

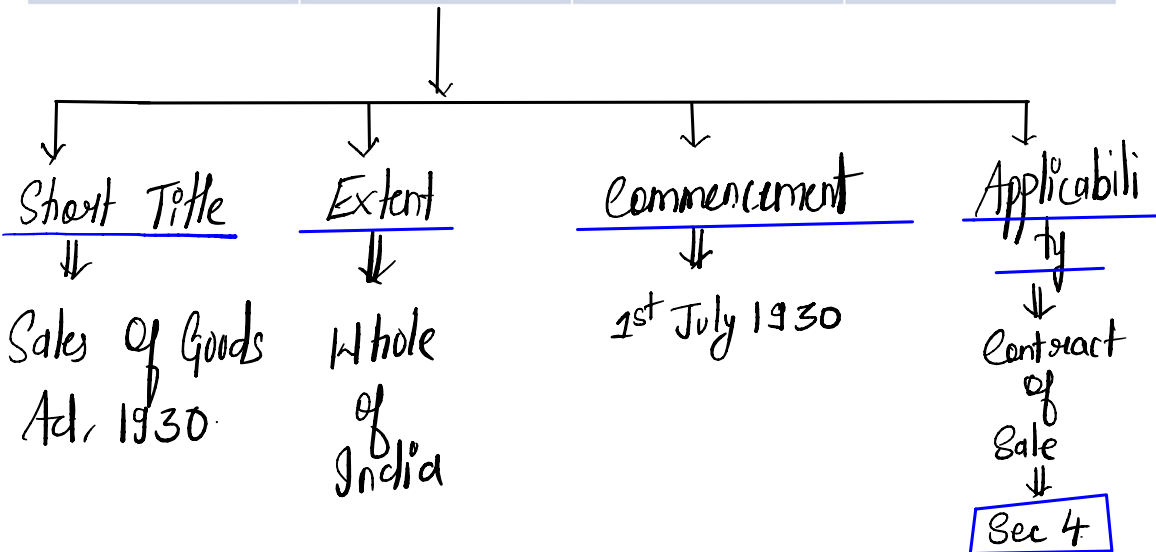
Sale of Goods Act, 1930



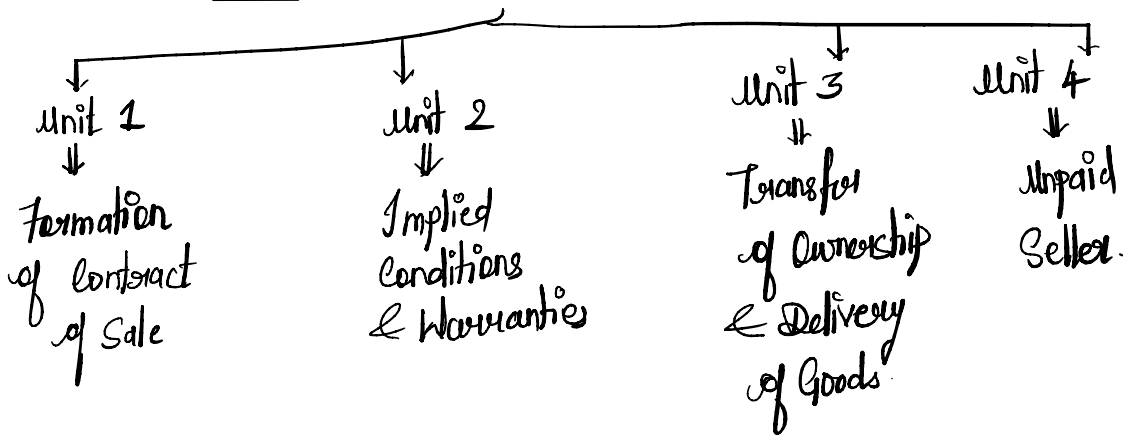
THE INDIAN CONTRACT ACT, 1872

THE STRUCTURE OF THE ACT

Section 1-75	Section 76-123	Section 124-238	Section 239-266
	Sale of goods		Partnership
General provisions	Sale of Goods Act, 1930	Special Contracts	Indian Partnership Act, 1932



SALES OF GOODS ACT, 1930



SALES OF GOODS ACT, 1930

UNIT: 1 ⇒ FORMATION OF CONTRACT OF SALE

* Definition.

