

Sale of Goods Act, 1930

Sale



Transfer of ownership

+

Transfer of possession

Goods

Immediately



sale

Future date or
when certain
conditions are
fulfilled



Agreement to sell

Goods:

- any kind of movable property
- other than money in circulation and actionable claims
- and it includes shares and stock, growing crops, grass and anything attached to land which can be severed before sale

Types of Goods

Existing
Goods

Future
Goods
(CATS)

Contingent
Goods
(CATS)

specific
Goods

Ascertained
Goods

Unascertained
Goods

→ Ownership

Property or Title
in Goods

General
ownership

special
ownership
Interest

SO GA ✓

Document of Title: proof of
possession / control over goods

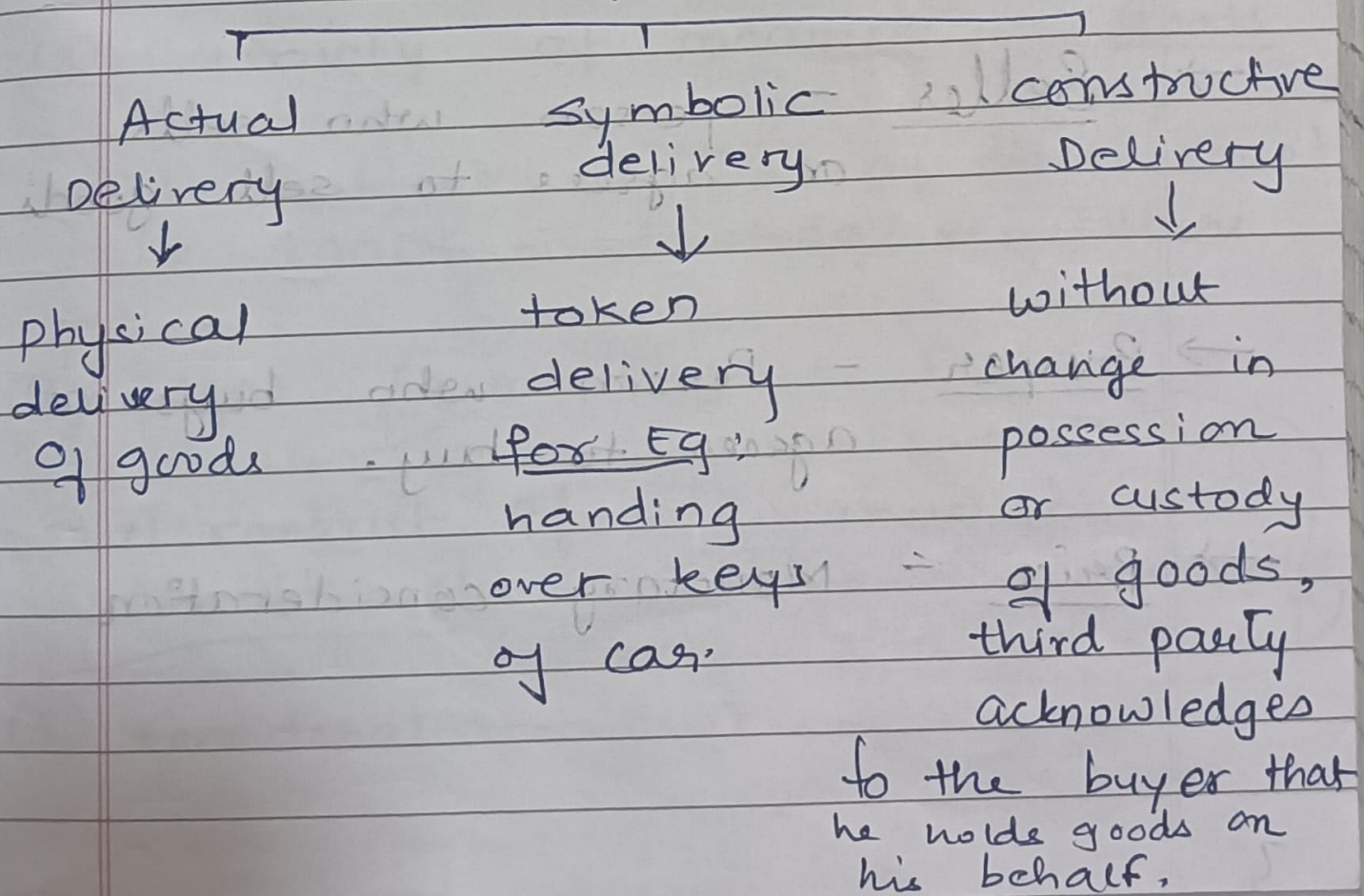
can be transferred just by
endorsement / delivery.

