties into their contract, unless they are expressly excluded by the parties.

1. **Warranty as to undisturbed possession [Sec. 14(b)]:** There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, after getting possession of goods, if the buyer is disturbed in his possession, he is entitled to sue the seller for damages for the breach of warranty.

Example:

2. **Warranty as to non-existence of encumbrances [Sec. 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

Example: A pledges his car with C for a loan of ₹ 15,0000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, without knowing the fact. B, may either ask A to clear the loan or himself may pay the money and then, file a suit against A for recovery of the money with interest.

3. **Warranty as to quality or fitness by usage of trade [Sec. 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.

Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

4. **Disclosure of dangerous nature of goods:** Where the goods are of dangerous nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

Caveat Emptor:

In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When seller display their goods in the open market, it is for the buyers to make a proper selection of the goods. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

It is the duty of the buyer to satisfy himself before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve the purpose, the buyer cannot hold the seller responsible.

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The rule of Caveat Emptor is laid down in the **Section 16**, which states that, "subject to the provisions of this Act or of any other law for the time being in force, **there is no implied warranty or condition as to the quality or fitness for any particular purpose** of goods supplied under a contract of sale".

Examples:

- ◆ A sold pigs to B. These pigs got infected, caused typhoid to other healthy pigs of the buyer. It was held that the seller was not bound to disclose that the pigs were unhealthy. The rule of the law being "Caveat Emptor".
- ◆ A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat Emptor rule applies here and so A can neither reject the horse nor claim compensation from B.

Exceptions: The doctrine of Caveat Emptor is, however, subject to the following exceptions:

1. Fitness as to quality or use: The condition as to the quality or fitness of goods for a particular purpose may be implied if:

- ◆ The buyer had **made known to the seller the particular purpose** for which goods are required,
- ◆ The buyer **relied on the skill and judgement of the seller** and
- ◆ The goods are of a description **dealt in by the seller**, whether as a manufacturer or otherwise.

Example: An order was placed for some trucks to be used for heavy traffic in a hilly country. The trucks supplied by the seller were unfit for this purpose and broke down. There is a breach of condition as to fitness.

In **Priest vs. Last**, 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. 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.

In **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.

- 2. Goods purchased under patent or brand name:** In case where the goods are purchased under its patent name or brand name, there is **no implied condition that the goods shall be fit** for any particular purpose [Sec. 16(1)]. 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 [Sec. 15]. **If it is not so, then seller is responsible.**
- 4. Sale by sample:** Where the goods are bought by sample, this rule of Caveat Emptor does not apply **if the bulk does not correspond with the sample** [Sec.17].

Conditions and Warranties

6. **Sale by sample as well as by description:** Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition [Sec. 15].

6. **Goods of Merchantable Quality:** Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is **not applicable for latent defects**. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination [Sec. 16(2)].

7. **Trade Usage:** An implied warranty or condition as to quality or fitness for a particular purpose **may be annexed by the usage of trade** and if the seller deviates from that, this rule of Caveat Emptor is not applicable [Sec.16(3)].

8. **Seller actively conceals a defect or is guilty of fraud:** Where the seller makes some misrepresentation or fraud **and the buyer relies on it** or when the seller actively conceals some defect in the goods **so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply**. In such a case the buyer has a right to avoid the contract and claim damages.

Passing of Property [Sec.18 - 26]

Passing of property implies **passing of ownership**. If the property has passed to the buyer, the **risk in the goods sold is that of buyer** and not of seller, though the goods may still be in seller's possession. The rules regarding transfer of property in goods from the seller to the buyer **depend on two basic factors**:

- (a) **Identification of Goods:** Sec. 18 provides that where there is a contract of sale for unascertained goods, the property in goods cannot pass to the buyer unless and until the goods are ascertained. Thus, the buyer can get the ownership right **only when the goods are specific or ascertained**.
- (b) **Intention of parties:** The property in goods is transferred to the buyer **at such time as the parties to the contract intend it to be transferred**. [Sec.19(1)]
Sec. 19(2) further provides that for the purpose of **ascertaining the intention** of the parties, regard shall be had to:
- (i) the terms of the contract,
 - (ii) the conduct of the parties and
 - (iii) the circumstances of the case.