1] Seller ⇒ Sec 2(13) means a person who sell or Agrees to sell } Goods.
Natural
Artificial

2] Buyer ⇒ Sec 2(1) means a person who Buys or Agrees to buy } Goods.

3] Goods ⇒ Section 2(7)

means every kind of MOVABLE PROPERTY Other than

↓
Actionable claims
and Money.

Includes

Stocks, shares, growing crops, grass and things attached to earth or forming part of land which are agreed to be severed before sale or under contract of sale.

Types of Goods:

Existing Goods:

⇒ owned or possessed
By the seller
At the time of contract of sale
is made.

Future Goods:

Are those goods
which are to be
Manufactured or
Produced or
Acquired by
seller after
making of
contract of sale.

Contingent Goods

The acquisition
of which by
seller depends
upon an uncer-
tain contingency
(uncertain event)
are called
contingent
Goods.

① Specific Goods

Are those goods which
are identified or agreed
upon at the time of contract
of sale is made

② Ascertained Goods:

Are those goods which are
identified in accordance with
agreement after the contract
of sale is made.

③ Unascertained Goods:

Are those goods which are
not specifically identified or
ascertained at time of making
of contract.

↓
Agreement to Sell

4] Delivery \Rightarrow Sec 2(2)

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

Types of Delivery

Actual

When goods are physically delivered to buyer.

Constructive

Where it is effected without any change in custody or actual possession of thing or as a case may be delivery by acknowledgement.

Symbolic.

When there is delivery of thing in token

5] Price \Rightarrow Sec 2(10)

Price means money consideration for sale of goods.

6] Document of Title to Goods \Rightarrow Sec 2(4)

Any document used in ordinary course of business

\Rightarrow as a proof of possession or control of goods or authorising or purporting to authorise either by endorsement or delivery $\left. \begin{array}{l} \text{transfer} \\ \text{or} \\ \text{receive} \end{array} \right\}$ Goods thereby represented.

Note:- A document amounts to Document of Title only where it shows an unconditional undertaking to deliver the goods to the holder of document.

* Contract of Sale

Where under a contract of sale, property in goods is transferred from Seller to Buyer, the contract is called Sale. In Sale property in goods is transferred from Seller to Buyer immediately.

* Agreement to Sell

Where the transfer of property in 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.

In an agreement to sell ownership of goods is not transferred immediately.

* When Agreement to Sell becomes Sale

An Agreement to Sell becomes sale when

Time Elapses or conditions are fulfilled subject to which property in goods is transferred

* Essentials of Valid Contract of Sale.

- 1] Two Parties \Rightarrow Bilateral Contract
- 2] Subject Matter \Rightarrow Goods (future or Existing)
- 3] Price \Rightarrow [Paid or Promised] \Rightarrow Partly in money & Partly in kind.
- 4] Transfer of Property in Goods.
- 5] Absolute (Sale) or conditional (Agreement to Sell)
- 6] All other essential elements of contract.

* Difference between Sale And Agreement to Sell

	<u>Sale</u>	<u>Agreement to Sell</u>
① Transfer of Property	Immediately	Future date or on fulfillment of conditions.
② Nature of Contract	Executed	Executory
③ Remedies for Breach	Seller can sue for price because property is passed	Can sue only for damages but not for price.
④ Liability of Parties.	Subsequent destruction or loss is the liability of Buyer.	Liability of Seller

⑤ Rights	Jus in Rem.	Jus in Personam.
⑥ Right of Resale.	Seller cannot resale the Goods.	Seller can resale the goods since ownership is with seller

* Sale v/s. Hire Purchase

↓
Governed by Hire Purchase Act, 1972

MEANS:

Agreement → Goods let on hire and hirer has an OPTION to Purchase.

INCLUDES:

- Possession of Goods Delivered.
- Property in Goods passes on payment of last Installment.
- Right to terminate agreement ANY TIME before the property is passed.

* Sale v/s Hire Purchase

Basis of Difference	Sale	Hire Purchase
Time of passing property	Property in the goods is transferred to the buyer immediately at the time of contract.	The property in goods passes to the hirer upon payment of the last installment.
Position of the party	The position of the buyer is that of the owner of the goods.	The position of the hirer is that of a bailee till he pays the last installment.
Termination of contract	The buyer cannot terminate the contract and is bound to pay the price of the goods.	The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
Burden of Risk of insolvency of the buyer	The seller takes the risk of any loss resulting from the insolvency of the buyer.	The owner takes no such risk, for if the hirer fails to pay an installment, the owner has right to take back the goods.
Transfer of title	The buyer can pass a good title to a bona fide purchaser from him.	The hirer cannot pass any title even to a bona fide purchaser.
Resale	The buyer in sale can resell the goods	The hire purchaser cannot resell unless he has paid all the installments.