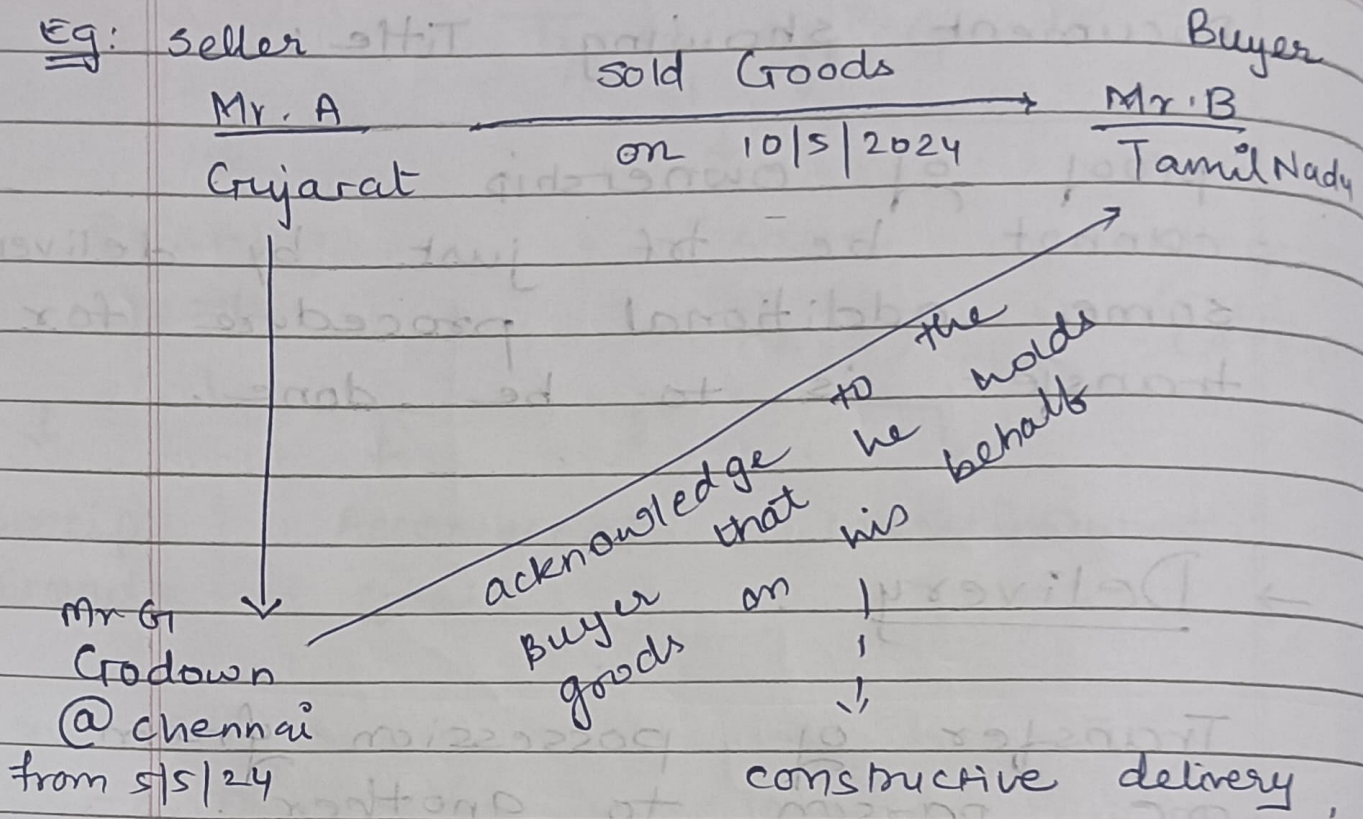
Document showing Title :

- proof of ownership
- cannot be for just by delivery
- some additional procedure for transfer is to be done.

→ Delivery

Transfer of possession from one person to another.





