

**SCHOOL OF STUDIES IN COMMERCE**  
**VIKRAM UNIVERSITY, UJJAIN (M.P.)**

**CLASS: B.COM (HONS.), B.B.A. (HONS.), M.COM. (CBCS)**

**SUBJECT: LEGAL ENVIRONMENT OF BUSINESS**

**TITLE OF LECTURE: THE SALE OF GOODS ACT, 1930**

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# THE SALE OF GOODS ACT, 1930

## PART I

### FORMATION OF THE CONTRACT OF SALE

#### **Applicability of the Sale of Goods Act, 1930 [Sec 1 & 3]**

1. The Sale of Goods Act, 1930 extends to the whole of India, except the State of Jammu Kashmir.
2. The Act comes into force with effect from 1<sup>st</sup> July 1930.

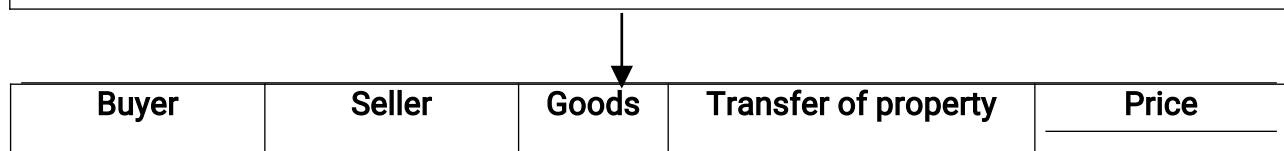
The Sale of Goods Act deals with "Sale" but not with "mortgage" (which is dealt with under the Transfer of Property Act, 1882) or "pledge" (which is dealt with under the Indian Contract Act, 1872). This act deals with "goods" but not with other movable property, e.g. actionable claims and money.

The provisions of the Indian contract Act, 1872 shall continue to apply to contracts for the sale of Goods, unless they are inconsistent with this Act. [Sec. 3]

#### **Contract of Sale. [Sec. 4]**

1. **Definition** – Sec. 4: A Contract of Sale of Goods is a contract whereby the Seller transfers or agrees to transfer the property (ownership) in Goods to the Buyer for a price.
2. **Wider scope:** The term "Contract of Sale" is a generic term and broader than Sale. Thus, it includes "sale proper" and "Agreement to sell". The contract of Sale may be absolute or conditional.

#### **ESSENTIALS OF CONTRACT OF SALE**



#### **Essentials of Contract of Sale**

1. Two parties :

- (a) There must be two distinct parties, one being the Seller and the other being the Buyer.
- (b) **Buyer** means a person who buys or agrees to buy Goods. **[Sec.2(1)]**
- (c) **Seller** means a person who sells or agrees to sell Goods **[Sec.2(13)]**
- (d) A person cannot buy his own Goods and the sale has to be necessarily made to another person.

## 2. Goods:

- (a) Goods means every kind of **movable** property other than actionable claims and money, and includes Stocks 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. [Sec.2 (7)].
- (b) Trade Marks, Copyrights, Patent Rights, Goodwill, Electricity, Water, Gas are all Goods.

### Notes:-

- (i) It may be noted that "actionable claims" mean a claim which can be enforced through the courts of Law, e.g. a debt due from one person to another is an actionable claim.
- (ii) The 'money' here means the legal tender ( i.e. currency of the country) and not Old coins.

## 3. Transfer of " Property" in Goods:

Passing of Property implies passing of Ownership. If the Property has passed to the Buyer, the risk in the Goods sold is that of the Buyer and not of the Seller, even though the Goods may still be in the Seller's Possession. Therefore Transfer of Property means Transfer of General Property (Ownership) and not Transfer of Special Property (Possession).

**Example:** When "A" owns certain Goods, he has general property in the Goods, whereas when it is pledged with "B", "B" has mere possession or limited interest, i.e. special property.

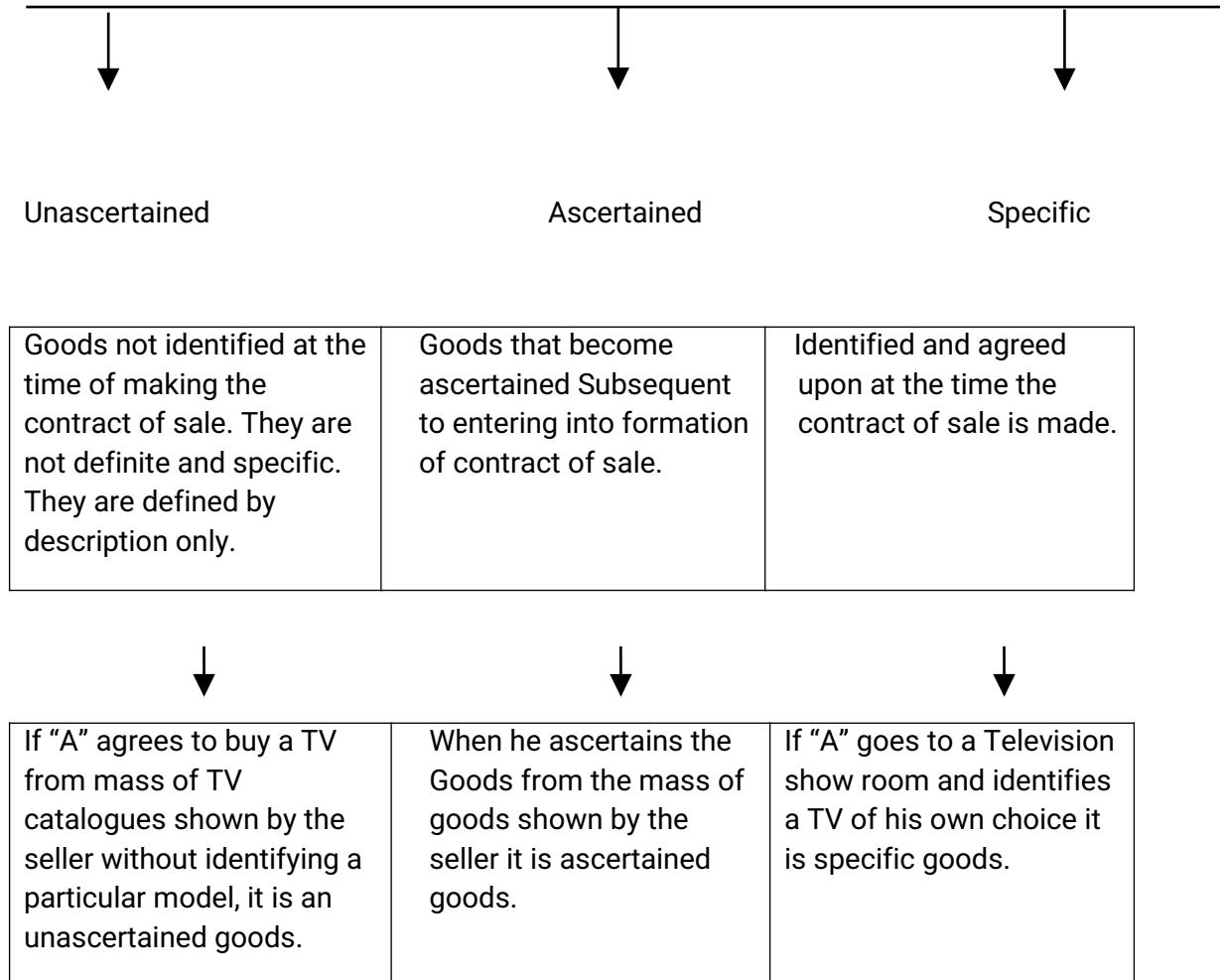
## 4. Consideration – Price:

- (a) Consideration agreed in a contract of sale should be by way of Money only.
- (b) However, the consideration may be **partly** in money and partly in Goods. Example: Y can contract to sell 100 bags of rice for a consideration of Rs. 350 per bag and 30 bags of wheat to be given by Z.
- (c) When Goods are offered in return of Goods, it will not amount to sale, but merely an exchange, i.e. barter.
- (d) Where there is no consideration, it becomes a gift and does not amount to a sale.

**5. Other essentials of a valid contract: All other elements of a valid contract should be present. Example:** Parties must be capable of entering into a contract, the consent of the contracting parties should be free, the object of the transaction must be legal, etc.