Thus,

- (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- (2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

Stages of the Goods while passing of property [Sec. 20, 21 and 22]:

1. **Specific goods in a deliverable state [Sec. 20]:** Where there is an **unconditional contract** for the sale of specific goods in a deliverable state, the property in the goods **passes to the buyer when the contract is made**, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Example: X goes into a shop and buys a television and asks the shopkeeper for its home delivery. The shopkeeper agrees to do it. The television immediately becomes the property of X.

2. **Specific goods to be put into a deliverable state [Sec. 21]:** Where there is a contract for the sale of specific goods and the 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.

Example: Vidhaan buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Vidhaan before making the delivery. In this case, the property transfers to Vidhaan only after the shopkeeper has installed the OS making the laptop ready for delivery and informed the buyer about it.

Transfer of Ownership and Delivery of Goods

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price [Sec. 22]: Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the price, the **property does not pass until such act or thing is done** and the buyer has notice thereof.

Example: A sold carpets to the company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company.

Goods sent on approval or 'on Sale or return' [Sec. 24]:

When goods are delivered to the buyer on approval or 'on sale or return' or other similar terms, the **property therein passes to the buyer-**

- (a) when he **signifies his approval or acceptance** to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but **retains the goods without giving notice of rejection**, then, if a time has been fixed for return of goods, **on the expiration of such time**, and if no time has been fixed, on the expiration of a reasonable time; or
- (c) he **does something to the goods which is equivalent to accepting** the goods e.g. he pledges or sells the goods.

Examples:

- ◆ P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument. The ownership is transferred when he has decided to purchase the instrument as his own.
- ◆ 'A' delivered some jewellery to 'B' on sale or return basis. 'B' pledged the jewellery with 'C'. It was held that the ownership of the jewellery had been transferred to 'B' as he had adopted the transaction by pledging the jewellery with 'C'. In this case, 'A' has no right against 'C'. He can only recover the price of the jewellery from 'B'.

Reservation of Right of Disposal [Sec. 25]:

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

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

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.

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Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

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

Transfer of Title by Non-Owners (Sec. 27 – 30):

Sale by person not the owner [Sec. 27]: The general rule regarding the transfer of title is that the **seller cannot transfer a better title to the buyer than he himself has**. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller. This rule is expressed in the Latin maxim *'Nemo dat quod non habet'* which means that **no one can give what he has not got**.

Example: If A sells some stolen goods to B, who buys them in good faith, B will get no title to that and the true owner has a right to get back his goods from B.

Exceptions to Sec. 27: To protect the interests of innocent buyers, a number of exceptions have been provided to the above rule. **In the following cases, a non-owner can convey better title to the bonafide purchaser of the goods for value.**

1. **Sale by a Mercantile Agent [Proviso to Sec. 27]:** A sale by a mercantile agent of the goods for document of title of goods would pass a good title to the buyer if-
 - (a) he was in **possession** of the goods or document of title **with the consent** of the owner;
 - (b) the sale was made by him **while acting in the ordinary course of business** as a mercantile agent; and
 - (c) 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.

Mercantile Agent means an agent having in the customary course of business authority to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods [Sec. 2(9)].

2. **Sale by one of the Joint Owners [Sec. 28]:** If one of the several joint owners of goods has the **sole possession of the 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** and has not at the time of the contract of sale notice that the seller has no authority to sell.

Example: Raj, Raja and Rajan are three brothers and joint owners of a TV. With the consent of Raja and Rajan, the TV was kept in the possession of Raj. Raj sells the TV to Maahi who buys it in good faith and without notice that Raj had no authority to sell. Maahi gets a good title to TV.

Transfer of Ownership and Delivery of Goods

Sale by a person in Possession under Voidable Contract [Sec. 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 on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale.

Example: X fraudulently obtains a diamond ring from Y. This contract is voidable at the option of X. But before the contract could be terminated, X sells the ring to Z, an innocent purchaser. Held that, Z gets the good title and Y cannot recover the ring from Z even if the contract is subsequently set aside.

Sale by Seller who has already sold the goods but continues in Possession thereof [Sec. 30(1)]: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith and without notice of the previous sale, he will have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other disposition of the goods or documents of title by the seller in possession are equally valid.

Example: P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. S gets a good title.

Sale by Buyer obtaining Possession before the Property in the goods has passed to him [Sec. 30(2)]: Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith he will get a good title to them.