→ Seller - person who sells or agrees to sell goods

→ Buyer - Person who buys or agrees to buy.

→ Price - Monetary consideration

Essential Elements of valid contract of sale

(1) Two parties - Seller & Buyer

- At least two parties - seller and Buyer - two distinct persons

(2) Legal relationship - Sale

- Transfer of property in goods from seller to buyer.

(3) Certainty of meaning - Goods

- The subject matter of sale must be GOODS - Existing or Future

(4) Legal Formalities - T & C

- A contract of sale may be conditional or absolute (unconditional)

(5) Consideration - Price

Monetary consideration to be there. A partly in cash or partly in kind is valid.

(6) All other EE of a valid contract as per Sec-10 of ICA, 1872 must be present.

Contract of Sale - How Made?

* contract of sale is made by an offer to sell or buy goods for a price and acceptance thereof.

* Immediate Delivery — cash sale
+ Immediate Payment

* Immediate Delivery — credit sale
+ later payment

* Later Delivery + Advance paid
Immediate payment

* Later Delivery + C.O.D.
Later Payment

* Goods or payment or Both in Installments.

→ Subject Matter of Contract of Sale :

Subject matter = Goods

- Existing or Future
- Contingent Goods
- when seller - to effect a present sale of future goods - it is an agreement to sell.

* Destruction of Goods :

- (1) Goods perishing before making of contract

(1) the contract is void if goods without the knowledge of seller or Buyer become perished or damaged at the time of making contract.

(2) Goods perishing before sale but after agreement to sell.

- ATS is made - but goods damaged or perished without the fault of buyer or seller & before risk passes to the buyer - the ATS is avoided or becomes void.

(3) Perishing of Future Goods.

- IF future goods are destroyed, it is a supervening impossibility and contract shall become void.

⇒ Ascertainment of Price

- (1) Fixed in the contract
- (2) manner fixed in the contract
eg: Valuation by valuer (T.P.)
- (3) normal course of dealing between the parties
- (4) If not fixed in any of the above manners, buyer to pay reasonable price

→ Agreement to Sell at valuation

- T.P. to do valuation
- T.P. cannot or does not make valuation - contract to be avoided
- T.P. is prevented by buyer or seller - innocent party can claim compensation
- If the buyer has already taken the goods and appropriated it, must pay a reasonable ~~use~~ price.

Unit : 2 Condition and Warranty

Condition

essential stipulation to the main purpose of contract

Breach of condition
(cancel)
- repudiate the contract / reject the goods and claim Damages

B.O.C can be treated as B.O.W

Warranty

collateral stipulation to the main purpose of contract

Breach of warranty
↓
only claim Damages

B.O.W cannot be treated as B.O.C

→ When B.O.C. can be treated as B.O.W.?

- (1) Buyer waives off the performance of condition.
- (2) Buyer treats B.O.C. as B.O.W. can claim only damages.
- (3) contract becomes non-severable, buyer has accepted part or whole of the goods.
- (4) Impossibility - Excused by Law.

Condition / Warranty

Express

by parties

in a contract

Implied

by Law

→ Implied conditions:

(1) Condition as to title: (General ownership)

- seller has right to sell
- otherwise buyer can claim refund.

(2) Condition as to quality or Fitness to use:

- ordinarily seller is not responsible that the goods shall be fit for the purpose.

But it is implied condition that the goods shall be fit for purpose if following conditions are satisfied

(1) Buyer has made known the purpose to the seller

(2) Relied on the skills and judgment of seller

(3) seller deals in such description of goods.

(3) Condition as to Merchantability → saleability

Two conditions must be satisfied.

(1) Goods must be brought (by description

(2) seller deals in such description of goods.

The goods of merchantable quality means - if a person of ordinary prudence accept those goods as of that description.

(4) Condition as to wholesomeness

In case of eatables, goods must be wholesome (khaane layak)

(5) Condition as to sample.

- (i) bulk correspond with sample
- (ii) Buyer to examine the goods
- (iii) goods must be free from hidden defects.

(6) Condition as to Description.

- must correspond with description.
- otherwise buyer can reject the goods.

(7) Condition as to sample & description

- correspond with both sample & description.