* Sale v/s Bailment :-

Bailment is delivery of goods from one person to another for ^{Bailee} some purpose upon a contract that goods shall once the purpose is accomplished be ^{Bailor} returned or otherwise disposed off according to the directions of person delivering them [Bailee]

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

* Contract of Sale How made? (Sec 5)

Any of the following modes:-

① Offer $\left\{ \begin{array}{l} \rightarrow \text{Buy} \\ \rightarrow \text{Sell} \end{array} \right\}$ Goods
By one person.

AND

Acceptance of same by other person.

② Immediate delivery of Goods.

③ Immediate Payment of Price and Delivery at future date

④ Immediate Delivery and Immediate Payment.

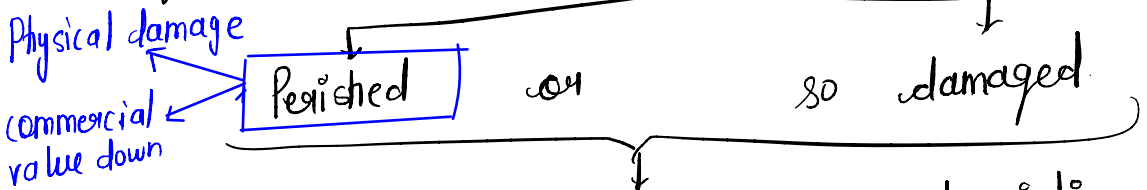
⑤ Installment $\left\{ \begin{array}{l} \rightarrow \text{Delivery} \\ \rightarrow \text{Payment} \end{array} \right\}$ AND

⑥ Both in future date.

* Goods Perishing before making of contract of Sale
Section 7

Contract of Sale \Rightarrow SPECIFIC GOODS

Contract \rightarrow VOID \rightarrow If goods without knowledge of SELLER \rightarrow At the time of contract

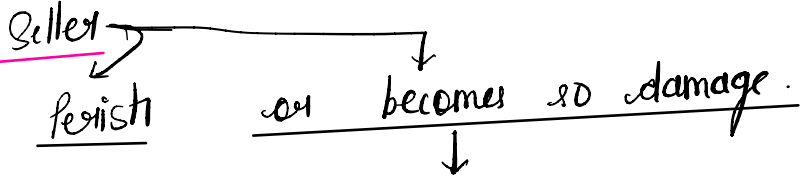


Physical damage
Commercial value down

As no longer to answer their description.

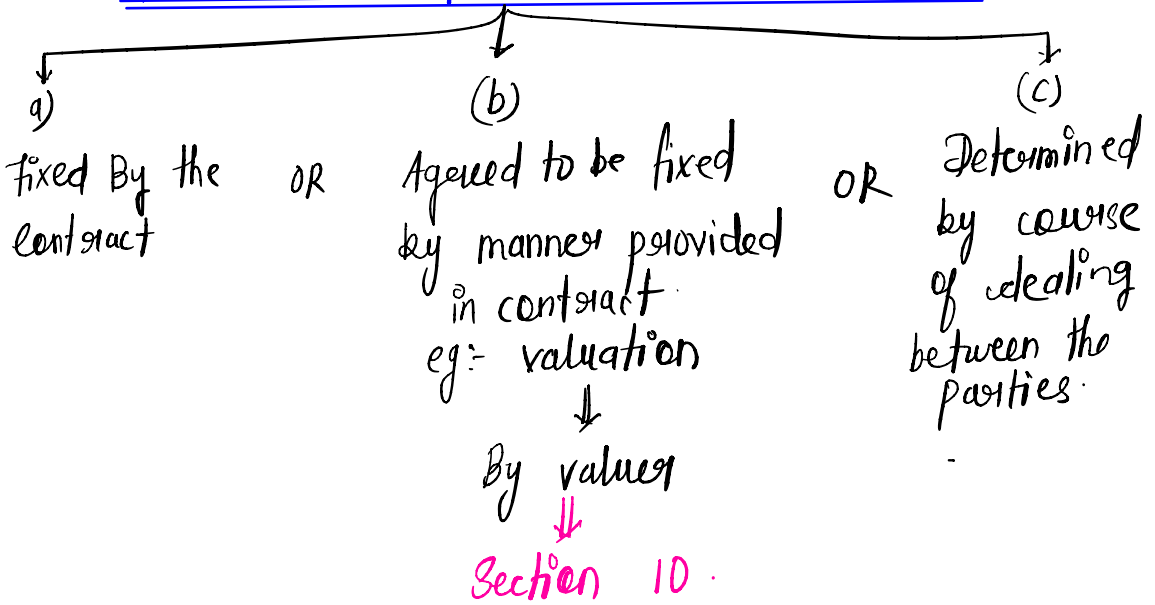
* Goods perishing before sale but after agreement to sell \Rightarrow Section 8.