Example: Furniture was delivered to B under an agreement that price was to be paid in two instalments, and ownership shall pass to B on the payment of second instalment. But, B sold the furniture before the second instalment. It was held that the buyer acquired a good title. (**Lee Vs Butler**)

However, a person in possession of goods under a **'hire-purchase' agreement** which gives him only an option to buy is **not covered within this section** unless it amounts to a sale.

Example: Namya took a car from Drishti on this condition that Namya would pay a monthly instalment of ₹ 5,000 as hire charges with an option to purchase it by payment of ₹ 1,00,000 in 24 instalments. After the payment of few instalments, Namya sold the car to Diti. Drishti can recover the car from Diti since Namya had neither bought the car, nor had agreed to buy the car. She had only an option to buy the car.

6. Effect of Estoppel: Where the **true owner is estopped by his conduct from denying the seller's authority to sell**, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively held out the other person in question as the true owner or as a person authorized to sell the goods.

Example: 'A' said to 'B', a buyer, in the presence of 'C' that he (A) is the owner of the horse. But 'C' remained silent though the horse belonged to him. 'B' bought the horse from 'A'. Here the

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buyer (B) will get a valid title to the horse even though the seller (A) had no title to the horse. In this case, 'C', by his own conduct, is prevented from denying 'A's authority to sell the horse. Here, 'C's silence has induced 'B' to believe that 'A' is the owner of the horse.

7. **Sale by an Unpaid seller [Sec. 54(3)]:** Where an unpaid seller who had **exercised his right of lien or stoppage in transit resells the goods**, the buyer acquires a good title to the goods as against the original buyer.
8. **Sale under provisions of Other Acts:**
 - (i) Sale by an **Official Receiver or Liquidator** of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a **finder of goods** will get a valid title under circumstances [Sec. 169 of the Indian Contract Act, 1872]
 - (iii) A **sale by pawnee** can convey a good title to the buyer [Sec. 176 of the Indian Contract Act, 1872]

Performance of the Contract of Sale [Sec. 31 - 44]:

The performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment of price for them by the buyer in accordance of the terms of the contract.

Definition of Delivery [Sec. 2(2)]:

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

For delivery, physical possession is not important. The buyer should be placed in a position so that he can exercise his right over the goods.

Note: If possession of goods is taken through unfair means, it is not treated as delivery of the goods.

Types of Delivery of goods:

- (a) **Actual Delivery:** When the goods are **physically delivered** to the buyer. Actual delivery takes place when the seller transfers the physical possession of the goods to the buyer or to a third person authorised to hold goods on behalf of the buyer. This is the most common method of delivery.
- (b) **Symbolic delivery:** When there is a **delivery of a thing in token of a transfer** of something else, i.e. delivery of goods in the course of transit may be made by **handing over documents of title** to goods e.g. bill of lading, railway receipt or delivery orders or the **key of a warehouse** containing the goods is handed over to buyer. **Where actual delivery is not possible**, there may be delivery of the means of getting possession of the goods.
- (c) **Constructive Delivery:** When transfer of goods is **effected without any change in the custody or actual possession of the thing** as in the case of delivery by attornment (acknowledgement).

Example: Where a warehouse keeper holding the goods of Mr. Ritesh agrees to hold them on behalf of Mr. Suresh, at Mr. Ritesh's request.

Unless otherwise agreed, **delivery of the goods and payment of the price are concurrent conditions**, that is to say, the

- ◆ seller shall be ready and willing **to give possession of goods** to buyer in exchange for the price, and
- ◆ buyer shall be ready and willing **to pay the price** in exchange for possession of the goods. [Sec.32]

Rules Regarding Delivery of goods [Sec. 33-41]:

