

Ch. 3:

Unit 1 The sale of Goods Act 1930

INTRODUCTION

- Sale of goods is one of the specific forms of contracts recognized and regulated by law in India. Sale is a typical bargain between the buyer and the seller.
- The Sale of Goods Act, 1930 allows the parties to modify the provisions of the law by express stipulations. However, in some places this freedom is severely restricted.
- Sale of Goods Act, 1930 is the Act to define and amend the law relating to the sale of goods. It extends to the whole of India ~~except the State of Jammu and Kashmir~~.
- It came into force on 1st July, 1930.

1) DEFINITIONS

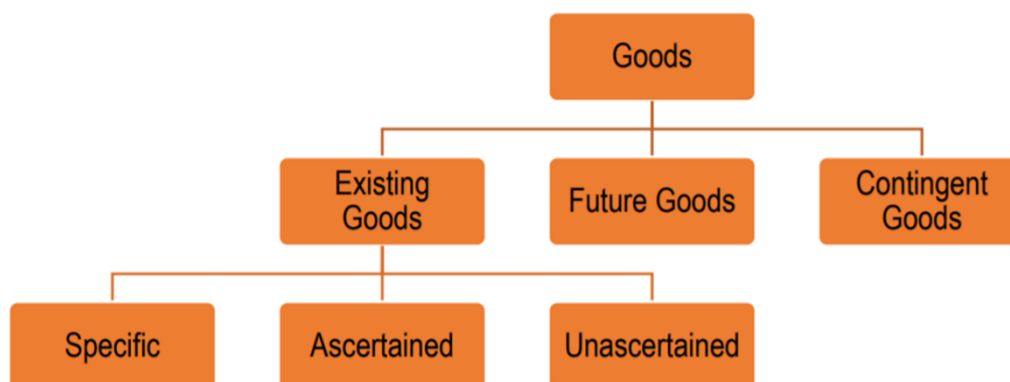
- a. Buyer and Seller: 'Buyer' means a person who buys or agrees to buy goods
'Seller' means a person who sells or agrees to sell goods.
- b. Goods and other related terms: "Goods" means every kind of **movable property other than** actionable claims and money; and **includes** stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7)]

This is a wider definition than contained in the English law, which does not consider 'stock' and 'shares' as goods, though it includes a ship.

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the fixed Deposit Receipts (FDR) are considered as goods



Classification of Goods



- EXISTING GOODS are such goods as **are in existence** at the time of the contract of sale, i.e., those **owned or possessed** by the seller at the time of contract of sale (Section 6).
 - ✓ **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**.

When from 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.
 - ✓ **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.



- **FUTURE GOODS** means goods to be manufactured or produced or acquired by the seller **after making the contract of sale**.
A contract for the sale of future goods is always an **agreement to sell**. It is never actual sale because a man cannot transfer what is not in existence.
- **CONTINGENT GOODS**: The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods'.
Contingent goods also operate as 'an agreement to sell' and not a 'sale'.
- c. **Delivery - its forms and derivatives**: Delivery means **voluntary transfer of possession** from one person to another.
As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Forms of delivery

- ✓ **Actual delivery**: When the goods are physically delivered to the buyer.
- ✓ **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, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.
- ✓ **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) e.g.,