Sample - ✓	X	} Reject
description - X	✓	

→ Implied Warranty :

(1) warranty ^{as} to nonexistence of encumbrances (free from charges)

(no special ownership in favour of other)

(2) warranty as to undisturbed possession :

(3) Implied warranty annexed by usage of trade

(4) Dangerous nature of goods ↓

seller must warn the buyer for probable danger, otherwise liable for Damages -

Caveat Emptor:-



Let the Buyer Beware.

Duty of Buyer -

- Buyer to make proper selection of goods
- seller not responsible for defective choice of the Buyer

Exceptions:

Seller is responsible in following cases (Duty of seller)

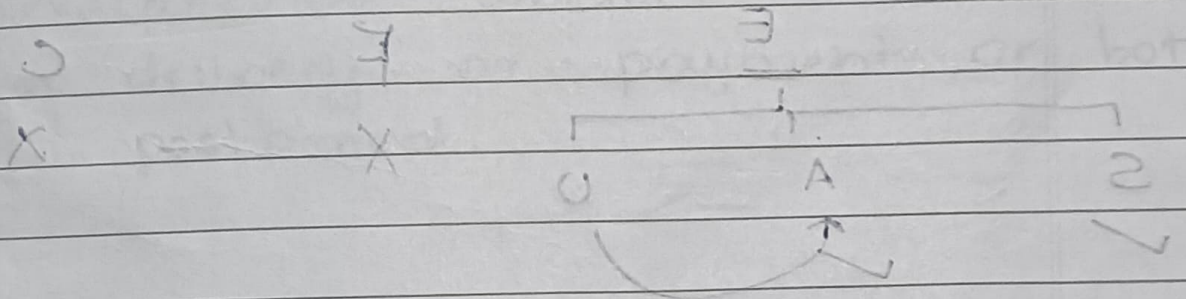
(Hint - Breach of Implied Condition)

- (1) Quality or Fitness to use
- (2) Merchantability of goods
- (3) Trade usage
- (4) Sample
- (5) Description
- (6) Sample and Description

(7) Seller is guilty of Fraud & buyer had no chance to discover the truth

(8) Goods are sold under a brand name or patent ↓

Seller not responsible if goods not fit for purpose -

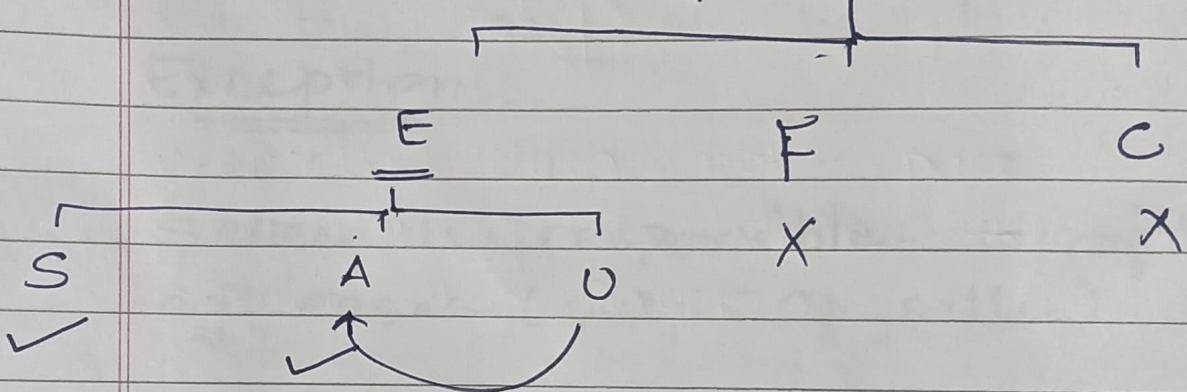


UNIT-3

Transfer of ownership and Possession :

Two factors for transfer of property in goods:

(1) Identification of goods:



(2) Intention of parties.

To ascertain the intention:

- the terms of contract
- conduct of parties
- circumstances of the case

Rules related to Transfer of Property :

(A) Specific Goods :

(1)

Specific goods are in deliverable state



Eg: chair with wheel.

property passes at the time of making the contract irrespective whether the time of delivery or payment or both is postponed.

