

CONTRACT OF SALE

DEFINITIONS:

- ♠ **BUYER AND SELLER:** Buyer means a person who buys or agrees to buy goods. Seller means a person who sells or agrees to sell goods.
- ♠ **GOODS AND OTHER RELATED TERMS:**
 - "GOODS"[section 2(7)]** 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 served before sale or under the contract of sale.
 - "ACTIONABLE CLAIMS"** are claims, which can be enforced only by an action or suit. E.g. debt.
- ♣ **EXISTING GOODS** are such goods as are in *existence at the time of the contract of sale*. The existing goods may be of following kinds:
 - **SPECIFIC GOODS** means goods *identified and agreed upon at the time a contract* of sale is made.
 - **ASCERTAINED GOODS** are those goods *which are identified in accordance with the agreement after the contract of sale* is made.
 - **UNASCERTAINED GOODS** are the *goods not specifically identified or ascertained* at the time of making of the contract.
- ♣ **FUTURE GOODS** means goods to be *manufactured or produced or acquired by the seller after making the contract* of sale.
- ♣ **CONTINGENT GOODS** the *acquisition of which by the seller depends upon an uncertain contingency (uncertain event)*. The property does not pass to the buyer at the time of making the contract.
- ♠ **DELIVERY – ITS FORMS AND DERIVATIVES:** delivery means *voluntary transfer of possession* from one person to another.
FORMS OF DELIVERY:
 - (i) **ACTUAL DELIVERY:** When the goods are *physically delivered* to the buyer.
 - (ii) **CONSTRUCTIVE DELIVERY:** When it is *effected without any change in the custody or actual possession of the thing* as in the case of delivery by attornment (*acknowledgement*).
 - (iii) **SYMBOLIC DELIVERY:** *Delivery of goods in the course of transit* may be made by handing over document of title to goods, like bill of lading.

Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them.

- ♠ **DOCUMENT OF TITLE TO GOODS:** Including bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business.
- ♠ **MERCANTILE AGENT:** An agent having authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.
- ♠ **PROPERTY:** Property here means '**OWNERSHIP**' or general property.
- ♠ **INSOLVENT:** When he ceases to pay his debt or cannot pay his debt as they become due.

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- ♠ **PRICE:** The money consideration for a sale of goods.
- ♠ **QUALITY OF GOODS:** State or condition.

SALE AND AGREEMENT TO SALE

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

AGREEMENT TO SALE: The ownership of the goods is not transferred immediately. It is intending to *transfer at a future date upon the completion of certain conditions thereon*.

WHEN AGREEMENT TO SELL BECOMES SALE: An agreement to sell becomes a sale *when the time elapses or the conditions are fulfilled* subject to which the property in the goods is to be transferred.

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

- ♥ There must be at *least two parties*, the seller and the buyer.
- ♥ The subject matter of the contract must necessarily be *goods* covering only movable property.
- ♥ *A price in money (not in kind) should be paid or promised*. Can be partly cash and kind.
- ♥ A *transfer of property* in goods from seller to the buyer must take place.
- ♥ A contract of sale may be *absolute or conditional*.
- ♥ All the *essential elements of a valid contract must be present* in the contract of sale.

DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

BASIS	SALE	AGREEMENT TO SELL
TRANSFER OF PROPERTY	<i>Immediately</i>	<i>Future date or fulfilment of some condition.</i>
NATURE OF CONTRACT	It is an <i>executed contract</i> .	It is an <i>executory contract</i> .
REMEDIES FOR BREACH	The <i>seller can sue the buyer for the price</i> of the goods because of the passing of the property therein to the buyer.	The aggrieved <i>party can sue for damages only and not for the price</i> , unless the price was payable at a stated date.
LIABILITIES OF PARTIES	Liability of <i>buyer</i>	Liability of <i>seller</i>
BURDEN OF RISK	Of <i>buyer</i>	Of <i>seller</i>
NATURE OF RIGHTS	Creates Jus in rem	Creates Jus in personam
RIGHTS OF RESALE	The seller <i>cannot resell</i> the goods	The seller <i>may sell the goods</i> since ownership is with the seller.