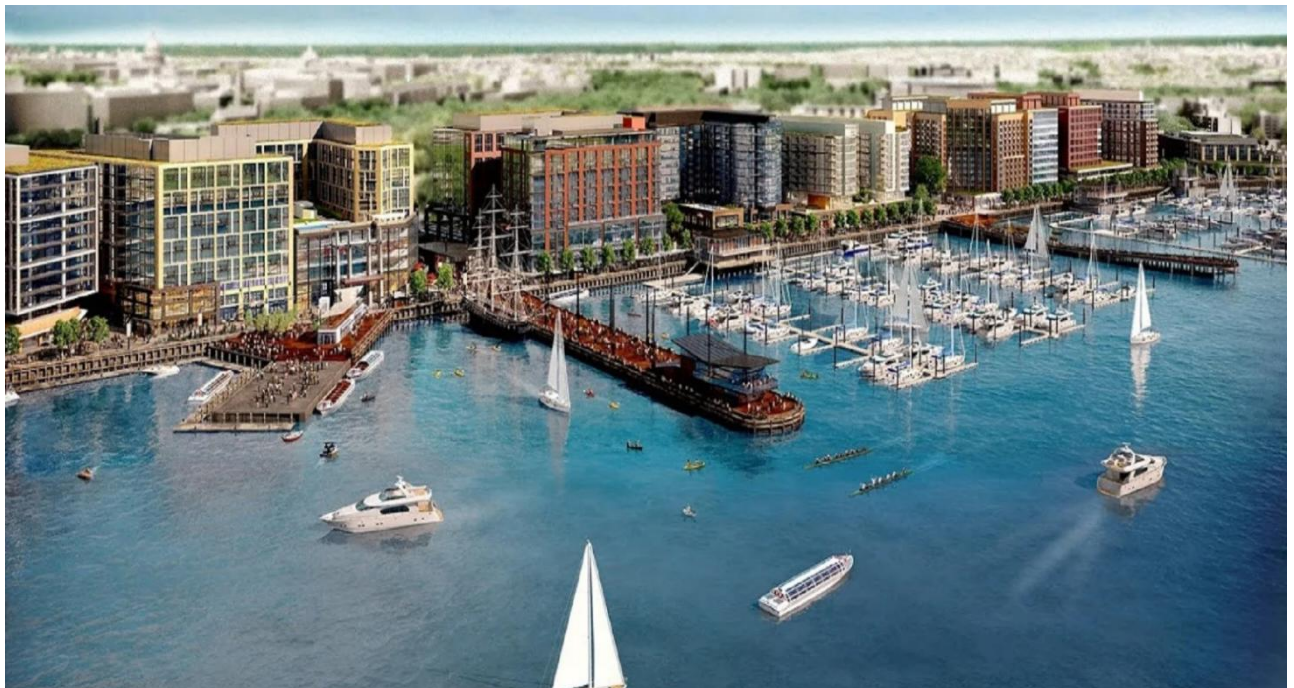
where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

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.

For example, when A contracts to sell timber and make bundles thereof, the goods will be in a deliverable state after A has put the goods in such a condition.

- d. "Document of title to goods" **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 authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

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 share 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.



- e. **Mercantile Agent** [Section 2(9)]: It means an agent having in the customary course of business as such agent authority either to **sell** goods or to **consign** goods for the purpose of sale or to **buy** goods or to raise money on the security of the goods.

- f. **Property** [Section 2(11)]: 'Property' here means 'ownership' or **general** property. In every contract of sale, the **ownership of goods must be transferred** by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer.

It means the **general property** (right of owner-ship-in-goods) and not merely a special property. 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'. It is quite possible that the general property in a thing may be in one person and a special property in the same thing may be in another e.g., when an article is pledged.

The general property in a thing may be transferred, subject to the special property continuing to remain with another person i.e., the pledgee who has a right to retain the goods pledged till payment of the stipulated dues.

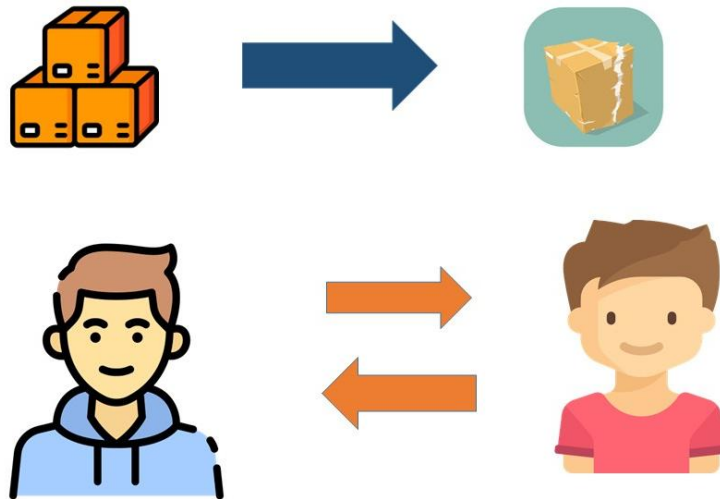
- g. **Insolvent** [Section 2(8)]: A person is said to be insolvent when he **ceases to pay his debts** in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.
- h. **Price** [Section 2(10)]: Price means the money consideration for a sale of goods
- i. **Quality** of goods includes their state or condition