1. **Delivery [Sec. 33]:** Delivery of goods sold may be made **by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer** or of any person authorised to hold them on his behalf.
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, for the purpose of passing the property in such goods, as a delivery of the whole; **but** a delivery of part of the goods, **with an intention of severing it from the whole**, does not operate as a delivery of the remainder.
 Example: Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer accepted them and took away part. Held, there was delivery of the whole.
3. **Buyer to apply for delivery [Sec. 35]:** Apart from any express contract, the **seller is not bound to deliver the goods** 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**, express or implied, between the parties. **Otherwise,**
 - ◆ goods sold are to be delivered **at the place at which they are at the time of sale**, and
 - ◆ goods agreed to be sold are to be delivered at the place at which they are at the time of the **agreement to sell** or
 - ◆ if goods are not then in existence, **at the place at which they are manufactured or produced.**
5. **Time of delivery [Sec. 36(2)]:** Where the seller is bound to send the goods to the buyer, but 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.** What is reasonable hour is a question of fact.
8. **Expenses for delivery [Sec. 36(5)]:** The expenses of and incidental to putting the goods into a deliverable state **must be borne by the seller** in the absence of a contract to the contrary.
9. **Delivery of wrong quantity [Sec. 37]:**
 - (1) 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.
 - (2) 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.

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- (3) Where the seller delivers to the buyer the goods he contracted to sell **mixed with goods of a different description** not included in the contract, the **buyer may accept the goods which are in accordance with the contract** and reject, or **may reject the whole**.
- (4) The provisions of this section are **subject to any usage of trade, special agreement or course of dealing** between the parties.

- 10. Installment deliveries [Sec. 38]:** Unless otherwise agreed, **the buyer is not bound to accept delivery in installments**. The rights and liabilities in cases of delivery by installments and payments thereon may be determined by the parties of contract.
- 11. Delivery to carrier [Sec. 39(1)]:** Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is *prima facie* **deemed to be delivery to the buyer**.
- 12. Buyer's right to examine the goods [Sec. 41]:** Where 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**. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods.

Rules related to Acceptance of Delivery of Goods [Sec. 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 the rejected goods [Sec. 43]:

Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right to do so, 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 and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is **liable to the seller**

- ◆ **for any loss occasioned by his neglect or refusal to take delivery** and
- ◆ **also for a reasonable charge for the care and custody of the goods.**

Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to repudiation of contract.

4. UNPAID SELLER

Unpaid Seller [Sec. 45(1)]:

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

- The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price, or
- When a bill of exchange or other negotiable instrument has been received as a conditional payment but the instrument has been dishonored.

Examples:

- Rohit sold certain goods to Mohit for ₹ 1,00,000. Mohit paid ₹ 90,000 but fails to pay the balance. Rohit is an unpaid seller.
- Paras sold some goods to Raman for ₹ 40,000 and received a cheque for a full price. On presentation, the cheque was dishonoured by the bank. Paras is an unpaid seller.

Rights of an Unpaid Seller

Against the Goods

When Property in goods has passed to Buyer-

- ◆ Right of Lien
- ◆ Right of Stoppage-in-transit
- ◆ Right of Re-sale.

When Property in goods has NOT passed to Buyer-

- ◆ In addition to above 3 remedies, the right of withholding delivery.

Against the Buyer

- ◆ To Suit for Price;
- ◆ To Suit for Damages; and
- ◆ To Suit for Repudiation of contract
- ◆ To file a suit for Interest

Rights of Unpaid Seller against the Goods:

1. Right of Lien [Sec. 47]:

- ◆ **Right of Lien** is the right to retain the possession of the goods and refusal to deliver them to the buyer until the due price due is paid or tendered. Seller may exercise his right of lien **only when he is in the possession** of the goods sold, whether as an agent or bailee for the buyer.
- ◆ Right of lien **can be exercised in the following cases** only:
 - (a) where goods have been sold without any stipulation of credit; (i.e. on cash sale); or
 - (b) where goods have been sold on credit but the credit period has expired; or
 - (c) where the buyer becomes insolvent.

Example: A sold certain goods to B for a price ₹ 50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

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- ◆ **Part delivery [Sec. 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 circumstances to show that he has waived the lien.
- ◆ **Termination of lien [Sec. 49]:** The unpaid seller loses his right of lien under the following circumstances:
 - (i) When he **delivers the goods** to a carrier or other bailee for transmission to the buyer without reserving the right of disposal of the goods.
 - (ii) Where the **buyer** or his agent lawfully **obtains possession** of the goods.
 - (iii) Where seller has **waived the right** of lien.
 - (iv) By **Estoppel** i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

The unpaid seller **does not lose his right of lien only by the reason that he has obtained a decree for the price** of the goods. (This means even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.)

2. Right of Stoppage-in-transit [Sec. 50 to 53]:

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.