## Types of Goods. [Sec 6]

- I. **Existing Goods:** They are Goods owned and possessed by Seller at the time of contract of sale. These may be-



## II. Future Goods [Sec. 2(6)]

1. Future Goods means Goods to be manufactured or produced or acquired by the Seller, after making of the Contract of Sale. The Seller does not possess or own Goods at the time of making the Contract of Sale. The Contract will operate only as an Agreement to sell.
2. Example: When X contracts to sell to Y all crops to be grown at X's farm in Punjab during the next season, for a sum of Rs. 10,000, it will be an agreement to sell and not a sale. Such agreement will become a sale after the crop has been harvested and put in a deliverable condition.

### **III. Contingent Goods:**

1. These are the type of Goods, the acquisition of the same depends upon happening or non happening of an uncertain event (i.e. a contingency)
2. Example: "A Car dealer agrees to sell a red colour car to a customer provided it is available with the manufacturer.

## Difference between "Future Goods" and "Contingent Goods"

Basis	Future Goods	Contingent Goods
<b>1. Meaning</b>	Goods that are yet to be manufactured or produced or acquired by the Seller after making contract of sale.	Goods, the acquisition of which by the Seller depends upon a contingency, which may or may not happen.
<b>2. Element of uncertainty</b>	Acquisition of Future Goods does not depend upon any uncertainty.	The procurement of Contingent Goods is dependent upon an uncertain event.
<b>3. Scope</b>	Future Goods do not include contingent Goods because of the element of certainty.	They are wider in scope, it includes future Goods.
<b>Effect of Contract</b>	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 [Sec. 6(3)]	There may be a "Contract for Sale" of Goods, the acquisition of which by the Seller depends upon a contingency which may or may not happen [Sec. 6(2)]
<b>5. Example</b>	B agrees to buy the entire crop of wheat that would yield in S's farm, at the rate of Rs. 1000 per quintal.	A agrees to sell to B a certain painting only if C, its present owner, sells it to him. The sale is contingent upon the sale by C.

### Delivery- its forms and derivatives:-

Delivery means voluntary transfer of possession by one person to another Sec. 2(2).

Delivery may be given to the buyer or any person duly authorized to hold them on his behalf.

### Types of Delivery:-

(i) **Actual delivery:** - It is actual when the goods are physically delivered to the buyer or his authorized agent.

(ii) **Constructive delivery** :- Delivery is said to be constructive where a person who is in possession of the goods, acknowledges (attornment) to hold the goods on behalf of the buyer. It means where delivery affected without any change in the custody or actual possession of the thing.

**Example-** where a godown keeper holding the goods of Mr. Ajay agrees to hold them on behalf of Vijay, at Ajay's request.

(iii) **Symbolic Delivery:** - Delivery is said to be symbolic where some symbol of the real possession or control over the goods is handed over to buyer. In simple words where something else is delivered for example delivery of goods in case of transit may be made by handing over documents to title to goods, like bill of lading or railway receipt or delivery order or the key of a warehouse containing the goods is handed over to buyer.

## Document of Title of Goods

1. **Document of Title [Sec. 2(4)] :** A Document of Title to Goods is one which enables its possessor to deal with the goods described in it as if he were the owner. It is used in the ordinary course of business as proof of the possession or control of goods. It authorises either by endorsement or by delivery, its possessor to transfer or receive goods represented by it. [Sec.2 (4)]

Example:- (i) Bill of lading, (ii) Dock Warrant, (iii) Warehouse Keeper's Certificate, (iv) Wharfinger's certificate, (v) Railway Receipt, (vi) Multimodal Transport Document, (vii) Warrant or Order for the delivery of Goods by delivery, the possessor of the document, to transfer or receive Goods thereby represented.

2. **Features of Document of Title :** The document becomes the document of title only on satisfaction of the following-

(a) **Unconditional:** It must show an unconditional undertaking to deliver the Goods to the holder of the document.

**Different from Acknowledgment for Receipt:** Though a Bill of Lading is a document of title, a Mate's Receipt [It is the receipt given by the Servant (Mate) of the Captain of the ship, on receipt of Goods into the ship for boarding] is merely an acknowledgement for the receipt of Goods and not document of title.

(b) **Enforcement of Rights:** Only a bonafide holder of the document of title can enforce his right there under. A person, who gets possession of a Bill of Lading by stealing it, does not have any right as against a bonafide holder for value.

3. **Document showing Title:** A Document of Title enables to a person named therein to transfer the property by mere endorsement and delivery, whereas a document showing title does not confer any right to transfer by way of endorsement and delivery. E.g. A Share Certificate shows that the person named therein is entitled to the shares represented by it, but does not allow transfer of shares by mere endorsement and delivery of the certificate.





## Difference between “Sale” and “Agreement to Sell”

Particulars	Sale	Agreement to Sell
<b>1. Meaning</b>	Where under a contract of sale, the property (ownership) in the Goods is transferred from the Seller to the Buyer, it is called a Sale.	Where under a contract of sale, the transfer of the property (ownership) in the Goods is to take place at a future time or subject to some condition thereafter to be fulfilled, it is called an “agreement to sell.” [Sec. 4(3)]
<b>2. Example</b>	Ram sells 20 bags of rice to Hari for a sum of rs. 10,000. It is a sale since the ownership in 20 bags of rice has been transferred from Ram to Hari for a consideration of Rs. 10,000/-.	Mani agrees to buy 1000 kgs of cement to arrive by a certain ship on a future date. The property in Goods (cement) will pass to the Buyer only when Goods arrive. Also the agreement is subject to condition that the ship arrives in the port with Goods.
<b>3. Transfer of Risk</b>	Buyer becomes the owner of Goods as soon as the contract is made. Hence the Buyer bears the risk.	Seller continues to be the owner till the agreement to sell becomes sale and hence the risk lies with him only.
<b>4. Rights created</b>	Creates a right in rem (right against property)	Creates a right in personam (right against a person).
<b>5. Type of Goods</b>	A Sale can be made only in respect of specific and ascertained Goods.	An agreement to sell may be made for future and Contingent Goods.
<b>6. Type of Contract</b>	Generally, executed contract.	Executory contract.
<b>7. Remedies available for breach of contract.</b>	Buyer’s breach: Seller can (i) sue for price of Goods even if Goods are in his own possession. (ii) Resell the Goods, (iii) exercise right of lien and (iv) exercise right of stoppage of Goods in transit, if necessary. Seller’s breach: Buyer has double remedy, (i) suit for damages against the Seller and (ii) recovering of Goods from third parties who bought them.	Buyer’s Breach: The Seller can sue only for damages and not for price.  Seller’s breach: The Buyer can sue the Seller for damages.
<b>8. Right to Re-sell</b>	Once an effective sale is made, Seller cannot resell the Goods, as the property in goods transferred to original Buyer.	Where Seller makes a re- sale, the subsequent Buyer, who takes the goods for consideration and without notice of the prior agreement, gets a good title. The remedy available to the original buyer is that he can sue for damages.
<b>9. Rights of Buyer</b>	The Buyer can sue the Seller for non-delivery of Goods, when he has paid the price for it.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a

		stated with buyer.
<b>10. Risk of loss of goods</b>	Risk being associated with ownership lies with the buyer and hence any loss shall be borne by the buyer only, even though the Goods lie with Seller.	Since risk associated with ownership is not transferred, loss shall be borne by Seller, even though the Goods lie with Buyer.
<b>11. Insolvency of Buyer before paying for Goods</b>	In the absence of any lien over Goods, Seller shall hand them over to the official receiver or assignee. The seller can only claim a rateable dividend (Proportionate amount) from the buyer's estate, as an Unsecured Creditor.	Seller need not part with the Goods, until he is paid for such Goods. He can refuse to hand over the Goods to the official receiver, unless the full price is paid.
<b>12. Insolvency of seller after buyer has paid the price</b>	Buyer can claim the goods from the official receiver or assignee.	Buyer can claim only a rateable dividend for price paid and cannot claim the Goods, since the property has not passed to him.
<b>13. Sales tax</b>	A sale is liable to Sales Tax.	An agreement to sell is not liable to sales tax, unless it becomes a "Sale".