2) SALE AND AGREEMENT TO SELL (SECTION 4)

According to section 4(1), "A contract of sale of goods is a contract whereby the seller transfers or agrees to **transfer the property** in goods to the buyer for a price".

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, the contract is called an agreement to sell.

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 under the Sale of Goods Act, 1930:

- (i) There must be at least **two parties**, the seller and the buyer.
- (ii) The **subject matter** of the contract must necessarily be **goods** covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
- (iii) A **price in money** (not in kind) should be paid or promised. But there is nothing to prevent the consideration from being partly in money and partly in kind.
- (iv) A **transfer of property** in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
- (v) A contract of sale may be **absolute or conditional**.
- (vi) All **other essential elements** of a valid contract must be present in the contract of sale, e.g. competency of parties, legality of object and consideration etc.

DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

Basis difference	of	Sale	Agreement to sell
Transfer property	of	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.
Nature contract	of	It is an executed contract, i.e. contract for which consideration has been paid.	It is an executory contract, i.e. contract for which consideration is to be paid at a future date.
Remedies breach	for	The seller can sue the buyer for the price of the goods because of the passing of the property therein to the buyer.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
Liability parties	of	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk		Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights		Creates Jus in rem	Creates Jus in personam
Right of resale		The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

3) SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS**a. Sale and Hire Purchase:**

Term "hire-purchase agreement" 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—

- (a) 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
- (b) The property in the goods is to pass to such person on the payment of the last of such instalments,
- (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:

- c. **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.

Example: Where gold is supplied to a goldsmith for preparing an ornament or when an artist is asked to paint a picture.

4) SUBJECT MATTER OF CONTRACT OF SALE

Existing or future goods (section 6):

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods or contingent goods

2) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an **agreement to sell the goods**.

Goods perishing before making of contract (Section 7): Where there is a contract for the sale of specific goods, the contract is **void** if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

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

Goods perishing before sale but after agreement to sell (Section 8): 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 passes to the buyer, the agreement is thereby **avoided**.

5) ASCERTAINMENT OF PRICE (SECTION 9 & 10)

'Price' means the monetary consideration for sale of goods [Section 2 (10)].

By virtue of Section 9, 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., by a valuer or
- determined by the **course of dealings** between the parties.

6) Agreement to sell at valuation (Section 10):

1. Where there is an agreement to sell goods on the terms that the price is to be fixed by the **valuation of third party** and such third party cannot or does not make such valuation, the agreement is thereby **avoided**.
Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.
2. Where such **third party is prevented** from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a **suit for damages** against the party in default.

Unit 2 - SOGA

1) STIPULATION AS TO TIME (SECTION 11)

- Unless a different intention appears from the terms of the contract, stipulations as to time of **payment** are **not** deemed to be of the essence of a contract of sale.
- Whether any other stipulation as to time is of the essence of the contract or not depends on the **terms of the contract**.
- Stipulations as to time of **delivery** are usually the **essence** of the contract.

2) INTRODUCTION - CONDITIONS AND WARRANTIES

- 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. Such **representations** are generally about the **nature and quality of goods**, and about their fitness for buyer's purpose.
- When these statements or representations do not form a part of the contract of sale, they are not relevant and have no legal effects on the contract. But when these form part of the contract of sale and the **buyer relies** upon them, they are relevant and have **legal effects** on the contract & are known as stipulations



Condition and warranty (Section 12):

- "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**".
- "A **warranty** is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for **damages** but not to a right to reject the goods and treat the contract as repudiated".
- 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 - Ram consults Shyam, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Shyam suggests 'Maruti' and Ram accordingly buys it from Shyam. The car turns out to be unfit for touring purposes. Here the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car.