When the

- ◆ **unpaid seller has parted with the goods to a carrier, and**
- ◆ **the buyer has become insolvent,**

he can exercise this right of asking the carrier to return back the goods, or not to deliver the goods to the buyer.

The right of stoppage-in-transit **can be 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.

Example: A of Mumbai sold certain goods to B of Delhi. He delivered the goods to C, a common carrier for the purpose of transmission of these goods to B. Before the goods could reach him, B became insolvent and A came to know about it. A can stop the goods in transit by giving a notice of it to C.

- ◆ **Duration of transit [Sec. 51]:** The goods are deemed to be in course of transit **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 takes delivery** from such carrier or other bailee.
- ◆ **When does the transit come to an end?**

The right of stoppage-in-transit is lost when transit comes to an end. Transit comes to an end in the following cases:

 - 1) When the buyer or other bailee **obtains delivery**.
 - 2) Buyer obtains **delivery even before the arrival** of goods at destination. It is also called interception by the buyer which can be with or without the consent of the carrier.
 - 3) If the **carrier wrongfully refuses to deliver** the goods to the buyer.

- 4) Where the carrier or other bailee **acknowledges 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 right of disposal** of the goods.
- 5) Where goods are delivered to the **carrier hired by the buyer**, the transit comes to an end.
- 6) Where the goods are delivered to a **ship chartered by the buyer**, the transit comes to an end.
- 7) Where the **part delivery of the goods has been made** to the buyer, the transit will end for the remaining goods which are yet in the course of transmission.

• **How stoppage-in-transit is effected [Sec. 52]:**

The unpaid seller may exercise his right of stoppage in transit either

- (a) by taking actual possession of the goods, or
- (b) by giving notice of his claim to the carrier or other bailee who has the possession of goods.

Effects of Sub-sale or Pledge by buyer [Sec. 53]:

The right of lien or stoppage-in-transit is **not affected** by the buyer selling or pledging the goods **unless the seller has assented** to it. This is based on the principle that a second buyer cannot stand in a better position than his seller, the first buyer.

Example: A sold certain goods to B of Mumbai and the goods are handed over to railways for transmission to B. In the mean time, B sold these goods to C for consideration. B becomes insolvent. A can still exercise his right of stoppage in transit. Here we assume that seller did not give his assent for sub sale, therefore he can still exercise his right of stoppage in transit.

However, the right of stoppage is **defeated** -

- (a) if the buyer has transferred the document of title or
- (b) pledges the goods to a sub-buyer in good faith and for consideration.

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

- (a) When the **seller has assented** to the sale, mortgage or other disposition of goods made by the buyer.

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

- (b) When a document of title to goods has been transferred to the buyer and **the buyer transfers the document of title to a person who has bought goods in good faith and for value** i.e. for price.

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

Distinction between Right of Lien and Right of Stoppage in Transit:

- (i) The essence of a right of lien is to **retain possession** whereas the right of stoppage in transit is right to **regain possession**.
- (ii) Seller **should be in possession** of goods under lien while in stoppage-in-transit seller should have **parted the possession with a carrier** & buyer has not acquired the possession.
- (iii) Right of lien can be exercised **even when the buyer is not insolvent** but right of stoppage-in-transit can be exercised **only when the buyer is insolvent**.
- (iv) Right of stoppage-in-transit **begins** when the right of lien **ends**. Thus, the end of the right of lien is the starting point of the right of stoppage in transit.
- (v) Right of lien comes to an end as soon as the goods go out of the possession of the seller but the right of stopping in transit comes to an end as soon as the goods are delivered to the buyer.

3. Right of Re-sale [Sec. 54]:

The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) **Where the goods are of a perishable nature:** In such a case, the buyer need not be informed of the intention of resale.

(ii) **Where he gives notice to the buyer of his intention to re-sell the goods:** If after the receipt of such notice **the buyer fails to pay or tender the price within a reasonable time**, the seller may resell the goods.

When the goods are **resold after giving notice of resale**, the seller is also entitled to:

(a) **Recover the difference** between the contract price and resale price, from the original buyer, as damages.

(b) **Retain the profit** if the resale price is higher than the contract price.

Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

Note:

Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, **the subsequent buyer acquires the good title** thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iii) **A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale:**

Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale and he is entitled to recover damages from the original buyer.

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.