(2) Specific goods to be put into deliverable state

(Eg: chairs - wheel to be affixed)



seller bound to do something to put the goods into deliverable state



property does not pass until such thing is done + Notice to Buyer

(3) specific goods in deliverable state, something to be done to ascertain the price



seller to do something to ascertain the price (Eg: Test, weigh, measure)



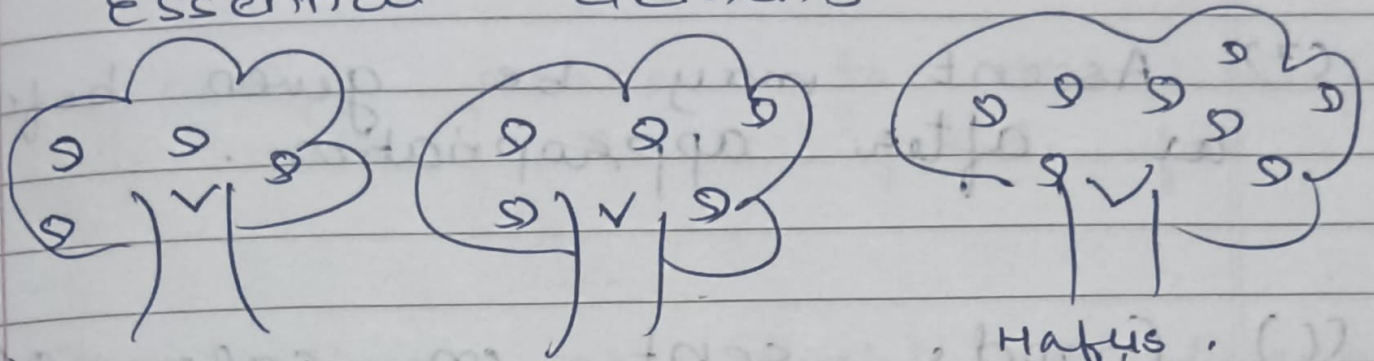
property does not pass until such thing is done + Notice to Buyer

(B) Unascertained Goods:

Buyer to get the property in goods when the goods are ascertained

Sale of unascertained goods ↓

Essential Elements



Kesar

Hafis

(1) contract is to ~~sell~~ ^{sell} unascertained or future goods

(2) Goods are sold by description

(3) Goods must be in deliverable state. (Delivery to be made to buyer or carrier or agent)

(4) Appropriation - unconditionally appropriated

(5) Appropriation must be made by

- (i) seller with assent of Buyer
- (ii) Buyer with assent of seller

(6) Assent may be express or implied

(7) Assent may be given before or after appropriation.

(1) Goods sent on sale or
Return Basis - Sec-24

When the goods are delivered on sale or return basis, the property in goods passes when:

(1) the buyer signifies his approval

(2) time for rejecting the goods expires

(3) he does something which is similar to adopting the transaction. (Eg: sale, pledge)

- Sale on cash only :

↓
'Price'

property passes to the buyer only when it is paid for.

(D) Reservation of Right of Disposal
Sec - 25

↓

property of goods shall not pass to the buyer until certain conditions kept by the seller are fulfilled. (Eg: Payment of price)

circumstances under which Right of Disposal may be reserved.

(1) If goods are shipped or delivered to a railway administration for carriage and goods are deliverable to the order of the seller

(2) When the seller draws a bill on the buyer for the price and sends to him BoE together with invoice, to secure acceptance or payment



Sec-25 deals with 'conditional appropriation'

(E) Risk follows Ownership

goods remain at the seller's risk until the property therein passes to the buyer



But when the property passes to the buyer the goods are at Buyer's risk whether delivery is made or not.

subject to two qualifications:

- (1) Delivery delayed due to fault of seller or Buyer



goods are at risk of the party in default.

- (2) The duties and liabilities of seller or Buyer as bailee of goods for the other party remain unaffected even if the risk has passed.

→ Transfer of ownership by Non-owners:

Nemo dat quod non habet:

no one can transfer what he has not got.

Seller cannot transfer the better title to the buyer than he himself has.

If seller's title is defective, buyer's title is also defective.

If seller is not the owner then buyer will also not become owner of the goods.

Exceptions:

In the following cases, buyer will get good title even if the seller is not the owner:

(1) Sale by mercantile Agent:

- agent has the possession of goods with the consent of owner
- Sale made in ordinary course of Business.
- Buyer has acted in good faith.

(2) Sale by Joint owners:

several joint owners of the goods
& one person having sole possession



property passes to the buyer if
he acts in good faith.