Ram is therefore entitled to reject the car and have refund of the price.

Let us assume Ram buys a new Maruti car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and in the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired.

After six months Ram finds that the horn of the car is not working, here in this case he cannot terminate the contract. The manufacturer can either get it repaired or replaced it with a new horn. Ram gets a right to claim for damages, if any, suffered by him but not the right of repudiation.

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 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.

3) WHEN CONDITION TO BE TREATED AS WARRANTY (SECTION 13)

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

1. Where the buyer altogether **waives the performance** of the condition. A party may for his own benefit, waive a stipulation.
2. Where the buyer **elects to treat** the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract.
3. Where the contract is **non-severable** and the buyer has **accepted** either the whole goods or any part thereof.
4. Where the fulfillment of any condition or warranty is **excused by law** by reason of impossibility or otherwise.

4) **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES**

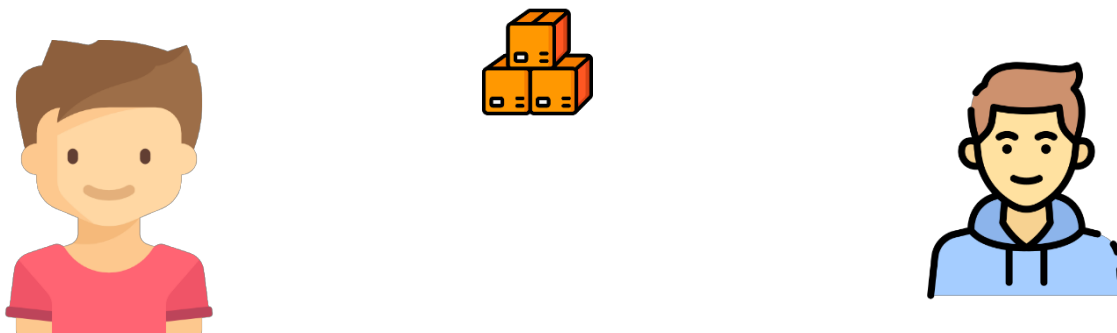
Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

The 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.

Implied Conditions:

- a. **Condition as to title** [Section 14(a)]. In every contract of sale, unless there is an agreement to the contrary, the first implied condition on the part of the seller is that
 - (a) in case of a sale, he has a **right to sell** the goods, and
 - (b) in the case of an agreement to sell, he **will have 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 from the seller.



If the seller has no title and the buyer has to make the goods over to the true owner, he will be entitled to a refund of the price.

Example 1: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded 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.

Example 2: If A sells to B tins of condensed milk labelled 'C.D.F. brand', and this has proved to be an infringement of N Company's trademark, 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.

b. Sale by description [Section 15]:

- Where there is a contract of sale of goods by **description**, there is an implied condition that the goods shall **correspond** with the description.
- 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 goods.
- Thus, it has to be determined whether the buyer has undertaken to purchase the goods by their description, i.e., whether the description was essential for identifying the goods where the buyer had agreed to purchase.
- If that is required and the **goods tendered do not correspond with the description**, it would be breach of condition, entitling the buyer to **reject** the goods whether the buyer is able to inspect them or not.

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



c. **Sale by sample [Section 17]:**

In a contract of sale by sample, there is an implied condition that

- the bulk shall **correspond** with the sample in quality
- the buyer shall have a **reasonable opportunity of comparing** the bulk with the sample
- 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. But if the defects are latent, then the buyer can avoid the contract.



d. **Sale by sample as well as by description [Section 15]:**

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.

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.

- e. **Condition as to quality or fitness** - There is no implied condition as to the quality or fitness of the goods sold for any particular purpose.

However, the condition as to the reasonable fitness of goods for a particular purpose may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller to select the best goods and the seller has ordinarily been dealing in those goods.