### **"Sale" vs. "Contract for Work and Labour"**

<b>Particular</b>	<b>Sale</b>	<b>Contract for work and labour</b>
<b>1. Meaning</b>	A Sale is one in which the property (ownership) in the Goods is transferred from the Seller to the Buyer.	It is a contract for performing a certain work and not specifically for transfer of property in Goods.
<b>2. Act involved</b>	It involves delivery of Goods by Seller to Buyer.	It involves exercise of skill and labour in doing or rendering of some work by one person to another, for consideration in money or other form.
<b>3. Example</b>	A owns 100 bags of wheat and sells it to B for Rs. 5000, by giving possession of the wheat bags.	A goldsmith is provided with raw gold for preparing ornaments of a specific design or pattern, and he gives it back as finished ornament of the said pattern.

## Other examples:-

Sale	Contract for Work and Labour
A dentist agreeing to supply a full set of artificial teeth with material entirely found by him is a contract of Sale of Goods. [Lee v. Griffin]	Repair of a car and supply of spare parts required for such repairs is a contract for work and materials. [Myers & Co. v. Brent Cross Services Co.]
Sale of a fur coat of special design and color as per customer design and specification is a contract of sale notwithstanding the degree of skilled work and labour involved in its production. [Marcel v. Furriers Tapper]	Drawing a portrait and handing it over to the person who had requested it amounts to contract for work and labour even though there would pass to the customer, materials in the form of canvas paint. [Robinson v. Graves]

## Sale vs. Hire Purchase Agreement

Particulars	Sale	Hire Purchase Agreement
<b>1. Meaning</b>	Sale is one in which property (ownership) in the Goods is transferred from Seller to Buyer.	Hire purchase is a contract in which the owner of Goods allows their use by another person called hire purchaser. The owner of Goods gets hire charges in installments upon an agreement that the hire purchaser will become the owner after payment of last installment. Thus it is a bailment with an option to buy.
<b>2. Mode of Payment</b>	Price can be paid full or in installments in such case, amounts already paid would be reduced from total amount payable by Buyer.	Hire Charges or installments are recurring payments made by the hirer for the use of Goods and are not treated as payments by the hirer, unless the exercise the option to purchase.
<b>3. Transfer of ownership</b>	Immediate, as soon as the contract of sale is entered into.	Delayed, as per agreement between owner and hire purchases upon payment of specified number of installments or upon payment of last installment when the hirer exercises his option to purchase.
<b>4. Transfer to buyer</b>	Buyer becomes owner of the Goods.	Hire purchaser is only a bailee of Goods taken as hire purchase

		until the payment of stipulated number of installments.
<b>5. Buyer's Right of termination</b>	Buyer does not have any option of terminating the contract and is bound to pay for the goods.	Hire purchaser has an option to terminate the contract at any stage. He cannot be forced to pay the installments and take the goods.
<b>6. Sale by buyer/ hirer</b>	A third party, acting in good faith, would be protected and would get a good title against original Seller even though all the installments had not been paid by buyer.	Under a hire purchase contract, the third party would not get a good title, since the hirer had no title to the Goods.
<b>7. Default by buyer/ hirer</b>	The seller can sue only for the price of goods and right of lien can be exercised.	When there is a default in payment of Hire charges, the seller can take repossession of the goods since he is the actual owner.

### 'Sale', 'Bailment' and 'Barter System'

<b>Sale</b>	<b>Bailment</b>	<b>Barter</b>
<ul style="list-style-type: none"> <li>• A Sale is one in which the property (ownership) in the Goods is transferred from Seller to Buyer.</li> <li>• It gives freedom to the buyer to deal with the goods in any manner he likes.</li> </ul>	<ul style="list-style-type: none"> <li>• Under bailment, there is no transfer of property, but only transfer of possession from the owner to another person called Bailee for the purpose of safe custody, usage, transportation from one place to another, etc.</li> <li>• The bailee does not get any right on the goods and is bound to act as per the directions of the owner, i.e. Bailor.</li> </ul>	<ul style="list-style-type: none"> <li>• It involves exchange of Goods for Goods between persons. The ownership passes on handling over the goods to the other party.</li> <li>• No money consideration is involved and hence, the contract does not amount to a sale.</li> <li>• If consideration for transfer of property is partly in money and partly in goods, the contract is a sale.</li> </ul>

### Price

1. **Definition [Sec. 2(10)]** : Price means the money consideration for a sale of Goods:

2. **Ascertainment of Price [Sec. 9(1)]**: The Price may be-

- a. Fixed by contract, or
- b. Agreed to be fixed in a manner provided by the contract, e.g. by a value, or
- c. Determined by the course of dealings the parties.

Thus, the price need not necessarily be fixed at the time of sale.

3. **Reasonable Price [Sec. 9(2)]**:

- a. When the price cannot be fixed in any of the ways mentioned by Sec. 9(1), then the Buyer is bound to pay a reasonable price to the Seller.
- b. What constitutes a reasonable price is a question of fact dependent on the circumstances of each particular case.
- c. A Buyer, who has received and appropriated the Goods, must pay a reasonable price for them in any eventuality.

4. **Valuation by third party [Sec. 10]**:

- a. Failure to value by third party [Sec. 10(1)]: Where there is an agreement to sell Goods on the terms that the price is to be fixed by valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. However, when the Buyer has received and appropriated the Goods, he is bound to pay a reasonable price for them.
- b. Either Party at fault and remedy [Sec. 10(2)]: Where the third party is prevented from making valuation by the default of the Seller or Buyer, then, the party not at fault may sue the party at fault for damages.

5. **Example**: A agrees to sell certain goods to B at a price to be fixed by C. If C refuses to value the goods and fix the price, the agreement is avoided. If, however, C is willing to value the goods, but is prevented from making the valuation by the wrongful act or fault of A or B, the party in fault is liable in damages to the party not in fault.

## SUBJECT MATTER OF CONTRACT OF SALE

1. The subject matter of contract of sale is always the goods, may be existing or future goods.
2. There may be contingent contract of sale of goods. For example X agrees to sell you crops grown of z's farm if Z sold to X. In this type of contract acquisition of goods by seller depends upon a contingency, which may or may not happen.
3. When the seller purports by his contract of sale to affect a sale of future goods, the contract will operate only as an agreement to sell the goods and not as sale.

### **Destruction of Goods:-**

**Before making of Contract :-** 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 in the contract.

**Example:-** A agrees to sell to B a parcel of 700 bags of Chinese groundnuts identified by marks and lying at a named warehouse. As at the date of the contract, there were only 591 bags, the remaining 109 having been extracted by a third party before the contract date without the knowledge of A. The contract is void u/s 7. Held B could not be compelled to take the remainder as the contract was for 700 bags

**Before sale but after agreement to sell:-** 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.

**Example:-** Where a certain quantity of wheat was sold by A to B and, after the contract but before delivery of Goods to B, the goods were requisitioned by the Government, it was held that the contract had become void.

### **STIPULATION AS TO TIME u/s 11**

In Case of delivery of goods usually time is essence of contract. But in case of payment of price, unless a different intention appears from the terms of contract, stipulation as regard this, is not deemed to be of the essence of contract of sale.

## PART II

### Condition AND WARRANTY

#### CONDITION V/S WARRANTY :-

<b>Basis</b>	<b>Condition</b>	<b>Warranty</b>
<b>1. Definition</b>	A condition is stipulation which is essential to the main purpose of the contract.	A warranty is stipulation which is only collateral or subsidiary to the main purpose of the contract.
<b>2. Effect of breach</b>	Breach of Condition gives the aggrieved party (i) a right to repudiate the contract and (ii) right to sue for damages.	Breach of warranty gives only the right to sue for damages. The contract cannot be repudiated and the Goods cannot be rejected.
<b>3. Inter-changeability</b>	Breach of condition may be treated as a breach of warranty in certain situations.	Breach of Warranty cannot be treated as a breach of condition.
<b>4. Example</b>	Car for "touring purpose".	Car purchase agreement & mileage 20 km per liter but the could run only 15 kms.

#### CIRCUMSTANCE WHEN A CONDITION IS TREATED AS A WARRANTY

Condition to be treated as warranty [section 13]: Under the following circumstances, a breach of



condition should be treated as a breach of warranty, i.e., the right to repudiate the contract is deemed to be lost:-

**1. Buyer's discretion** [Sec.13(1)]: Where a contract of sale is subject to any condition to be fulfilled by the seller, the Buyer may – (a) waive the condition or (b) elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

**2. Acceptance of goods** [Sec. 13(2)]: Where the contract of sales is not severable, and the Buyer has accepted the Goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty. However, where there is a term in the contract, express or implied that the buyer can reject the goods and repudiate the contract, the buyer can still exercise his right as the breach of condition.