(3) Sale by Estoppel:

if TP sold the goods to the
buyer and owner allowed him
to do so

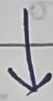


owner is estopped from denying
the seller's authority to sell
and buyer will get a good
title.

(Tint - sell by TP → IPA)

(4) Sale by unpaid seller

The property in goods passed to the Buyer But seller is unpaid (possession not with the Buyer)



Seller has exercised his right of lien or stoppage in transit



may resell the goods, the buyer acquires a good title



(5) Goods owned by Buyer, in possession of seller.



Sale by the seller who has already sold the goods but continues the possession thereof.



the another Buyer gets good title if he acts in good faith.

- (6) Goods owned by seller in possession of Buyer (Sale or Return)



Sale by a buyer who has obtained possession before the ownership has vested in him.

- (7) Sale in possession of person under a voidable contract :



Seller had possession of goods under a voidable contract



sells it to another person who has acted in good faith provided the voidable contract is not rescinded by the suffering party.

(8) Any other Act

(i) Sale by liquidator of the company
↓

(ii) Finder of goods under a Quasi contract gives good title to the Buyer

(iii) Sale by pledgee (Eg: Bank)

→ Rules Related to Delivery

(1) Delivery: effect of putting the goods in the access of Buyer

(2) Buyer to demand Access.

↓

(3) at reasonable hour - Time to demand access.

(4) Time for Delivery
↓
at reasonable hour

(5) Place of Delivery

Agreed
Place

If not Agreed

- Sale - place where Contract is made

- A.T.S - where A.T.S is made

- ^{goods} Not in existence - place of mtg.

(6) Expenses for Delivery

expenses to put the goods into deliverable state → seller

(7) Delivery to the carrier
↓

for the purpose of transmission to the buyer

(8) If goods delivered to T.P who acknowledges to the Buyer that he holds goods on his behalf ↓

Constructive Delivery

(9) Installment Delivery

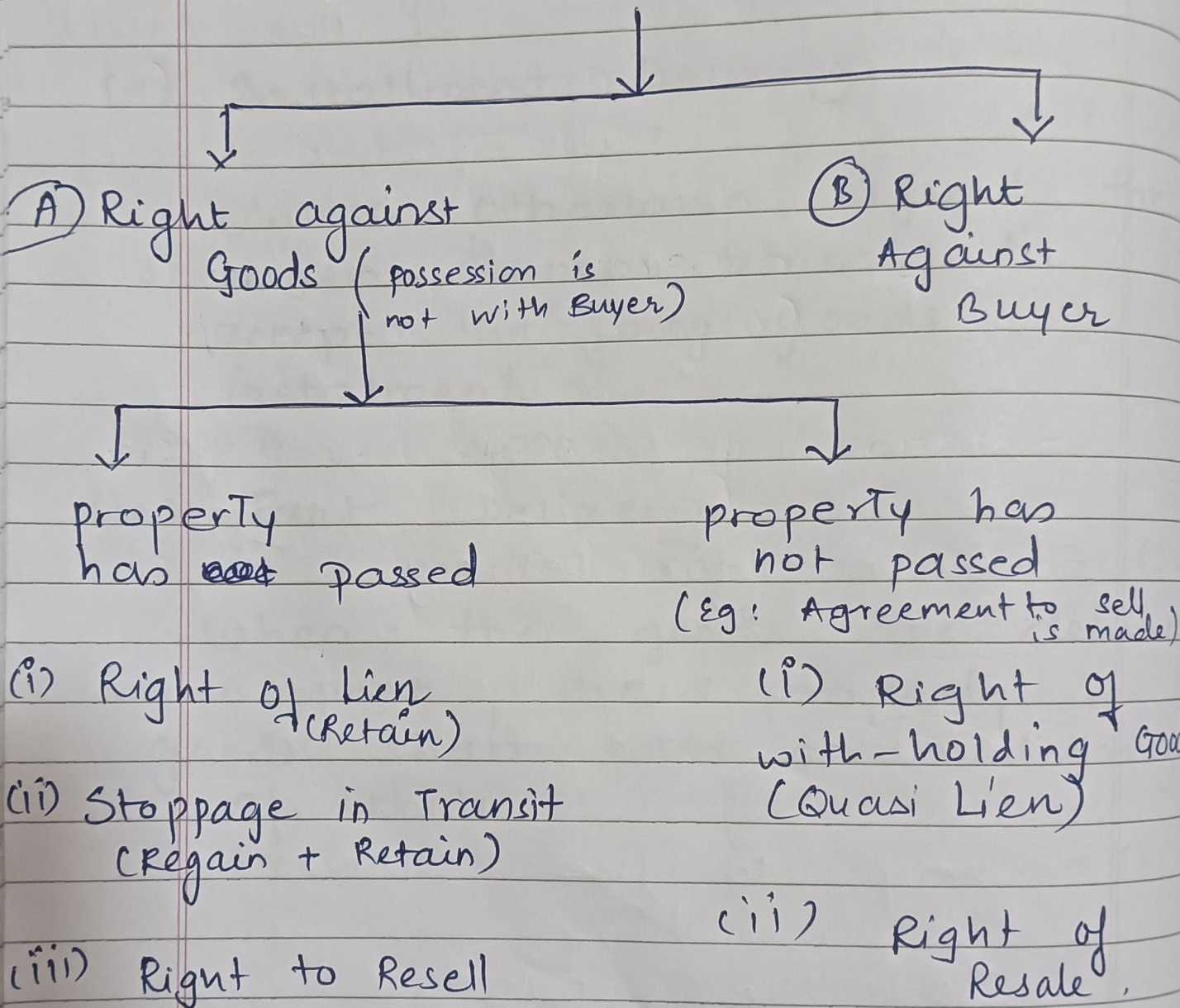
Unless otherwise agreed, the buyer ~~is~~ cannot bound to accept the ~~del~~ goods in instalments.