This implied condition will not apply if the goods have been sold under a trademark or a patent name.

There is implied condition of the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the following conditions are fulfilled:

- The buyer should have made known to the seller the particular purpose for which goods are required.
- The buyer should rely on the skill and judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

f. Condition as to Merchantability [Section 16(2)]:

- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
- Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.
- The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition 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.

Example : 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 unmerchantable.

- g. **Condition as to wholesomeness:** In the 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.

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:

- **Warranty as to undisturbed possession** [Section 14(b)]: An implied warranty that the buyer shall have and enjoy **quiet possession** of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the **breach** of the warranty.
- **Warranty as to non-existence of encumbrances** [Section 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.
- **Warranty as to quality or fitness by usage of trade** [Section 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.

- **Disclosure of dangerous nature of goods:** Where the goods are dangerous in 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.

5) CAVEAT EMPTOR

'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. 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 his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible.

Exceptions :

1. **Fitness as to quality or use:** Where 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 judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
Case law - Priest vs. Last
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.
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 [Section 15]. If it is not so, then seller is responsible.
4. **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. This rule shall apply if the defects were such which ought to have not been revealed by ordinary examination.
5. **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.

6. **Goods by sample as well as 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.
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**.
8. **Seller actively conceals a defect or is guilty of fraud:** Where 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 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.

UNIT - 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

INTRODUCTION

Sale of goods involves transfer of ownership of property from seller to buyer. It is essential to determine the time at which the ownership passes from the seller to the buyer.

Importance of the time of transfer:

The general rule is that risk prima facie passes with the property. In case where goods are lost or damaged, the burden of loss will be borne by the person who is the owner at the time when the goods are lost or damaged. Where the goods are damaged by the act of the third party, it is the owner who can take action. Suit for price by the seller lies only when the property has passed to the buyer.

1) PASSING OF PROPERTY (SECTIONS 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 the seller's possession.

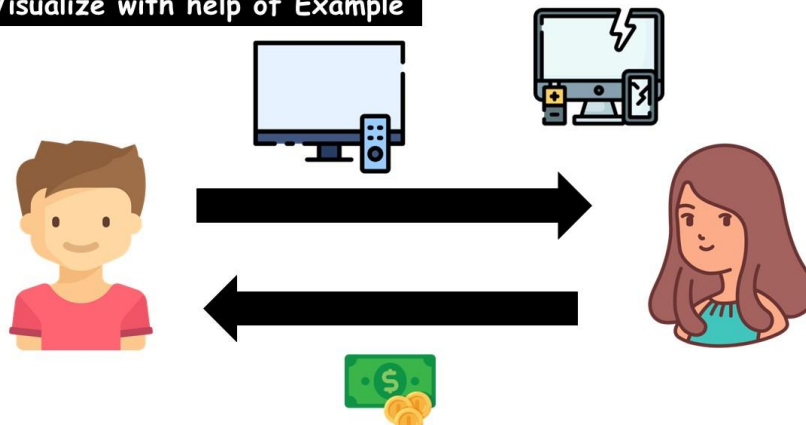
A. **Property (Specific or ascertained goods) passes when intended to pass (Section 19):**

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.

Unless a different intention appears, the rules contained in **sections 20 to 24** are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer :

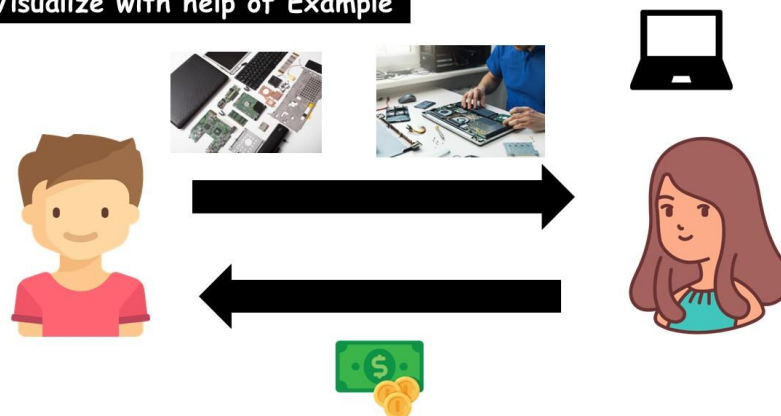
- **Specific goods in a deliverable state (Section 20):** Where there is an unconditional contract for the sale of specific goods in a **deliverable state**, the **property in the goods passes** to the buyer when the **contract is made**, and it is **immaterial** whether the time of **payment** of the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

Lets Visualize with help of Example



- **Specific goods to be put into a deliverable state (Section 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**.