Where there is Agreement to sell Specific Goods & subsequent goods without any fault of Buyer &

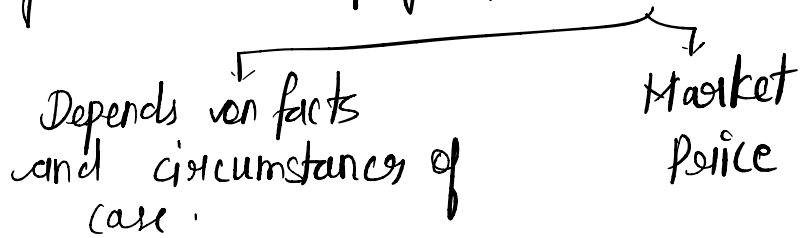


As no longer to answer their description. Before the risk passes to the buyer. Agreement is thereby avoided or becomes void.

* Ascertainment of Price (Sec 9)



Section 9(2) If party cannot fix the price under
Sec 9(1) ⇒ Buyer Bound to pay ⇒ Reasonable Price



* Section 10 ⇒ Valuation By Third Party

Failure to value by
Third Party

cannot
(Party k
vajese)

or

Does not
[Khadse]

makes such valuation

⇓

Agreement is avoided.

However where Buyer has received & Appropriated (use) the goods he is bound to pay reasonable price for them.

Where third party is prevented from making such valuation by the fault of Buyer or seller.

⇓

Party not at fault

↓

may sue the Party at Fault

UNIT - 2 ⇒ CONDITIONS & WARRANTIES

* Stipulation [Requirement]

Section 12(1)

Condition

Stipulation is essential to the main purpose of the contract

Effect of Breach (2)

- Right to repudiate the contract
- Reject the goods
- Refund price

Warranty

Stipulation collateral (collateral) to main purpose of the contract.

Effect of Breach (3)

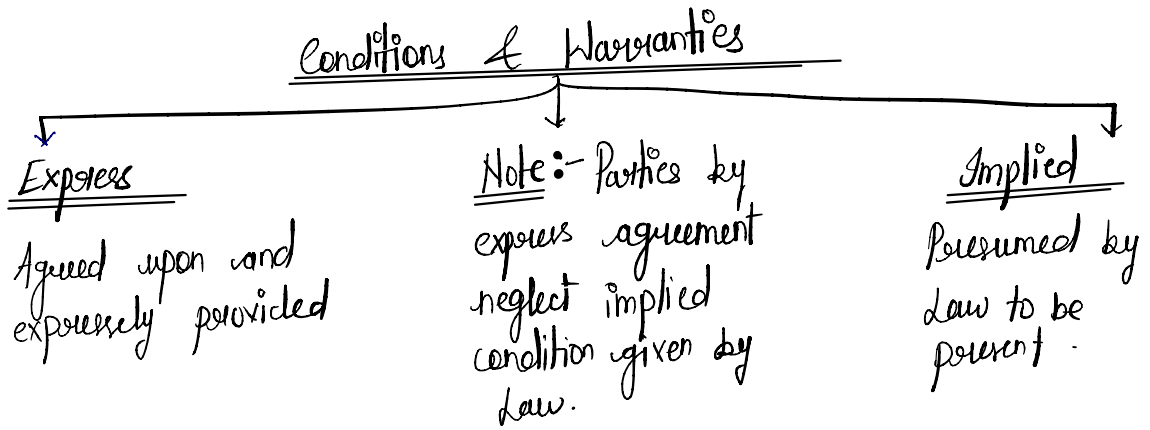
- Right to claim for damages
- No right to repudiate contract
- No right to reject goods

* When condition is to be treated as warranty [Sec 13]

- ① When buyer waives the condition
Effect:- Buyer will lose the right to repudiate and reject.
- ② When Buyer elect to treat the condition as warranty
Effect:- Buyer will lose the right to repudiate and reject.
- ③ When contract is not severable.