DISTINCTION BETWEEN SALE AND HIRE PURCHASE

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

- ♦ *Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and*

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- ♦ *The property in the goods is to pass to such person on the payment of the last of such installments, and*
- ♦ *Such person has a right to terminate the agreement at any time before the property so passes.*

BASIS	SALE	HIRE- PURCHASE
TIME OF PASSING PROPERTY	<i>Immediately</i>	Upon the payment of <i>last instalment</i>
POSITION OF THE PARTY	<i>Buyer as a owner</i>	<i>The position of the hirer is that of a bailee</i> till he pays the last installment.
TERMINATION OF CONTRACT	<i>The buyer cannot terminate the contract</i> and is bound to pay the price of the goods	<i>The hirer may, if he so likes, terminate the contract by returning the goods to its owner</i> without any liability to pay the remaining installments.
BURDEN OF RISK OF INSOLVENCY OF THE BUYER	The <i>seller takes the risk of any loss</i> resulting from the insolvency of the buyer	<i>The owner takes no such risk</i> , for if the hirer fails to pay an installment, the owner has right to take back the goods.
TRANSFER TO TITLE	<i>The buyer can pass a good title to a bona fide</i> purchaser from him.	<i>The hirer cannot pass</i> any title even to a bona fide purchaser.
RESALE	The buyer in sale <i>can resell the goods</i>	The <i>hire purchaser cannot resell</i> unless he has paid all the installments.

DISTINCTION BETWEEN SALE AND BAILMENT

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

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

SALE AND CONTRACT FOR WORK AND LABOUR: A contract of sale of goods is one in which some goods are sold or are to be sold for a price. **But where no goods are sold, and there is only the doing or rendering of some work of labour**, then the contract is only of work and labour and not of sale of goods.

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CONTRACT OF SALE HOW MADE:

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

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

SUBJECT MATTER OF CONTRACT OF SALE

GOODS PERISHING BEFORE MAKING CONTRACT OF CONTRACT: When there is a contract for the **sale of specific goods, the contract is void** if the goods without knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

GOODS PERISHING BEFORE SALE BUT AFTER AGREEMENT TO SALE: Where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the **agreement before the risk to the buyer, the agreement is thereby avoided**.

ASCERTAINMENT OF PRICE

Price means the monetary consideration for the sale of goods. The price in the contract of sale may be-

- ♥ **Fixed by the contract or**
- ♥ **Agreed to be fixed in a manner provided by the contract e.g. valuer or**
- ♥ **Determined by the course of dealing between the contracts.**

AGREEMENT TO SELL AT VALUATION

DETERMINATION OF PRICE BY A THIRD PARTY

When 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**. In case the third party is prevented by the default of either party from fixing the price, **the party at fault will be liable to the damages to the other party who is not at fault**. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.

CONDITIONS & WARRANTIES

STIPULATION: At the time of selling the goods, a seller usually makes **certain statements or representations** with a view to induce the intending buyer to purchase the goods. A representations which forms a part of the contract of sale and affects the contract, is called a stipulation.

CONDITION: “A condition is a **stipulation essential to the main purpose** of the contract, the breach of which gives rise to a right to treat the contract as repudiated”.

WARRANTY: “A warranty is a **stipulation collateral to the main purpose of the contract**, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated”.

DIFFERENCE BETWEEN CONDITIONS AND WARRANTIES:

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

WHEN CONDITION TO BE TREATED AS WARRANTY

As a result buyer loses his right to rescind the contract and claim for damages only.

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

- ♣ *When the buyer altogether waives the performance of the condition.*
- ♣ *Where the buyer elects to treat the breach of the conditions, as one of a warranty.*
- ♣ *Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof.*
- ♣ *Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.*

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

EXPRESS CONDITIONS are those, which are agreed upon between the parties at the time of contract and are expressly provided in contract.

IMPLIED CONDITIONS are those, which are presumed by law to be present in the contract.