Lets Visualize with help of Example



- **Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Section 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 some other act or thing 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.



B. 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. **[Section 18]**

The rules in respect of passing of property of unascertained goods are as follows:

- **Sale of unascertained goods by description [Section 23(1)]:** 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.

Such assent may be express or implied, and may be given either before or after the appropriation is made.

- **Delivery to the carrier [Section 23(2)]:** Where, in pursuance of the contract, 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.



C. Goods sent on approval or "on sale or return" (Section 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-

- 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 the 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 good which is **equivalent to accepting the goods** e.g. he pledges or sells the goods.

Example 1: 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.

Example 2: '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'.

Example 3: A sends to B a water motor on approval or return in March, 2016. B to return it after trial in August, 2016. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

Sale for cash only or Return

It may be noted that where the goods have been delivered by a person on "sale or return" 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**.

D. Reservation of right of disposal (Section 25)

- This section preserves the right of disposal of goods to secure that the price is paid before the property in goods passes to the buyer.
- Where there is contract of sale of specific goods or where the goods have been subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled.
- In such a case in spite 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 to the buyer till the condition imposed, if any, 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.

Circumstances under which the right to disposal may be reserved:

1. 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**, then the seller will be prima facie deemed to have reserved to 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 (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.

It should be noted that Section 25 deals with "conditional appropriation" as distinguished from 'unconditional appropriation' dealt with under Section 23 (2).

2) RISK PRIMA FACIE PASSES WITH PROPERTY (SECTIONS 26)

- 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:
- Provided that, where **delivery has been delayed through** the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as bailee of the goods of the other party.

Example: A bid for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer. The aforesaid rule is, however, subject to two qualifications:

(i) 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.

(ii) The duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

Example: A contracted to sell 100 bales of cotton to B to be delivered in February. B took delivery of the part of the cotton but made a default in accepting the remaining bales.

Consequently, the cotton becomes unfit for use. The loss will have to be borne by the buyer.

It should, however, be remembered that the general rule shall not affect the duties or liabilities of either seller or buyer as a bailee of goods for the other, even when the risk has passed.

As noted above, the risk (i.e., the liability to bear the loss in case property is destroyed, damaged or deteriorated) passes with ownership. The parties may, however, agree to the contrary. For instance, the parties may agree that risk will pass sometime after or before the property has passed from the seller to the buyer.

3) TRANSFER OF TITLE (SECTIONS 27 - 30)

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 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 1: 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.

Example 2: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

Exceptions :

1. **Sale by a Mercantile Agent (Sec 27) :** 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 :
 - If he was in **possession** of the goods or documents **with** the **consent** of the owner
 - If the sale was made by him in **ordinary course of business** as a mercantile agent; and
 - If the buyer had acted in good faith and had no notice of the fact that the seller had no authority to sell
2. **Sale by one of the joint owners (Section 28):** If one of several joint owners of goods has the **sole possession** of them by permission of the **co-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 the seller has no authority to sell.
3. **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

4. Sale by one who has already sold the goods but continues in possession thereof (S 30):

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 would 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: During ICL matches, 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.

5. Sale by buyer obtaining possession before the property in the goods has vested in him: (S 30 (2)) :

Where a buyer with the **consent of the seller** obtains possession of the goods before the property in them has passed to him, he may **sell, pledge or otherwise dispose** of the goods to a third person, and if such person obtains 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.