- (h) Nothing shall effect Breach of Condition or warranty
↳ Excused by impossibility or otherwise.

* Expressed & Implied conditions & Warranties [Section 14 to 17]



* Implied Conditions:-

① Condition as to title :-

Sale :- seller has the right to sell.

Agreement to sell - will have right to sell the goods at the time when property is to be passed.

② Sale by description :-

Goods shall correspond with the description.

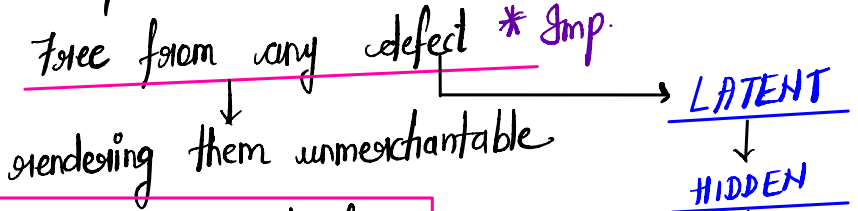
Principle:- "If you contract to sell peas you cannot compell buyer to take beans"

It is essential to know whether the description is essential for identifying the goods.

eg:- Banarasi Saree, Nagpuri Oranges, Kolkata Chappals.

③ Sale By Sample :-

- a] Bulk shall correspond with sample in quality
- b] Buyer shall have reasonable opportunity of comparing bulk with sample
- c] Goods → free from any defect * Imp.



which would not be apparent from reasonable examination by sample

Applicability of this condition :- only on defects.

d] Sale by Sample as well as by description.

Bulk supplied shall correspond with

↓
sample

↓
description.

e] Condition as to Quality or fitness

No implied condition as to quality or fitness of goods for particular purpose:

Note:- If all the following conditions are satisfied then there will be Implied condition for quality or fitness.

Buyer had made known to seller purpose of his purchase.

Buyer relied on seller's skill & Judgement

Seller's business to supply good of that description

Note:- Implied condition for quality or fitness does not apply when goods are bought under Trade Mark or Patent.

f) Condition as to Merchantability

* Goods sold by description.

* By seller who deals in goods of that description [Whether he is manufacturer or producer]

Implied Condition:- Goods shall be of merchantable quality

g) Condition as to wholesomeness.

↓
Eatables & Provisions:

↓
condition as to merchantability

↓
Goods shall be wholesome

* Implied Warranties

① Warranty as to undisturbed possession:-

Buyer have and enjoy quite possession of goods

② Warranty as to non existence of encumbrances not declared or known to Buyer.

③ Warranty as to quality or fitness by usage of trade

④ Disclosure of dangerous nature of goods

↳ The seller must warn the buyer of probable damage.

* CAVEAT EMPTOR

↓
"let the Buyer beware"

When the seller displays goods in open market

↓
Duty of Buyer

↓
To make proper selection or choice of goods.

* Seller not liable ⇒ If goods turn out to be defective

Exceptions:

If all the following conditions are satisfied

↓
Buyer had made known to seller purpose of his purchase.

↓
Buyer relied on seller's skill & Judgement

↓
Seller's business to supply good of that description

- ① Fitness as to quality or use
 - ⇒ Priest vs Last.
 - ⇒ Bombay Burma Trading Corporation v/s Aga Muhammad.
- ② Goods purchased under Patent or Brand Name.
- ③ Goods sold by description
- ④ Goods of Merchantable quality
- ⑤ Sold by Sample
- ⑥ By sample and Description
- ⑦ Trade Usage.
- ⑧ Seller actively conceal a defect or is guilty of fraud.

UNIT 3 ⇒ TRANSFER OF OWNERSHIP & DELIVERY OF GOODS

* Transfer of Ownership.

Passing of Property (Ownership)
↓

Importance of Time
↓

Delivery of Goods
↓
Passing of Risk

General Rule

Risk passes with Property.

* What if Goods damaged or Destroyed?
↳ Loss will be borne by the the owner, even if goods were in possession of seller.