**3. Impossibility** [Sec. 13(3)]: Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise the breach of condition need not be treated as a breach of warranty.

**Note:**

Meaning of Acceptance [Sec. 42]: A Buyer shall be deemed to have accepted the Goods when–

- (a) He intimates to the Seller that he has accepted them, or
- (b) The Goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the Seller (say, pledges or sells them), or
- (c) When, after the lapse of a reasonable time, he retains the Goods without intimating to the Seller that he has rejected them.

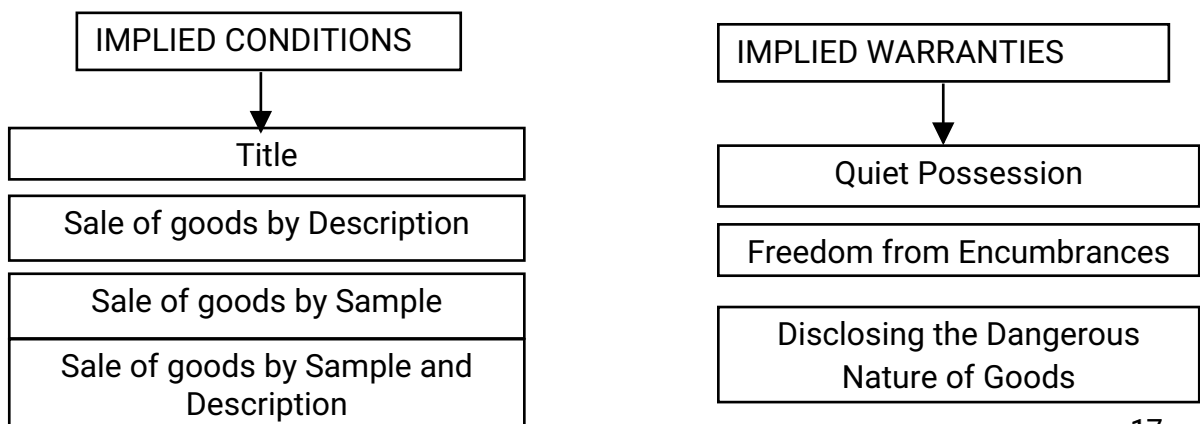
**EXPRESS CONDITIONS AND WARRANTIES:-**

When terms of the contract expressly stated in the contract.

For example –

**IMPLIED CONDITIONS & WARRANTIES**

Conditions are said to be implied when the law deems their existence in the contract even without their actual presence in the contract. Sometime, implied conditions and warranties may also be annexed by custom / usage.



Merchantable Quality

Quality or Fitness

Wholesomeness

Quality or Fitness for a particular purpose annexed by usage of trade

## IMPLIED CONDITIONS

1. **Condition as to Title [Sec. 14]:** In a Contract of Sale, unless the circumstances of the Contract are such as to show a different intention, there is an implied condition on the part of the seller that-

- (a) In case of Sales – he has the right to sell the goods, and
- (b) In case of Agreement to Sell – he will have a right to sell the goods at the time when the property is to pass.

Example :- X purchased a car from Y. after 6 months Z, the true owner of car, demanded it from X. X had to return it to its true owner. X was entitles to recover the full price even though several months had passed.

## 2. Sales by description [Sec. 15]:

(a) Goods sold should correspond with the description. Meaning of Description: The Act does not define “description”. A sale is deemed to be by description –

- Where the class or kind to which the goods belong has been specified, e.g. Assam Tea, etc. and
- Where the goods have been described by certain characteristics essential to their identification, E.g., jute bales of specified shipment, steel of specific dimension, etc.

(b) Sale of goods by description may include the following situations (decided by case laws ) –

(i) Where the buyer has never seen the goods and buys them only on the basis of description given by the seller. Example:- X bought a reaping machine from Y who described it to be one year old and used only to cut 50 or 60 acres but X found that the machine extremely old. X was entitled to reject the machine because machine did not correspond with the description given by the seller.

(ii) Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.

Example:- the buyer bought after seeing certain goods which were described by the seller as “ dating from seventeenth century” but he found them of eighteenth century. The buyer was entitled to reject the goods because goods did not correspond with the description

given by the seller.

(iii) Where the method of packing has been described.

Example:- X purchased from Y 1000 tins of canned fruit to be packed in cases each containing 50 items but Y supplied cases containing 25 tins. X was entitled to reject the goods because the goods were not packed according to the description.

**3. Sale by Sample [Sec. 17]:** A contract of sale by sample is one where there is a term in the contract, express or implied, to that effect, it is subject to following three implied conditions –

(a) Bulk to correspond with sample: Goods should correspond to the sample, i.e. Buyer shall have a right to reject Goods which are inferior or even superior to the sample.

(b) Reasonable opportunity of inspection: Buyer shall be given a reasonable opportunity to compare the Goods with the sample. Example: Where in a sale of 100 bags of cement, the Buyer is given an opportunity to examine the contents of three bags only, the Buyer can terminate the contract.

(c) Merchantable Quality: Goods must be free from any latent (hidden) defects rendering them unmerchantable. Such defects may be discovered only when the goods are put to use and would not be apparent on reasonable examination of the Sample. Example: Sale of pure ghee was warranted only equal to sample. The ghee tendered corresponded to the sample, but was adulterated with 25% groundnut oil. The buyers were not bound to accept.

**4. Sale of goods by Sample and Description :-** If the sale is by sample as well as by description the goods must correspond with the sample as well as the description.

**5. Quality or Fitness Sec. 16(1):** Generally there is no implied condition as to quality or fitness of Goods for any particular purpose **except if –**

Buyer has disclosed to Seller the exact purpose, for which goods are required,

Buyer has indicated to the Seller that he relies on Seller's skill or judgment, and

Seller's business is to sell Goods of such description.

If all the above conditions are satisfied, there is an Implied condition that the goods shall be "reasonably fit" for the purpose. Also, an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Exceptions:- However, the above implied condition does not apply-

- Where the specific goods are sold under their patent or trade name,
- When the Buyer purchasing a specified article is suffering from an abnormality and does not indicate that fact to the seller, and
- Where the Goods are capable of being put to multiple uses and the Buyer does not indicate to the Seller the exact purpose of his purchase.

**6. Merchantable Quality [Sec. 16(2)]:** Goods should be of "merchantable Quality" if they are in such condition as a man of ordinary prudence would accept them as goods of that description. It applies to goods whether or not the goods are sold under a patent or trade name.

Example:- X bought from a dealer a bottle of wine. While opening its cork in the normal manner, the bottle broke off and injured X's hand. X was entitled to claim damages because the bottle was not of merchantable quality.

Exception: However, this implied condition does not operate where the Buyer examines the goods prior to the sale and the examination ought to have revealed the defects.

**7. Condition as to wholesomeness:-** In case of eatables, or provisions or foodstuffs, there is a condition as to wholesomeness in addition to the condition as to merchantability. Condition of wholesomeness means that the goods shall be fit for human consumption.

**Example:-** Milk contains typhoid jermes....

### **IMPLIED WARRANTIES (Sections 14):-**

1. **Quiet possession** [Sec. 14(a)]: The Buyer shall have and enjoy quiet possession, means undisturbed possession. If the right of possession is disturbed by the Seller or any other person, the Buyer is entitled to sue for damages.

2. **Freedom from encumbrances** [Sec. 14(c)]: Goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer or at the time when the contract is made.

3. **Disclosure of Hazardous nature of Goods**: Where the Seller is aware of the danger associated with the Goods, he is bound to disclose the same to the Buyer otherwise he will be liable in damages.

4. **Quality or Fitness** – Sec. 16 (3): An implied warranty or condition as to quality or fitness for particular goods may be annexed by usage of trade and customs.

Practical Question	Hint / Answer:
<p>For the purpose of making uniform for the employees, Banshi Bhaiya bought dark blue colored cloth from Vivek, but did not disclose to the Seller the purpose of said purchase. When uniform were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advice Banshi Bhaiya whether he is entitled to have any remedy?</p>	<p>1. The cloth supplied is capable of being applied to a variety of purposes, the Buyer should have told the Seller the specific purpose for which he required the Goods, but he did not do so. Hence, the implied condition as to the fitness for purpose does not apply.</p> <p>2. Hence, the Buyer will not succeed in getting any remedy from the Seller under the Sale of goods Act. [Jones V. Padgett]</p>

### **DOCTRINE OF "CAVEAT EMPTOR"**

**Meaning:**

'Caveat Emptor' is a fundamental principle of the law relating to sale of Goods. It means 'i.e. "Let the Buyer beware"'.