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

6. Effect of Estoppel: Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the **true owner had actively suffered** or held out the other person in question as the true owner or as a person authorized to sell the goods.**7. Sale by an unpaid seller:** 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 the provisions of other Acts:**

- Sale by an **Official Receiver** or Liquidator of the Company will give the purchaser a valid title.
- Purchase of goods from a **finder** of goods will get a valid title under circumstances
- A sale by **Pawnee** can convey a good title to the buyer

4) PERFORMANCE OF THE CONTRACT OF SALE (SECTIONS 31 - 44)

Definition of Delivery [section 2(2)]: Delivery means **voluntary transfer of possession** from one person to another.

Thus, if the possession is taken through unfair means, there is no delivery of the goods. Delivery of goods sold may be made by doing anything which the parties agree, shall be treated as delivery or putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Duties of seller and buyer (Section 31): It is the duty of the **seller to deliver** the goods and of the **buyer to accept and pay** for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions (Section 32): 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 the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rules Regarding Delivery of goods (Section 33-41)

1. **Delivery (Section 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 (Section 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.
3. **Buyer to apply for delivery (Section 35) :** Buyer has to apply for delivery of goods.
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. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the 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.
5. **Time of delivery {Sec 36(2)}:** Where under the contract of sale 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 [Section 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. Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
7. **Time for tender of delivery [Section 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 [Section 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 [Section 37]**:
 1. Where the seller delivers to the buyer a quality 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
 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. **Instalment deliveries (Section 38)** : Unless otherwise agreed, the buyer is not bound to accept delivery in instalments. The rights and liabilities in cases of delivery by instalments and payments thereon may be determined by the parties of contract.
11. **Delivery to carrier (Sec 39)**: 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. **Deterioration during transit (Sec 40)** : Where goods are delivered at a distant place, the liability for deterioration necessarily incidental to the course of transit will fall on the buyer, though the seller agrees to deliver at his own risk.

Example: P sold to Q a certain quantity of iron rods which was to be sent by proper vessel. It was rusted before it reached the buyer. The rust of the rod was so minimal and was not affecting the merchantable quality and the deterioration was not necessarily incidental to its transmission. It was held that Q was bound to accept the goods.

13. **Buyer's right to examine the goods:** 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. (Section 41)

5) Rule related to Acceptance of Delivery of Goods (Section 42):

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.

6) **Buyer not bound to return rejected goods (Section 43):** 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.

7) **Liability of buyer for neglecting or refusing delivery of goods (Section 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.

Provided further that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Unit 4 : UNPAID SELLER

1) Unpaid Seller

A contract comprises of reciprocal promises. In a contract of sale, if seller is under an obligation to deliver goods, buyer has to pay for it. In case buyer fails or refuses to pay, the seller, as an unpaid seller, shall have certain rights.

According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- a. The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- b. 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 reason of the dishonour of the instrument or otherwise.

The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price [Section 45(2)].

2) RIGHTS OF AN UNPAID SELLER

Unpaid seller's right (Section 46): 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 passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

1. a lien on the goods for the price while he is in possession of them
2. 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
3. a right of re-sale as limited by this Act. [Sub-section (1)]

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.

An unpaid seller has been expressly given the rights against the goods as well as the buyer personally which are discussed as under:

- I. **Rights of an unpaid seller against the goods:** The right of unpaid seller against goods can be categorized under two headings.

- a. **Seller's lien (Section 47):** The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-
- (a) where the goods have been sold **without** any stipulation as to **credit**;
 - (b) where the goods have been sold on credit, but the term of **credit** has **expired**;
 - (c) where the **buyer** becomes **insolvent**.

According to sub-section (2), the seller may exercise his right of lien notwithstanding that he is in **possession** of the goods as agent or bailee for the buyer

Part delivery (Section 48): Where an unpaid seller has made **part delivery** of the goods, he may **exercise** his right of lien on the **remainder**, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Section 49): According to sub-section (1), the unpaid seller of goods loses his lien thereon-

- (a) 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;
- (b) when the **buyer** or his agent lawfully obtains **possession** of the goods;
- (c) by **waiver** thereof.
- (d) By **Estoppel** i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

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

The unpaid seller of 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. [Sub-section (2)]

b. Right of stoppage in transit (Section 50 to 52):

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 the goods back, or not to deliver the goods to the buyer.