Rights of Unpaid Seller against the Buyer personally [Sec. 55-61]:

Rights of unpaid seller against the buyer are known as **seller's remedies for breach of contract of sale**. The rights of the seller against the buyer personally are called **rights in personam** and are **in addition to his rights against the goods**. They are as under:

1. **Suit for price [Sec. 55]:**
 - (a) **Where the property in the goods has passed to the buyer** and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods. (This is in case of sale)
 - (b) **Where the price is payable on a certain day irrespective of delivery** and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. (This is in case of agreement to sell)
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. As regards amount of damages, Section 73 of the Indian Contract Act, 1872 shall apply.
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 the 'rule of anticipatory breach of contract'.
4. **Suit for interest [Sec. 61]:** Where there is specific agreement between the seller and the buyer 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**. In the **absence of a contract**, the **Court may award interest** to the seller in a suit by him **at a rate it thinks fit** on the amount of the price from the date of the tender of goods or from the date on which the price was payable.

Remedies of Buyer against the Seller:

Breach of contract by seller: Breach of contract by seller, where he-

- ♦ Fails to deliver the goods at the time or in manner prescribed, or
- ♦ Repudiates the contract, or
- ♦ Deliver non-conforming goods and the buyer reject and revokes acceptance.

Rights of Buyer in case of breach of contract:

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

1. **Damages for non-delivery [Sec. 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.

Example: 'A' a shoe manufacturer, agreed to sell 100 pairs of shoes to 'B' at the rate of ₹ 10,500 per pair. 'A' knew that 'B' wanted the shoes for the purpose of further reselling them to 'C' at the rate of ₹ 11,000 per pair. On the due date of delivery, 'A' failed to deliver the shoes to 'B'. In consequence, 'B' could not perform his contract with 'C' for the supply of 100 pairs of shoes. In this case, 'B' can recover damages from 'A' at the rate of ₹ 500 per pair (the difference between the contract price and resale price).

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2. **Suit for Specific Performance [Sec. 58]:** Where the seller commits breach of contract of sale, the buyer can appeal to the court for specific performance. This remedy is allowed by the court subject to following conditions:

- (a) The contract must be for the sale of **specific and ascertained goods**.
- (b) The **damages would not be an adequate remedy**.
- (c) The goods are of **special nature or are unique**.
- (d) The power of court to order Specific Performance is **subject to provisions of Specific Relief Act, 1963**.

Example: 'A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

3. **Suit for breach of warranty [Sec. 59]:** Where there is breach of warranty by seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer cannot reject the goods 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.

4. **Repudiation of contract before due date [Sec. 60]:** Where the seller repudiates the contract before the date of delivery, the buyer may treat the contract –

- (a) as **subsisting and wait** till the date of delivery, or
- (b) as **rescinded and sue** for damages for the breach.

5. **Suit for interest and special damages:**

- (a) Buyer can recover the money paid **where the consideration for the payment of it has failed** (i.e. goods have not been delivered to him)
- (b) The buyer **can claim interest when he has the right to recover the price**.
- (c) Interest shall be calculated **from the date on which the payment** was made.
- (d) In the absence of a contract to the contrary, the **court may award interest at such rate as it thinks fit** on the amount of the price to the buyer.

Auction Sale [Sec. 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** of the seller. He may, however, sell his own property as the principal and need not disclose the fact that he is so selling.

Legal Rules of Auction Sale: Section 64 provides the following rules to regulate the Auction Sale:

- (a) **Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
- (b) **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. Until such announcement is made, any bidder may retract from his bid.

- (c) **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.
- (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, it shall not be lawful for the seller
- ◆ to bid himself or
 - ◆ to employ any person to bid at such sale, or
 - ◆ for the auctioneer knowingly to take any bid from the seller or any such person;
- and any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) **Reserved price:** The sale may be notified to be subject to a reserve or upset price; and
- (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.

Example: P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and subsale are valid in favour of Q and R respectively.

Inclusion of Increased or Decreased Taxes in Contract of Sale [Sec. 64A] /Treatment of Tax Revision:

Unless a different intention appears from the contract, **any imposition, increase, decrease or remission of tax** in respect of the goods (customs or GST on goods; tax on the sale or purchase of goods) **after the contract of sale has been made** but before it has been performed, shall be dealt with as under:

Treatment of Tax Differences