The doctrine of " Caveat Emptor' has been given in the first Para of Section 16 which reads as under:

" Subject to the provisions of this act and any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Under this principle, it is no part of the Seller's duty in a contract of sale of goods to give to the Buyer an article suitable for a particular purpose, or of a particular quality. Also, the Seller is under no obligation to point out the defects in the Goods he offers for sale.

The Buyer of Goods must keep his eyes open, his mind active, and should be cautious while buying the Goods. The Buyer must examine the Goods himself and find out their suitability for the purpose he intends to buy.

**Exceptions:** The doctrine of 'Caveat Emptor' will not hold good in the following situations –

(a) Makes a misrepresentation by seller and Buyer relies on it, the rule of 'Caveat Emptor' will not apply. Also the contract entered between the parties would be voidable at the option of Buyer.

(b) Actively conceals a defect in the goods, so that on a reasonable examination the same could not be discovered, the contract is voidable at the option of Buyer.

(c) Makes a false representation amounting to fraud, and the Buyer, relying upon the false representation, enters into a contract, the resulting contract would be voidable. Buyer's remedy is that he can put an end to the contract and can also claim damages from the Seller for fraud.

(d) Sales by description :- Goods sold should correspond with the description.

(e) Sale by Sample :- Where the goods are bought by sample, this rule of Caveat Emptor does not apply if bulk does not correspond with the sample.

(f) Sale of goods by Sample and Description :- Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description.

(g) Implied Condition as to Quality or Fitness [Sec. 16(1)]: The rule of Caveat Emptor will not hold good when the Buyer –

- Has disclosed expressly or impliedly to Seller the exact purpose for which goods are required,
- Has indicated to the Seller that he relies on the Seller's skill or judgment, and

- The Seller's business is to sell Goods of such description.

However, in a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that Goods shall be reasonably fit for any particular purpose.

(h) Implied Condition as to Merchantability [Sec. 16(2)]: The Seller cannot take shelter under Caveat Emptor as there is an implied condition as to merchantable quality of the Goods he sells, i.e. he has to ensure that the Goods sold by him are of merchantable quality that will serve the Buyer's purpose. However, the Seller can invoke caveat emptor where the Buyer had a reasonable opportunity of inspecting the Goods before purchase.

(i) Usage of trade [Sec. 16(3)]: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In such cases, the principle of Caveat Emptor will not apply.

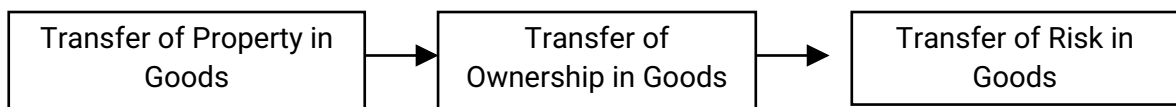
Practical Question	Hint / Answer:
A lady buys synthetic pearls for a high price <u>thinking</u> that they are natural pearls. The seller does not correct her mistake. Has she any remedies against the seller? Would your decision be different if the lady had told the seller: "I think they are natural pearls and, therefore, agree to buy them at your price," and the seller was silent?	The lady has no remedy against the seller as the doctrine of caveat emptor applies in this case. In the latter case, she can avoid the contract as there is a breach of condition as to quality [Sec. 16(1)].

Practical Question	Hint / Answer:
A, a farmer, simply exhibits oats in his farm. B buys the oats in the <u>belief</u> that are old oats. In fact they are new oats. B wants to return the oats and refuses to pay the price	B cannot return the oats as the doctrine of caveat emptor will apply.

**PART III**  
**TRANSFER OF OWNERSHIP & DELIVERY OF GOODS**

**TRANSFER OF PROPERTY AND RISK IN GOODS**

Transfer of Property means transfer of ownership of goods and not mere physical possession of goods. For example in case of H.O. & Branch when H.O. sends goods to branch it is merely transfer of physical possession and not the ownership of goods. Once the ownership in goods is transferred, risk in the goods sold is also transferred.



The risk of loss lies with the owner, whether delivery has been made or not and whether price has been paid or not.

**Significance of Passing of Property:-**

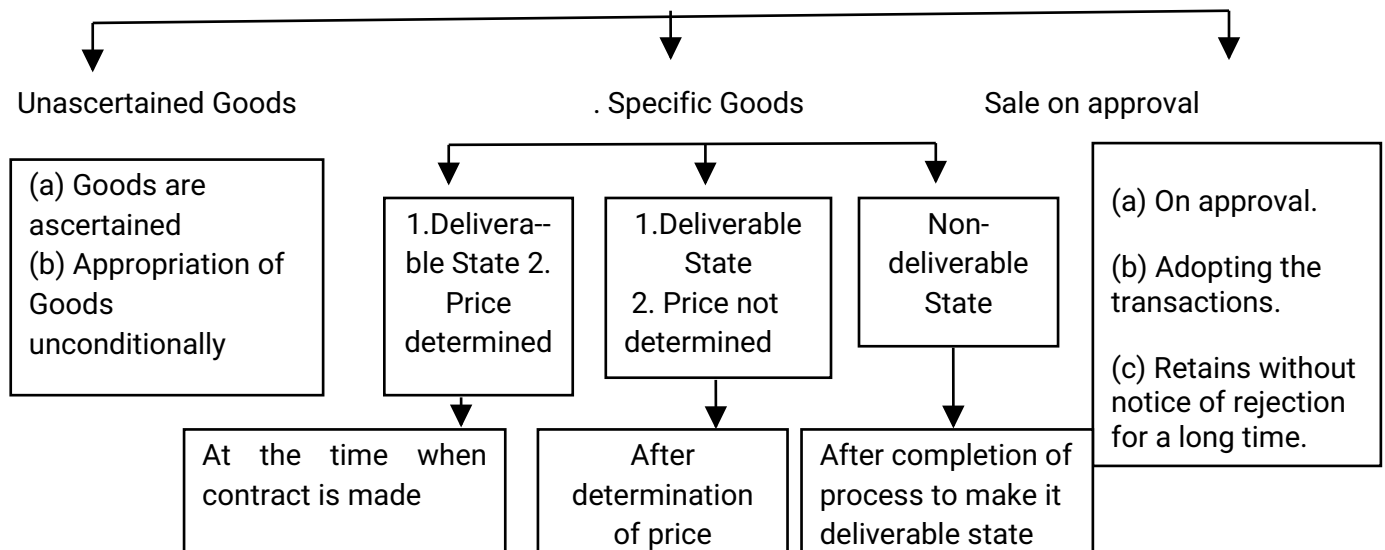
1. Default by one of the parties:- if delivery has been delayed because of the fault of either the buyer or the seller, the goods are at the risk of the party at fault.

2. Whether a Seller can sue for price:- the seller can sue for the price only if the ownership of goods has been transferred to the buyer.

3. Action against third parties: when the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them

### Rules regarding Transfer of Property

#### Transfer of property from Seller to Buyer



**[A] Unascertained Goods. [Sec. 16 & 23]:** No property in goods is transferred from the Seller to the Buyer unless and until the Goods are ascertained and appropriated.

1. Ascertainment: It is the process of identifying the goods and setting apart as per the intended quality or description.

2. Appropriation: For property to pass u/s 23, the following conditions must be satisfied –

- (a) Goods of the description mentioned in the contract must be produced or obtained.
- (b) They must be in a deliverable state, i.e., the goods are in such state that the Buyer would, under the contract, be bound to take delivery of them.
- (c) They must be unconditionally appropriated to the contract. Unconditional appropriation is where, in pursuance of the contract, Seller – (1) delivers the Goods to Buyer or to a carrier or other bailee for their transmission to Buyer and (2) does not reserve the right of disposal. [Sec. 23(2)]
- (d) The assent of the parties may be given expressly or impliedly and can be given either before or after the appropriation.



**Example:** A having a quantity of wheat stock in his godown 500 kg.. A contracts to sell to B 20 kg of it. After the contract A fills 20 kg in a bag. .and gives notice to B that the bag is ready and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, property in the wheat passes to B.