This right is the extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled: [Section 50]

- (a) The seller must be **unpaid**.
- (b) He must have **parted** with the **possession** of goods.
- (c) The goods are **in transit**.
- (d) The buyer has become **insolvent**.
- (e) The right is subject to provisions of the Act.

Example: B at Delhi, orders goods of A, at Mumbai. A consigns and forwards the goods to B. On arrival at Delhi, they are taken to B's warehouse and left there. B refuses to take these goods and stop payment. The goods are in transit and the unpaid seller can take them back.

Duration of transit: 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 in that behalf takes delivery of them from such carrier or other bailee.

When does the transit come to an end? (Sec 51)

Transit comes to an end in the following cases:

1. When the buyer or other bailee **obtains delivery**
2. **Buyer** obtains delivery **before** the arrival of goods at destination.
3. 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.
4. If the **carrier wrongfully refuses** to **deliver** the goods to the buyer.
5. Where goods are delivered to the **carrier hired** by the **buyer**, the transit comes to an end.
6. 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.
7. Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.

How stoppage in transit is effected:

Where the **notice** of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall **re-deliver the goods** to, or according to the directions of, the seller. The **expenses** of such re-delivery shall be borne by the **seller**.

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 (i) seller should have **parted** with the possession (ii) possession should be **with** a **carrier**, & (iii) buyer has not acquired the possession.

(iii) Right of lien can be exercised even when the buyer is **not insolvent** but it is not the case with right of stoppage in transit.

(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.

Effects of sub-sale or pledge by buyer (Section 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).

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.

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.

Exceptions:

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

Example: 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 documents to a person who has bought goods in good faith and for value i.e. for price, then, the proviso of sub-section (1) 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 pledgee.
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.

Effect of stoppage: The contract of sale 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.

- c. **Right of re-sale [Section 54]:** The right of resale is a 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 re-sell the goods under the following conditions:

- Where the goods are of a **perishable nature**: In such a case the buyer need not be informed of the intention of resale.
- 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 within a reasonable time to pay or tender the price, the seller may resell the goods.

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 also 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.

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)].

- 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.
- 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. He is entitled to recover damages from the original buyer even if no notice of resale is given.

- **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".

II. RIGHTS OF UNPAID SELLER AGAINST THE BUYER (SECTIONS 55-61)

The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods.

The right against the buyer are as follows:

1. **Suit for price (Section 55)**

- i. 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.
- ii. 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.

2. **Suit for damages for non-acceptance (Section 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 measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
3. **Repudiation of contract before due date (Section 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 contract'.
4. **Suit for interest [Section 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 to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

3) REMEDIES OF BUYER AGAINST THE SELLER

- a. **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

- b. **Suit for specific performance (Section 58):** 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.
- c. **Suit for breach of warranty (section 59):** 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. But he may -
 - set up against the seller the breach of warranty in diminution or extinction of the price; or
 - sue the seller for damages for breach of warranty.
- d. **Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
- e. **Suit for interest:** (1) 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.
 (2) 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.

4) AUCTION SALE (SECTION 64)

An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder. An auctioneer is an agent governed by the Law of Agency. When he sells, he is only the 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.

Rules of Auction sale:

1. **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.
2. **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, any bidder may retract from his bid.
3. **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.
4. **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.

5. Reserved price: The sale may be notified to be subject to a reserve or upset price; and

6. 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 sub sale are valid in favour of Q and R respectively.

5) **INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)**

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.

Following taxes are applied on the sale or purchase of goods:

- Any duty of customs or excise on goods,
- Any tax on the sale or purchase of goods

The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed. Thus, seller may add the increased taxes in the price.

The effect of provision can, however, be excluded by an agreement to the contrary. It is open to the parties to stipulate anything regard to taxation.