(10) Part Delivery.

When the goods are delivered in part, the property in goods shall pass as a delivery of whole.

Unpaid Seller

- price not paid (half or full)
- cheque dishonoured.



- Effect of sub-sale or pledge.

wrongfully rejected
or refuses to accept.

(B) Right against Buyer

(Seller's Remedy for Breach
by Buyer)

(1) Suit for Price

(2) Suit for interest

(3) Suit for Damages for Non-
acceptance of goods.

Eg: Delivery charges not refundable

(4) Repudiation of contract.

(C) Right against seller

(Buyer's Remedy for Breach by seller)

- (1) Suit for specific performance
Goods are of special nature (e.g. Goods)
- (2) Suit for Damages for non-delivery.
- (3) Suit for Breach of warranty (claim damages)
- (4) Repudiation of contract
- (5) Suit for Interest.

→ Right of Lien

↓
To Retain the Goods

↓
seller is unpaid + possession not parted from seller

When Lien can be exercised?

(1) When the goods are not sold on credit & price not received

OR

(2) when goods are sold on credit and term has expired.

OR

(3) Buyer has become insolvent.

* Effect of Part Delivery :

When the seller has made part delivery of goods, he may exercise lien on remaining goods.

* Termination of Lien

- (1) When Buyer has obtained the possession of goods.
- (2) When the goods are delivered to carrier or other bailee for the purpose of transmission to buyer without reserving the right of disposal.
- (3) When seller waives of lien.
- (4) Effect of Estoppel - Where the seller conducts in a way which leads to r.p. believe that lien does not exist.

Exception:

The right of lien is not terminated on receiving the decree or judgment of court for price of goods.

→ Right of Stoppage in Transit

* Conditions to be satisfied:

- 1) seller is unpaid
- 2) seller has parted with the possession
- 3) goods are in Transit
- 4) Buyer has become insolvent.

* Duration of Transit:

When the goods are delivered to carrier for the purpose of transmission to the buyer until the buyer obtains the delivery.

→ How Transit comes to an end?

- (1) Buyer obtains delivery of goods
- (2) Goods are delivered to carrier of Buyer
- (3) When the goods are delivered to the ship chartered by buyer
- (4) Buyer obtains delivery before arrival of goods at destination.
- (5) When the goods are delivered to the carrier and he acknowledges to the Buyer that he holds goods on his behalf & right of disposal not reserved.
- (6) When carrier wrongfully refuses to deliver the goods.