**[B] Transfer of Property in Ascertained / Specific Goods [Sec.19]:**

- Intention of parties: Property is transferred at such time as the Buyer and Seller intend it to be transferred.
- Terms of contract: For ascertaining the parties' intention, regard shall be had to the terms of the contract and circumstances of the case.
- Time of passing of property: Where the intention of the parties as to the time when the property in the Goods is to pass is not ascertainable from the contract, the rules laid down in Sec. 20 to 24 shall apply.

1. Specific Goods in a deliverable State [Sec. 20]:

Deliverable state means that the Goods are in such a state that the Buyer would, under the contract, be bound to take delivery of them.

Property passes at the time the contract is made. Contract is said to be made as soon as the offer is accepted. Contract here refers to an unconditional contract, i.e. it is subject to any condition which the parties are required to comply with.

Property passes immediately inspite of parties agreeing to postpone the time for payment or delivery of Goods.

**Example:** X offers to sell to Y his car at Rs.80,000. Y accepts the offer. As soon as the offer is accepted, it becomes contract and property is transferred to buyer even if delivery is postponed to another day as decided by X and Y.

2. Specific Goods in deliverable state, but price not ascertained [Sec.22]:

- (a) The Goods are specified, but the Seller has to weight, measure, test or do some other act or thing with reference to the Goods for the purpose of ascertaining the price.
- (b) Property passes only after the Seller has weighed, measured tested or does some other action or thing to ascertain the price and the Buyer has notice thereof.
- (c) Example: Gold ring

3. Specific Goods not in a deliverable state [Sec. 21]:

- (a) The Goods are specified, but the Seller has to do some act or process so as to put the

Goods in a deliverable state.

(b) Property passes only when the Seller has done such action and puts the goods into a deliverable state and the Buyer has notice thereof.

(c) Example: wooden furniture for polishing, wheat for weigh etc.

**[C]** Goods sent on Approval or Sale or Return basis [Sec.24]: In case of Sale on “Sale or Return” basis, property in the goods passes to the buyer if –

(a) Approval: Buyer signifies his approval or acceptance to the Seller, or

(b) Retention of Goods: Buyer retains the Goods with giving notice of rejection within the agreed time frame or if no time frame has been agreed, within a reasonable time.

(c) Adopting the transaction: Buyer does any act adopting the transaction e.g. if he pledges the goods with a third party.

## **SELLER’S RESERVATION OF THE RIGHT TO DISPOSE OF GOODS**

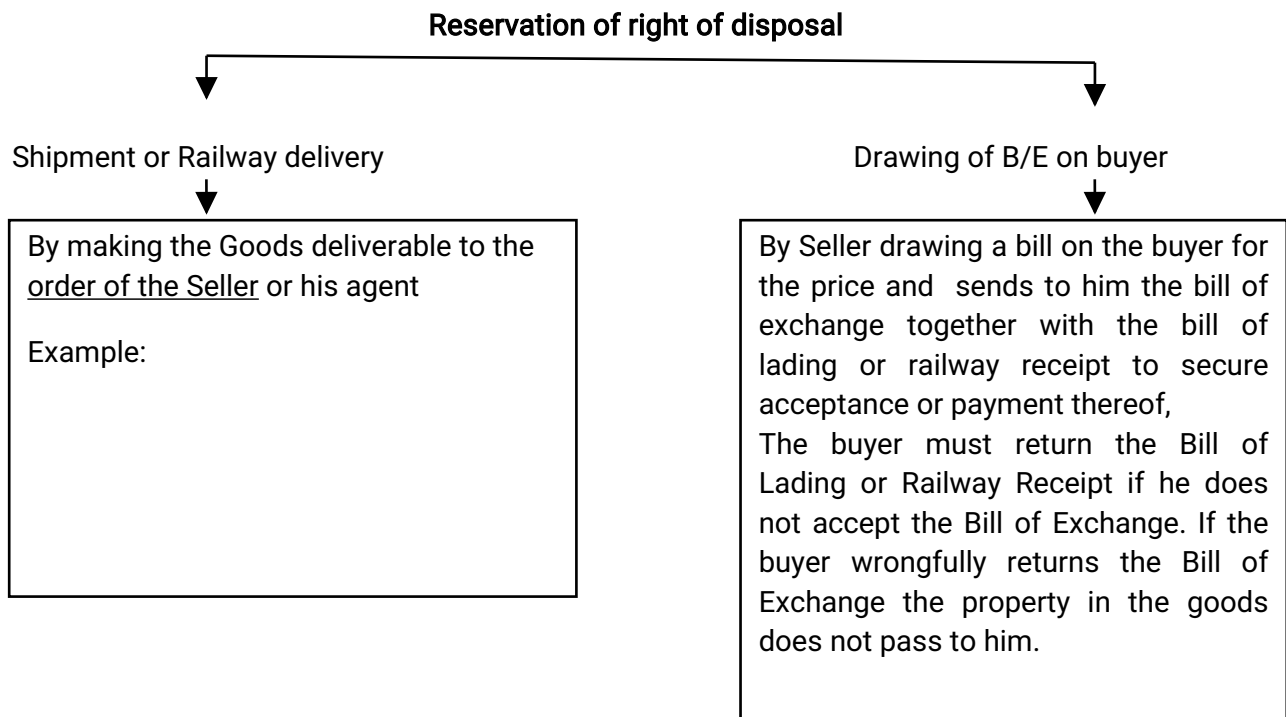
1. Conditional Appropriation [Sec. 25(1)]:

(a) In a contract for sale of specific Goods or where Goods are subsequently appropriated, the Seller may, by the terms of contract or appropriation, reserve the right of disposal of Goods until certain conditions are fulfilled.

(b) It makes no difference even if the goods have been delivered to the buyer, or carrier, or other bailee for the purpose of transmission to the buyer. The property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.

(c) Example: K sent Goods by carrier to M on the condition that payment shall be made within one week of the date of receipt of Goods by M. The property in Goods does not pass to M until payment, even though he has taken custody of the Goods from the carrier.

2. Deemed right of reservation [Sec. 25]: The Seller may reserve the right of disposal under the following modes –



## **LAW RELATING TO PASSING OF RISK IN SALE OF GOODS**

1. Risk passes with property: When the property in Goods is transferred to Buyer, Goods are at the Buyer's risk, irrespective of whether delivery has been made or not. [Sec. 26]

2. Seller's risk: Unless otherwise agreed upon, Goods remain only at the Seller's risk until the property therein is transferred to the Buyer. Hence, risk is borne by the Buyer, only when the property in the Goods passes over to him.

Exceptions: The following are the exceptions to the general rule that risk passes with property –

(a) Delayed delivery: Where delivery of Goods has been delayed through the fault of either Buyer or Seller, Goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(b) Agreement between parties: The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.

(c) Usage of Trade: In some cases trade customs may put the ownership and risk separately in two parties.

3. Bailee's Duties: Nothing contained in Sec. 26 shall affect the duties or liabilities of either the Seller or Buyer as a bailee of Goods of the other party.

## TRANSFER OF TITLE :-

“No one can give a better title to the Goods than what he himself has” – Sale by Non Owners

1. Meaning: Nemo dat quod non habet, i.e, No one can give or transfer what he does not himself possess. Hence only a true owner can transfer to another person, a good and valid title over the Goods. A Seller who himself does not have the ownership cannot confer the same upon the Buyer.
2. Transfer by non-owner [Sec. 27]: If any person who does not possess good title to the Goods and makes the sale, the Buyer would not acquire title even though he has acquired it bonafide and for value.
3. Example: If Raju sells some stolen goods to Ramu , who buys them in good faith, Ramu will get no title to that and the true owner has a right to get back his goods from Ramu.

**Exceptions:** Even a non-owner can make an effective sale in the following circumstances –

**(1). Sale by a mercantile agent Sec. 27 :-** A sale made by mercantile agent of goods , good title transfers to Buyer only when:-

- (a) If he is in possession of goods or of a document of title to goods with consent of the owner.
- (b) The agent sells those Goods in the Ordinary course of business as a Mercantile Agent.
- (c) The Buyer buys them in good faith , for value and the buyer does not have any notice at the time of contract that the seller has no authority to sell.

**(2) Sale by one of several joint owners :-** The joint owner must be in the sole possession of goods with the consent of other co-owners and buyer must have bought the goods in good faith and does not at the time of contract of sale have notice that the seller has no authority to sell.  
Example:- J,K and L Jointly owns a home theater system. With the consent of J and L , K is in possession of the system, which he sells to P who buys it in good faith and without notice that K had no authority to sell. P gets a good title to the home theatre system.