* What if goods were damaged by third party?
↳ It is only the owner who can take action

* When claim / suit for price arises to seller?
↳ Only when the property is passed.

* TIME OF TRANSFER OF PROPERTY IN GOODS

A) Transfer of Property in ascertained / specific Goods.

- 1] Intention of parties
- 2] Terms of contract and circumstances of case.
- 3] Still can't figure out intention \Rightarrow Sec 20-24.

1] Specific Goods in a deliverable state [Sec 20]

- a] Property passes when contract is made. [as soon as offer is accepted]
- b] Property passes immediately even if payment and delivery is postponed.

2] Specific goods not in deliverable state [Sec 21]

\hookrightarrow When the seller has done some action and put the goods in to deliverable state and buyer has notice thereof.

3] Specific goods in deliverable state, but price not ascertained \Rightarrow [Sec 22]

- a] Property passes only after seller has
 - weighed
 - measured

- tested or

- does some other action or thing to ascertain price

* Property does not pass until such act & thing is done and buyer has notice thereof.

B] Unascertained Goods [Section 19 and 23]

* When property will pass?

Ans ⇒

Goods

Ascertained

Appropriated

Selection of goods with intention of using them in performance of contract

AND

With mutual consent of Seller and Buyer.

* For property to pass following conditions to be satisfied (Sec 23)

✓ Goods of the description mentioned in the contract must be produced or obtained

* Risk Passes With Possession ⇒ Exception ⇒ Sec 26.

- a) Delayed delivery
- b) Special Agreement between parties
- c) Trade Usage.

Note:- Nothing contained in sec 26 shall affect the duties and liabilities of bailee.

Nemo dat quod non habet

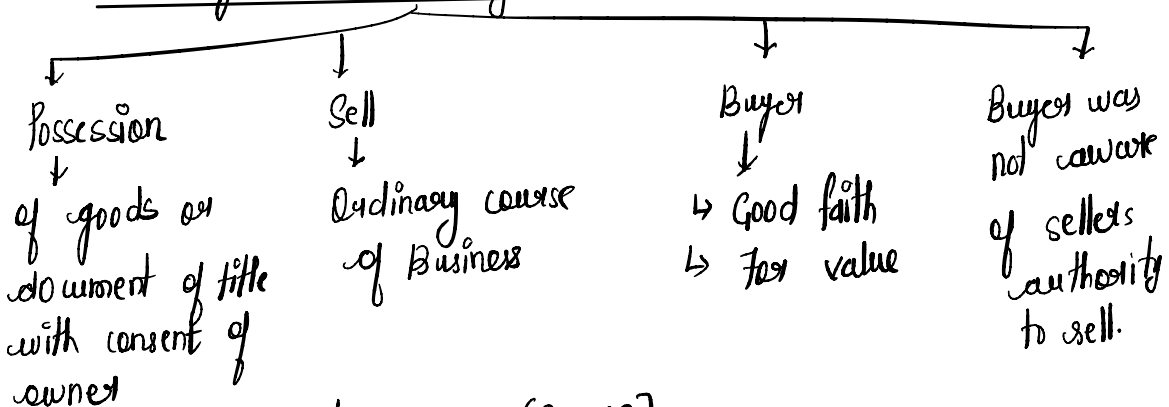
↳ No one can transfer better title than he himself has

Exception:- Transfer by Non-owner. [Sec 27]

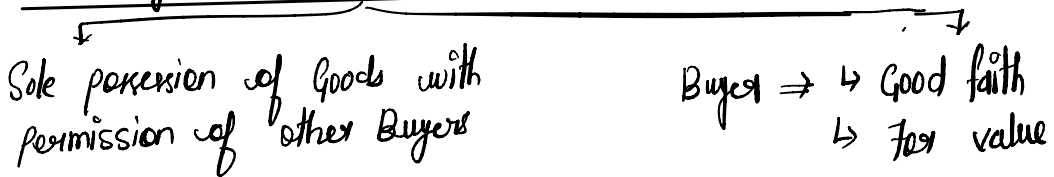
If buyer acquires it bonafide & for value

↓
(good faith)

1] Sale by Merchantile Agent (Sec 27)



2] Sale By Joint Owner (Sec 28)



- 3] Sale by person in possession under voidable contract.
- 4] Sale by person who already sold the goods but continues possession.
- 5] Sale by Buyer obtaining possession before the property in goods has vested in him.
- 6] Effect of Estoppel.
- 7] Sale by Unpaid Seller
- 8] Sale under provisions of other Act

* Performance of Contract of Sale

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

Definition of Delivery [Section 2(2)]: Delivery means voluntary transfer of possession from one person to another. For delivery, physical possession is not important. The buyer should be placed in a position so that he can exercise his right over the goods. 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.