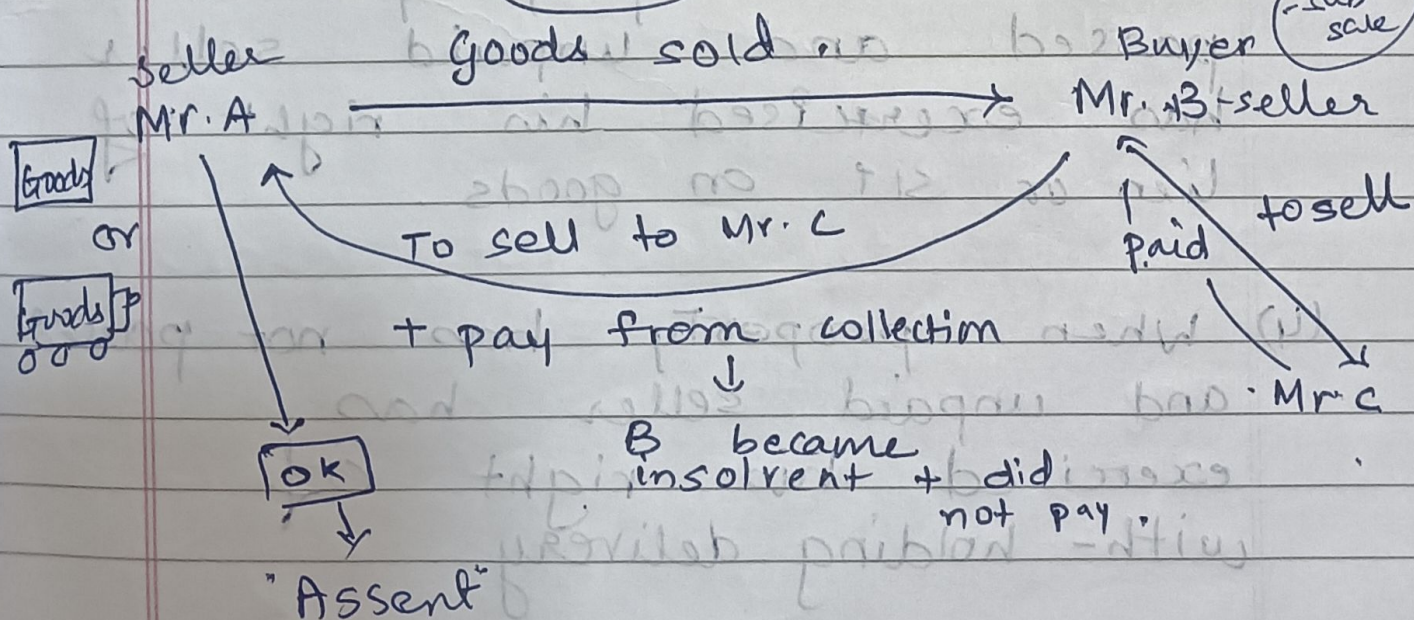
- (7) When part delivery is made, the transit comes to an end for remaining goods also.

How stoppage in Transit is Effected?

- By giving notice to carrier or by taking actual possession of goods.
- Goods to be re-delivered to the seller or on instructions of Seller.

→ Effect of sub-sale or Pledge

Mount D.F. sale v/s Jay & Jay (Provisions) Co. Ltd.



When the buyer sells or pledges the goods, the right of lien or S.I.T. is not defeated unless the seller has assented to it.

Right of Resale

(1) When there is express agreement in this regard.

(2) When the goods are of perishable goods, no notice is required.

(3) When the property has passed and unpaid seller has exercised his right of lien or S.I.T. on goods.

(4) When property has not passed and unpaid seller has exercised his right of with-holding delivery.

(5) When the seller wants to resell the goods, then give notice to the Buyer.

Ex: sale price - 1000.

Notice
Given

Notice
not given

Resale

Price - 1500

→ Retain

Restore

∴ Profit - 500

to the Buyer

Resale Price

is - 800

→ Recover

Bear / i.e.

Loss - 200

cannot recover

→ Auction Sale!

(1) Goods sold in lots



separate contract for each lot

(2) Completion of contract of Sale



on fall of hammer or any other customary manner.

(3) Right to bid may be reserved



by or on behalf of seller

(4) sale is not notified by seller



If right to bid not reserved then unlawful for seller or any person to bid on his behalf.

(5) Reserve Price

(6) Pretended Bidding. - to raise the price, the contract voidable at the option of Buyer.