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

- ♣ **CONDITION AS TO TITLE:** The condition implied is that the **seller has the right to sell the goods** at the time when the property is to pass. If the seller's title turns out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.
- ♣ **SALE BY DESCRIPTION:** Where there is a contract of sale of goods by description, there is an implied condition that **the goods shall correspond with the description**.
- ♣ **SALE BY SAMPLE:** In a contract of sale by sample, there is an implied condition that
 - a) The **bulk shall correspond with the sample in quality**;

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b) The buyer shall have a **reasonable opportunity of comparing the bulk with the sample**.

- ♣ **SALE BY SAMPLE AS WELL AS BY DESCRIPTION**: Where the goods are sold by sample as well as by description the implied condition is that the **bulk of the goods supplied shall correspond both with the sample and the description**.
- ♣ **CONDITION AS TO QUALITY OR FITNESS**: Ordinarily, **there is no implied conditions as to the quality or fitness of the goods sold for any particular purpose**.
- ♣ **CONDITION AS TO MERCHANTABILITY**: Where goods are brought 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**.
- ♣ **CONDITION AS TO WHOLESOMENESS**: In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another **implied condition that the goods shall be wholesome**.

IMPLIED WARRANTY

It is the stipulation which has not been included in the contract of sale in express words. But the **law presumes that the parties have incorporated in into their contract**.

The following implied warranties:

- ♥ **WARRANTY AS TO UNDISTURBED POSSESSION**: That the buyer shall have and enjoy quiet possession of the goods.
- ♥ **WARRANTY AS TO NON-EXISTENCE OF ENCUMBRANCES**: Goods shall be free from any charge or encumbrances in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- ♥ **WARRANTY AS TO QUALITY OR FITNESS BY USAGE OF TRADE**: Seller is under no duty to reveal unflattering truths about the goods sold.
- ♥ **DISCLOSURE OF DANGEROUS NATURE OF GOODS**:

CAVEAT EMPTOR

means 'let the buyer beware'. 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.

EXCEPTIONS:

- ♦ **FITNESS AS TO QUALITY OR USE**: When the **buyer makes known to the seller** the particular purpose for which the goods are required, so as to show that **he relies on the seller's skill or judgement and the goods are of description** which is in the course of seller's business to apply.
- ♦ **GOODS PURCHASED UNDER PATENT OR BRAND NAME**.
- ♦ **GOODS SOLD BY DESCRIPTION**
- ♦ **GOODS OF MERCHANTABILITY**
- ♦ **SALE BY SAMPLE**
- ♦ **GOODS BY SAMPLE AS WELL AS DESCRIPTION**
- ♦ **TRADE USAGE**: An **implies 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.
- ♦ **SELLER ACTIVELY CONCEALS A DEFECT OR IS GUILTY OF FRAUD**: **When the seller sells the goods by making 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 allowed discovered by the buyer on a reasonable examination, then the rule of caveat emptor will not apply.

TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

PASSING OF PROPERTY: Passing of property means passing of ownership.

- ❖ **PROPERTY (SPECIFIC OR ASCERTAINED GOODS) PASSES WHEN INTENDED TO PASS:** Where there is a contract for 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 to be transfer.

STAGES OF GOODS WHILE PASSING OF PROPERTY:

- **SPECIFIC GOODS IN A DELIVERABLE STATE:** The property in the goods passes to the buyer **when the contract is made**, immaterial of payment.
- **SPECIFIC GOODS TO BE PUT INTO A DELIVERABLE STATE:** Where seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until **such thing is done and the buyer has notice thereof**.
- **SPECIFIC GOODS IN A DELIVERABLE STATE, WHEN THE SELLER HAS TO DO ANTHING THERETO IN ORDER TO ASCERTAIN PRICE:** The seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until **such thing is done and the buyer has notice thereof**.
- ❖ **GOODS MUST BE ASCERTAINED:** Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, **unless and until the goods are ascertained**.
- **SALE OF UNASCERTAINED GOODS BY DESCRIPTION:** Where there is a contract for the sale of unascertained or future goods by description and **goods of that description and in a deliverable state are unconditionally appropriated to the contract**, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.
- **DELIVERY TO THE CARRIER:** **Where the seller delivers the goods to the buyer or to a carrier or other bailee** (whether named by the buyer or not) for the purpose of transmission to the buyer, **and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract**.
- ❖ **GOODS SENT ON APPROVAL OR "ON SALE OR RETURN":** The property therein passes to the buyer-
 - ♣ **When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;**
 - ♣ **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 the return of goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or**
 - ♣ **He does something to the goods which is equivalent to accepting the goods e.g. he pledges or sells the goods.**
- ♣ **SALE FOR CASH ONLY OR RETURN:** Where the goods have been delivered on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with. i.e. cash is paid for.