Delivery of goods is of three types:

- i) Actual Delivery
- ii) Symbolic delivery
- iii) Constructive Delivery

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.

Example: Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer, thereafter, accepted them and took away part. Held, there was delivery of the whole.

3. Buyer to apply for delivery [Section 35]: Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

4. Place of delivery [Section 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 [Section 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]:

- i) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.
- ii) 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.
- iii) 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.
- iv) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Example: A agrees to sell 100 quintals of wheat to B at Rs. 1,000 per quintal. A delivers 1,100 quintals. B may reject the whole lot or accept only 1,000 quintals and reject the rest or accept the whole lot and pay for them at the contract of sale.

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 [Section 39(1)]: Subject to the terms of contract, the delivery of the goods to the carrier for transmission to the buyer, is prima facie deemed to be delivery to the buyer.

12. Deterioration during transit (Section 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 were 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 effecting 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 (Section 41): Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods.

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

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when 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, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Analysis:

Acceptance is deemed to take place when the buyer-

- i) intimates to the seller that he had accepted the goods; or
- ii) does any act to the goods, which is inconsistent with the ownership of the seller;
or
- iii) retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods (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.

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.

UNIT: 4 ⇒ UNPAID SELLER

1] Unpaid Seller [Sec 45(1)]

Seller → Deemed unpaid Seller

a] Non-payment

↳ When whole price is not paid or tendered.

b] Dishonour of Negotiable instrument.

- Bills of Exchange or other negotiable instrument received
- For conditional Payment. *promissory note or cheque.*
- Conditional ⇒ Not fulfilled

Dishonour

Otherwise

2] Seller to include agent 45(a)

→ Any Person

→ Who is in a position of seller.

Eg: Seller's Agent or consignee ⇒ Directly responsible for price.

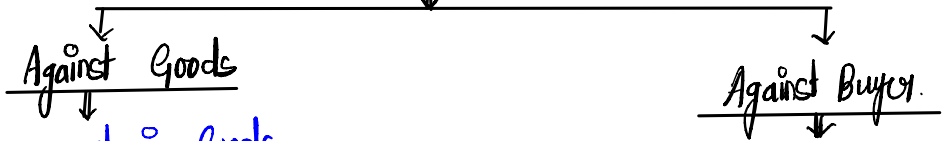
3] Small Dues

→ Subsequent amount paid

→ Small dues pending

→ Seller ⇒ can sue.

* Rights of Unpaid Seller



When property in Goods Passes.

- 1] Right of Lien [Retain possession]
- 2] Right of Stoppage in Transit [Retain possession]

⇒ When buyer becomes insolvent

- 3] Right of Resale

When property in Goods is not passed

⇒ Additional right to withhold delivery.

- 1] Suit for Price
- 2] Suit for Damages for non-acceptance
- 3] Suit for Interest

A] Right of Lien (Sec 47)

When to retain possession.

⇒ Till tender or payment of price.

* Right of Lien can be exercised in following cases

- Goods are sold ⇒ without credit
- Goods sold ⇒ credit period expired.
- Buyer becomes insolvent.

* Rules regarding Right of Lien

1] Goods must be in possession.

2] Possession lost \Rightarrow Right of Lien lost.

3] Goods delivered to carrier but document of title \Rightarrow seller's name i.e. seller reserved right of disposal.

* Lien only for price \Rightarrow not for any other expense like godown charges or interest.

* Termination of Lien [Sec 49(2)]

1] When he delivers the goods to carrier and does not reserve right of disposal.

2] Buyer or Agent have obtained possession of goods lawfully.

3] Seller waives right of Lien.

B] Right of Stoppage in Transit

\hookrightarrow only when buyer becomes insolvent.

* Conditions:-

a] Lost Right of Lien \Rightarrow Lost Possession

b] Buyer - insolvent

c] Notice $\begin{cases} \rightarrow$ Person actual Possession.
 \rightarrow Principle.

* Goods deemed to be in transit.

\Rightarrow From the time goods delivered to carrier until buyer takes delivery from them.

* Goods in transit can be stopped only for price