**(3) Sale by a person in possession of goods under a 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 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 person in possession after sale:-** It is possible that- (a) the buyer who buys goods sells thereafter to some other person or (b) the seller who sells the goods makes the sale again to some other person. If the conditions given below are satisfied they are deemed to be a good sale.

- **Sale by Seller :- (i)** Seller continues his possession of goods or document of title to goods only in the capacity of the Seller and not as bailee.

- (ii) Sells the same goods to another Buyer.
- (iii) Subsequent Buyer acts in good faith and without notice of previous sale.

- **Sale by Buyer:-** (i) Buyer has bought or agreed to buy the goods.
  - (ii) he is in possession of the goods or the document of title to goods with the consent of seller & property in it is not passed to Buyer.
  - (iii) The Subsequent Buyer receives the goods in good faith and without notice of the right of lien or other right of the original Seller.

**(5) 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.

**(6) Sale by finder of Goods:-** A finder of goods has the power to sell the goods under certain circumstances and the Buyer , in such cases, will get a good title. A finder of goods can sell such goods-

- (a) If the owner cannot be found with reasonable diligence, or
- (b) If found, he refuses to pay lawful charges of the finder or
- (c) If the Goods are in danger of perishing or of losing the greater part of their value, or
- (d) If the Lawful charges of the finder, in finding the real owner and in preserving the Goods found, amount to at least two third of the value of Goods found.

**(8) Sale by Pawnee or Pledgee :-** Sale of goods pledged by a Pawnee Conveys good title to the Buyer when- (a) The Pawnor or Pledger makes a default in payment of the debt or the performance of the promise at the stipulated time,

(b) The Pawnee has given a reasonable notice to the Pawnor or pledger.

**(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.

#### **(9) Effect of Estoppel [Sec. 27]**

If the true owner by his conduct, act or omission leads the Buyer to believe that the Seller has the authority to sell, and induces the Buyer to buy the Goods, he shall be estopped from denying the fact of want of authority of the Seller. The Buyer in such a case shall get better title that of the Seller.

Example: 'G' owns some sacks of rice. K sells it to M in G's presence. G does not indicate to M that the Goods belong to him and that K does not have authority to sell. M ultimately buys that rice. M acquires a good title to the Goods. G is estopped from repudiating later that the Goods belong to him.

#### **RULES REGARDING DELIVERY OF GOODS :-**

**1. Payment and Delivery to be Concurrent Sec. 32 :-** unless otherwise agreed, delivery of the

goods and payment of the price are concurrent conditions. i.e. seller shall be ready and willing to deliver possession to the buyer in exchange for price, and Buyer shall be ready and willing to pay the price in exchange for possession of goods.

**2. Effect of part delivery :-** A delivery of part of goods with an intention of giving the delivery of the whole, amount to delivery of whole of the goods. ( Part delivery = full Delivery )

But where the part is intended to be severed from the whole, part delivery does not amount to be the delivery of the whole. ( part Delivery = No delivery ) .

**3. Buyer to apply for delivery :-** the seller of the goods is not bound to deliver them until the buyer has applied for delivery, unless otherwise agreed.

**4. Place of Delivery :-**

<b>Case</b>	<b>Place of Delivery</b>
(1) Where there is contract as to the place of delivery	At the agreed place.
(2) Where there is no contract as to the place of delivery	
(a) In case of sale	At the place at which they are at the time of Sale.
(b) In case of an agreement to sell	At the place at which they are at the time of the agreement to sell.
(c) In case of future goods	At the place at which they are manufactured or produced.

**5. Time of Delivery :-** When the time of sending the goods has not been fixed by the parties the seller must send them within a reasonable time. What is reasonable is a question of fact depending upon the facts and circumstances of each case.

**6. Goods in possession of a third party :-** 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. The issue or transfer of any document of title to goods operates as delivery ( symbolic delivery ) , even if the goods are in the custody of a third person without such attornment.

**7. Expenses of Delivery :-** Unless otherwise agreed upon by the parties, the expenses of and incidental to putting the Goods into deliverable state shall be borne by the seller.

**8. Delivery of wrong quantity :-** Buyer has the following rights when wrong quantity is delivered:-

- **Short delivery :-** Reject the goods or accept and pay as per the contracted rate.

- **Excess delivery** :- Reject in full or accept the contract quantity and reject the excess or accept the whole.
- **Mixed Delivery** :- means with goods of different description  
Buyer can accept the contracted Goods and reject the rest. Or Reject the entire lot.

**Note** :- the buyer may not be allowed to reject the goods in case of negligible short or excess delivery.

**9. Delivery by instalments** :- Unless otherwise agreed between the parties , the Buyer is not bound to accept delivery by instalments.

**10. Delivery to carrier** :- Where the seller is authorised or required to send the goods to the buyer, delivery of the goods to carrier ( whether named by the buyer, or not ) for the purpose of transmission to the buyer, or delivery of the goods to wharfinger custody, is prima facie deemed to be a delivery of the goods to the buyer. But Seller is further required to perform the following two duties also.

- To make reasonable contract with the carrier or wharfinger
- to give notice to the buyer to enable him to insure the goods.

**11. Deterioration during transit** :- 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.

**12. Buyer's right of examining Goods** :- Where goods are delivered to the Buyer which had not been inspected previously by him, it is the duty of the seller to give a reasonable opportunity of examine them to ascertain that the goods delivered are in conformity with the contract.

**13. Acceptance of Delivery by Buyer** :- Acceptance is deemed to take place when the buyer.

- Intimates to the seller that he had accepted the good; or
- does any act to the goods which is inconsistent with the ownership of the seller or
- When after the lapse of a reasonable time, he retains the goods without intimating the seller that he has rejected the Goods.

**14. Buyer not bound o return rejected goods**:- Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller refuses to take back the Goods, the Buyer becomes the bailee of such Goods and he may charge the Seller for the custody of his Goods.

**15. Liability of the Buyer for refusal of delivery of Goods** :- The buyer is liable to the Seller when 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. Buyer is liable for the following:-

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

## PART IV UNPAID SELER

### UNPAID SELLER:

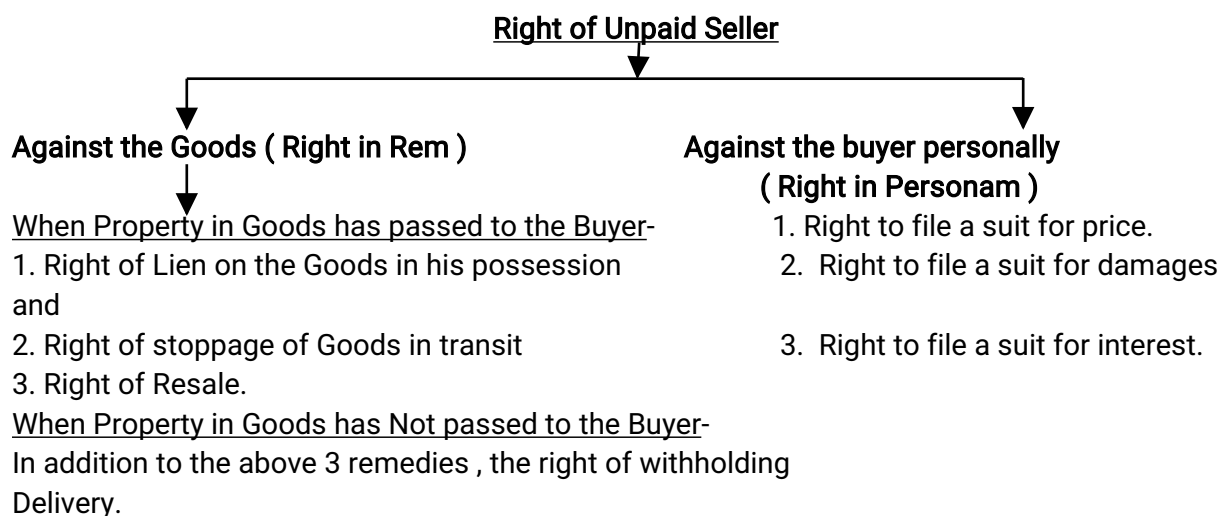
#### Definition of Unpaid Seller U/S 45(1) :-

- (i) When the whole of the price has not been paid or tendered or
- (ii) When a bill of exchange or other negotiable instrument ( such as cheque) has been received as conditional payment and it has been dishonoured.