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- ♣ **RESERVATION OF RIGHT OF DISPOSAL**: The right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer. Seller may reserve the rights until certain conditions have been fulfilled. Even if the goods are transferred property would not be transferred.

CIRCUMSTANCES UNDER WHICH THE RIGHT TO DISPOSAL MAY BE RESERVED:

- ♥ *If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller will be prima facie deemed to have reserved to the right of disposal.*
- ♥ *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 (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill.*

And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

RISK PRIMA FACIE PASSES WITH PROPERTY

"Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".

The aforesaid rule is, however, subject to two qualifications:

- ♦ *If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.*
- ♦ *The duties and liabilities of the seller or the buyer as a bailee of goods for the other party remain unaffected even when the risk has passed generally.*

TRANSFER TO TITLE

SALE BY PERSON NOT THE OWNER: The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title 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 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.*

EXCEPTIONS:

- ♣ **SALE BY A MERCANTILE AGENT**: A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
 - a) *If he was in possession of the goods or documents with the consent of the owner;*
 - b) *If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and*
 - c) *If the buyer has 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*
- ♣ **SALE BY ONE OF THE JOINT OWNERS**: The property in the goods is transferred to any person who buys them of such joint owner in ***good faith*** and ***has not at the time of the contract of sale notice that seller has no authority to sell.***

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- ♣ **SALE BY A PERSON IN POSSESSION UNDER VOIDABLE CONTRACT:** 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.
- ♣ **SALE BY ONE WHO HAS ALREADY SOLD THE GOODS BUT CONTINUES IN POSSESSION THEREOF:** The goods are sold to the third person, and such person obtains the delivery thereof in *good faith and without notice of the previous sale*, he would have good title to them.
- ♣ **SALE BY OWNER OBTAINING POSSESSION BEFORE THE PROPERTY IN THE GOODS HAS VESTED IN HIM:** Buyer with the consent of the seller sells, *pledge or otherwise dispose of the goods to a third person and* third person obtains the delivery of the goods *in good faith and without notice of the lien* or other right of the original seller in respect of the goods, he would get a good title to them.
- ♣ **EFFECT OF ESTOPPEL:** Where the *owner is stopped by the conduct from denying the seller's authority to sell*, the transferee will get a good title as against the true owner.
- ♣ **SALE BY AN UNPAID SELLER:** Where an unpaid seller who has 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.
- ♣ **SALE UNDER THE PROVISION OF OTHER ACTS:** Sale by official receiver or liquidator, purchase of goods from finder of goods, sale by pawnee can convey a good title to the buyer.

PERFORMANCE OF THE CONTRACT OF SALE

DEFINATION OF DELIVERY: voluntary transfer of possession from one person to another

DUTIES OF SELLER AND BUYER: it is the duty of the *seller to deliver the goods and of the buyer to accept and pay for them*.

PAYMENT AND DELIVERY ARE CONCURRENT CONDITIONS: *unless otherwise agreed*, both things to be done at the same time.

RULES REGARDING DELIVERY OF GOODS:

- ♣ **DELIVERY:** Putting the goods in possession of buyer.
- ♣ **EFFECT OF PART DELIVERY:** A delivery of part of the goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as delivery of the whole.
- ♣ **BUYER TO APPLY FOR DELIVERY:** Apart from any express *contract seller is not bound to deliver them until the buyer applies*.
- ♣ **PLACE OF DELIVERY:** *Firstly as specified in the contract, 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 not then in existence, at the place at which they are manufactured or produced.
- ♣ **TIME OF DELIVERY:** If no time fixed then at *reasonable time*.
- ♣ **GOOD IN POSSESSION OF A THIRD PARTY:** There will be no delivery unless and until such third person acknowledge to the buyer that he holds the goods on his behalf.
- ♣ **TIME FOR TENDER OF DELIVERY:** Should be at *reasonable hour*.
- ♣ **EXPENSES OF DELIVERY:** *Borne by the seller* unless contrary to the contract.