The term seller includes any person who is in position of a seller ( for instance an agent of 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.)

#### Points to be remember :-

1. Even if a substantial portion of the price is paid and only a small balance is pending, the seller is still regarded as an unpaid seller.
2. Unpaid seller is for the non-payment of the price and not for non payment of other expenses.
3. Where full price has been tendered by the buyer and the seller has refused to accept it , the seller cannot be called as unpaid seller.
4. Where the goods have been sold on credit, the seller cannot be called as an unpaid seller during the credit period unless the buyer becomes insolvent.



#### **Right against the goods:-**



**1. Right of Lien :-** The right of lien means the right to retain the possession of the goods until the full price is received. The unpaid seller who is in possession of goods is entitled to retain possession of them until payment or tender of the price in the following cases namely;

- (i) Where the goods have been sold without any stipulation to credit.
- (ii) Where the goods have been sold on credit, but the term of the credit has expired ;
- (iii) The buyer become insolvent (**sec. 47**).

Circumstances under which right of lien is lost :-

The unpaid seller loses his right of lien in the following cases:-

- (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) When the seller waives his right of lien.
- (d) When the buyer disposes of the goods by sale or in any other manner with the consent of the seller.
- (e) By Estoppel i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

**2. Right of Stoppage in Transit :-** When the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods by handing it over to a carrier for transmission, has the right of stopping them in transit. The seller may resume possession of the goods, as long as they are in the course of transit and may exercise this right of stoppage in transit either by taking actual possession of the goods, or by giving notice to the carrier or other bailee in whose possession the goods are, to not to deliver the goods to the buyer.

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are fulfilled.

1. The seller must have parted with the possession of goods i.e. the goods must not be in the possession of seller and
2. The goods must be in the course of transit and
3. The buyer must have become insolvent and
4. The seller must be unpaid in respect of price not for expenses.

Loss of right of stoppage:- The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end when—

- Buyer or his agent obtains delivery of goods before their arrival at their destination
- If after the arrival of goods at their destination, carrier or other bailee acknowledges to Buyer or his agent that he holds goods on his behalf, and continues possession of the goods , the transit is at an end even if the Buyer indicates further destination of the Goods to the Carrier.

Example:- Rajaram of Ujjain orders Jairam of Delhi ,to deliver certain Goods to him at Ujjain. While the Goods are lying at Ujjain Railway station, the station master informs Rajaram that goods are held at the station at Rajaram's risk. But Rajaram has become insolvent. Here Jairam (Seller) has lost his right of stoppage in transit. Intimation by station master amount to ending

of transit.

### Difference between Right of Lien & Right of Stoppage in Transit

Basic	Right of Lien	Right of Stoppage in Transit
Objective	To <u>retain</u> possession of Goods	To <u>regain</u> possession of Goods handed over to a carrier for the purpose of transmission
Buyer's solvency	The right can be exercised even when the buyer is solvent but refuses to pay price.	Can be exercised only when the Buyer is insolvent.
Possession of goods	Actual possession of the seller	The goods must be parted by seller to carrier or other bailee who is acting as an independent person.
End point	The Right of lien gives rise to the right of stoppage in transit	To exercise this right the seller must have lost his right of lien.
Person acting	The Seller has to exercise this right himself	The seller can exercise this right through the carrier / bailee with whom the goods are lying.

**3. Right of Resale :-** The unpaid seller can exercise the right to re-sell the goods under the following conditions:-

1. When the goods are of **perishable nature**:- In this case the buyer need not be informed of the intention of re-sale.
2. In case **other goods** :- When he gives notice to the buyer of his intension to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

**Rights of Unpaid Seller against the Buyer :-** An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. The right of the seller against the buyer personally are called right in personam and are in addition to his rights against the goods. The right in personam are as follows:-

**(1). 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 term of the contract, the seller may sue him for the price of the goods **(sec. 55)**

**(2) Damages for non-acceptance:-** Where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for damages for non-acceptance **(sec. 56)**

**(3) Repudiation of contract before due date:-** Where the buyer in a contract of sale repudiates the contract before the date of delivery, the seller 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 **(sec. 60)**

**(4) Suit for interest: –** The seller can recover interest on price from the date on which the payment became due, if there is a special agreement to that effect.

### **BUYER'S RIGHTS AGAINST THE SELLER:-**

Where there is a breach on the part of the seller, the buyer has the following remedies against him.

1. Suit for price:- Where Buyer has paid the price and seller refuses to deliver the Goods, Buyer can recover the amount paid.

2. Suit for non delivery:- 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.

3. Suit for Specific performance :- Where the Buyer is ready and willing to take delivery, but the seller refuses delivery, the Buyer can institute a suit for the specific performance of the contract i.e. for the delivery of the goods. But this right can be exercised only in respect of specific or ascertained goods.

The court may in its discretion grant a decree ordering the seller to deliver those specific or ascertained goods which formed the subject matter of the contract.

4. Suit for Breach of Warranty: - Where there is a breach of warranty by seller, or where the Buyer elects or is compelled to treat any breach of condition by the seller as breach of warranty, the buyer is entitled to

(a) Repair the goods,

(b) Set up against the seller the breach of warranty in diminution or extinction of the price or

(c) Sue the Seller for damages for breach of warranty.

Example :- X sold a second hand computer to Y who spent Rs. 1000 on the repair of this Computer This computer was seized by the police as it was a stolen one. Y filed a suit against X for recovery of damages for breach of warranty of undisturbed possession including the cost of repairs. It was held that Y was entitled to recover the same.

### **EFFECT OF SUB-SALE OR PLEDGE BY THE BUYER:-**

General rule is that, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods by the buyer.

Example: - X sold 10 tons of wheat to Y for Rs. 100000. Y resold 8 tons of wheat out of 10 tons to Z and instructed X to deliver 8 tons of wheat to Z. X delivered 5 tons of wheat to Z. later on when Y did not pay the price, X refused to make further deliveries to Z. it was held that X was entitled to refuse further delivery of wheat to Z.

However, there are two exceptions to this rule:-

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

(b) When document of title of 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 (price).

## PART V

### AUTION SALE UNDER SECTION 64

**Meaning :-** An Auction Sale is a model of selling property by inviting bids publicly and the property is sold to the highest bidder.

In auction sale Auctioneer is an agent governed by the Law of Agency. He has authority to sell on behalf of his Principal. However he may sell his own property as the principal and need not disclose the fact that he is so selling.

#### **Rules of Auction Sales :-**

**(a) Sale in lots :-** Where goods are put up for sale in lots, each lot is deemed , prima facie, to be the subject matter of a separate contract of sale.

**(b) Completion of auction and withdrawal by bidder:-** Auction sale is complete only when the Auctioneer announces its completion by the fall of the hammer or in any other customary manner. For example:-

Until such completion any bidder may withdraw his bid.

**(c) Right of Seller to Bid :-** 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, subject to following:-

**Seller not to bid :-** Where the sale is not notified (express ) to be subject to the right of the Seller to bid, it shall not be lawful –

- (i) For the seller to bid himself or to employ any person to bid at such sale, or
- (ii) For the Auctioneer knowingly to take any bid from the seller or any person representing him

Any sale contravening this rule may be treated as fraudulent by the buyer.

**(d) Reserve or Upset Price :-** The sale may be notified to be subject to reserve or upset price, i.e. the minimum price below which the Auctioneer will not sell the goods.

**(e) Pretended Bidding :-** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

**Important :-** 1. An auctioneer can refuse to accept even the highest bid because 'bid' is only an offer which may or may not be accepted by the auctioneer.

2. Knock-out agreement: - An agreement between the bidders not to bid against each other is called the knock out agreement. Under such agreement only one person will bid and anything obtained by him shall be shared by all privately. Such agreements are lawful unless the intention of the parties to the agreement is to defraud a third party.

3. Damping which is intended to discourage the bidder from bidding is an unlawful act.

4. Puffer (also known as By-bidder or white Bonnets or Decoy Ducks) are persons who are appointed by the Seller for the purpose of raising the price. The Seller can appoint only one puffer.



## **REFERENCE:**

**CA MANISH PARMAR (M.COM . , FCA)**

## **FOR MORE DETAIL , CONTACT HERE:**

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