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- ♣ **DELIVERY OF WRONG QUANTITY:** *If less quantity*, buyer may reject them or if buyer accepts the goods he shall pay for them. *More quantity*, buyer may accept as contracted and reject extra, he may reject the whole, accept the whole and pay for whole. *Mix goods*, buyer may accept which are in accordance of contract and reject balance, reject the whole goods.
- ♣ **INSTALLMENT DELIVERIES:** *Unless otherwise agreed*, buyer is not bound to accept the delivery in instalments.
- ♣ **DELIVERY TO CARRIER:** *Is prima facie deemed to be delivered to buyer* unless otherwise agreed in contract.
- ♣ **DETERIORATION DURING TRANSIT:** *Liability will fall on buyer.*
- ♣ **BUYER'S RIGHT TO EXAMINE THE GOODS:** *Buyer is entitled to reasonable examine the goods* as specified in contract. *Unless otherwise agreed* in the contract.

RULES RELATED TO ACCEPTANCE OF DELIVERY OF GOODS

Acceptance is deemed to take place when the buyer:

- ♥ *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: *Unless otherwise agreed*, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, 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.

LIABILITIES OF BUYER FOR NEGLECTING OR REFUSING DELIVERY OF GOODS: *Buyer will be liable to 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.

UNPAID SELLER

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.**
- ♣ **When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by the reason of the dishonour of the instrument or otherwise.**

RIGHT OF UNPAID SELLER:

Subject to the provisions of this act and of any law for the time being in force, notwithstanding that the property in the goods may have been passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

- ♣ **A lien on the goods for the price while he is in possession of them;**
- ♣ **In case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;**
- ♣ **A right of resale as limited by this act.**

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

The unpaid seller has the right against the goods as well as buyer:

♥ RIGHT OF AN UNPAID SELLER AGAINST THE GOODS:

- i) **SELLER'S LIEN:** An unpaid seller has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods.

The lien can be exercised as long as the seller remains in possession of the goods.

Exercise of right of lien: In the following cases only:

- Where goods have been sold without any stipulation of credit; (i.e. on cash sale)
- Where goods have been sold on credit but the terms of credit has expired; or
- Where the buyer becomes insolvent.

TERMINATION OF LIEN:

- When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- Where the buyer or his agent lawfully obtains possession of the goods.
- Where seller has waived the right of lien.
- By estoppels i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

EXCEPTION: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

♥ RIGHT OF STOPPAGE IN TRANSIT: Can be exercised if following conditions are fulfilled:

- The seller must be unpaid.
- He must have parted with the possession of goods.
- The goods are in transit.
- The buyer has become insolvent.
- The right is subject to provisions of this act.

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DURATION 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 in that behalf takes delivery of them from such carrier or other bailee.

When does the transit comes to an end?

In the following cases:

- ◆ When the **buyer or other bailee obtains delivery**.
- ◆ Buyer **obtains delivery before the arrival of goods at destination**.
- ◆ Where **the carrier or bailee acknowledge to the buyer or his agent that he holds the goods** as soon as the goods are loaded on the ship, unless the seller has reserved the rights of disposal of the goods.
- ◆ If the **carrier wrongfully refuses to deliver the goods to the buyer**.
- ◆ Where **goods are delivered to the carrier hired by the buyer**, the transit comes to an end.
- ◆ Where the **part delivery of the goods has been made to the buyer**, **there the transit will come to an end** for the remaining goods which are yet in the course of transmission.
- ◆ Where the **goods are delivered to a ship chartered by the buyer**, the transit comes to an end.

EFFECT OF SUB-SALE OR PLEDGE BY BUYER: *The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.* The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub buyer in good faith and for consideration.

EXCEPTIONS:

- ♣ When the **seller has assented to the sale, mortgage or other disposition of the goods made by the buyer**.
- ♣ When a **document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for price**, then, the proviso stipulates as follows:
 - If the last mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or
 - If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only be exercised, subject to the rights of the pledge.

EFFECT OF STOPPAGE: The contract is not rescinded when the seller exercises his right of stoppage in transit. ***The contract still remains in force and the buyer can ask for delivery of goods on payment of price.***

♥ **RIGHT OF RE-SALE:** *The right of resale is very valuable right given to an unpaid seller.* In the absence of this right, the unpaid seller's other rights against the goods that is lien and the stoppage in transit would not have been of much use because these rights only entitled the unpaid seller to retain the goods until paid by the buyer.

The unpaid seller can exercise the right to resell the goods under the following conditions:

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

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It may be noted that in such cases, on the resale of the goods, 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.

It may be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer.

- ♠ *Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods:* The subsequent buyer acquires the good titles.
- ♠ *A re sale by the seller where a right of resale is expressly reserved in a contract of sale:* In such a case seller is not required to give notice of resale. Can recover damages from 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".*

RIGHT OF UNPAID SELLER AGAINST THE BUYER

♥ SUIT FOR PRICE:

- Where under a contract of sale *the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods* according to the terms of the contract, the seller may sue him for the price of the goods.
- Where under *a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price*, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

♥ SUIT FOR DAMAGES FOR NON ACCEPTANCE: Where the *buyer wrongfully neglects or refuses to accept* and pay for the goods.

♥ REPUDIATION OF CONTRACT BEFORE DUE DATE: If the buyer does this then the seller may treat the *contract as rescinded and sue damages for the breach*.

♥ SUIT FOR INTEREST: *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.

REMEDIES OF BUYER AGAINST THE SELLER

- ♦ *DAMAGES FOR NON-DELIVERY:* Where the *seller wrongfully neglects or refuses to deliver the goods* to the buyer may sue the seller for damages for non-delivery.
- ♦ *SUIT FOR SPECIFIC PERFORMANCE:* *Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance.* The court can order for specific performance only when the goods are ascertained or specific.
- ♦ *SUIT FOR BREACH OF WARRANTY:* *Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty*, the buyer is not entitled to reject the goods only on the bases of such breach of warranty.

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- ♦ **REPUDIATION OF CONTRACT BEFORE DUE DATE:** Where either party to a contract of sale repudiates the contract before the date of delivery, ***the other may either treat the contract as subsisting and wait the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.***
- ♦ **SUIT FOR INTEREST:**
 - ***Nothing in this act shall affect the right of the seller or the buyer to recover interest or special damages,*** in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.
 - ***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*** in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.

AUCTION SALE

An 'auction sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.

RULE OF AUCTION SALE:

- ♣ **WHERE GOODS ARE SOLD IN LOTS:** Each lot is *prima facie* deemed to be subject of a separate contract of sale.
- ♣ **COMPLETION OF THE CONTRACT OF SALE:** The sale is complete when the auctioneer announces its ***completion by the fall of hammer or in any other customary manner*** and until such announcement is made, nay bidder may retract from his bid.
- ♣ **RIGHT TO BID MAY BE RESERVED:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, ***but not otherwise, the seller or any one person on his behalf may bid at the auction.***
- ♣ **WHERE THE SALE IS NOT NOTIFIED BY THE SELLER:** It shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such other person and any sale contravening this rule may be treated as fraudulent by the buyer.
- ♣ **RESERVED PRICE.** *Upset price.*
- ♣ **PRETENDED BIDDING:** If the ***seller does it to raise the price,*** the sale is voidable at the option of the buyer.

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE

- ♠ *Where after a contract has been made but before it has been performed, tax revision takes place.*
- ♠ *Where tax is being imposed, increased, decreased or remitted in respect of any goods without any stipulations to the payment of tax, the parties would become entitled to read just the price of the goods accordingly.*
- ♠ ***The buyer would have to pay the increased price where the taxes increases and may derive the benefits of reduction if taxes are curtailed.***
- ♠ ***Thus, seller may add the increased taxes in the price. However this can be excluded by an agreement.***