

## CHAPTER

# 11

# SALE OF GOODS ACT, 1930

### **Covering-**

- Contract of sale of goods
- Distinction between sale and agreement to sell
- Sale and Bailment
- Sale and Contract for work and labour
- Sale and hire purchase agreement
- Subject matter of contract of sale of goods
- Conditions and warranties
- Doctrine of caveat emptor
- Passing of property
- Performance of the Contract of Sale
- Unpaid Seller
- Auction sales
- Trading Contracts involving rail or sea transit

**EXPECTED  
MARKS COVERAGE  
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# SALE OF GOODS ACT, 1930

The law relating to **sale of goods** is contained in the Sale of Goods Act, 1930.

Sale of Goods Act is one of **very old mercantile law**.

Sale of Goods is one of the **special types of contract**. Initially, *this was part of Indian Contract Act itself*. Later, this was deleted in Contract Act, and separate Sale of Goods Act was **passed in 1930**.

**Sale of Goods Act is complimentary to Contract Act. *Basic provisions of Contract Act apply*** to contract of Sale of Goods Act also. Basic requirements of contract i.e. Offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract; free consent, lawful object, consideration etc. apply to contract of Sale of Goods Act also. Sale of Goods Act **has to be read as part of** the **Indian Contract Act, 1872**.

## CONTRACT OF SALE OF GOODS

According to **Section 4**, a contract of sale of goods is **a contract whereby the seller:**

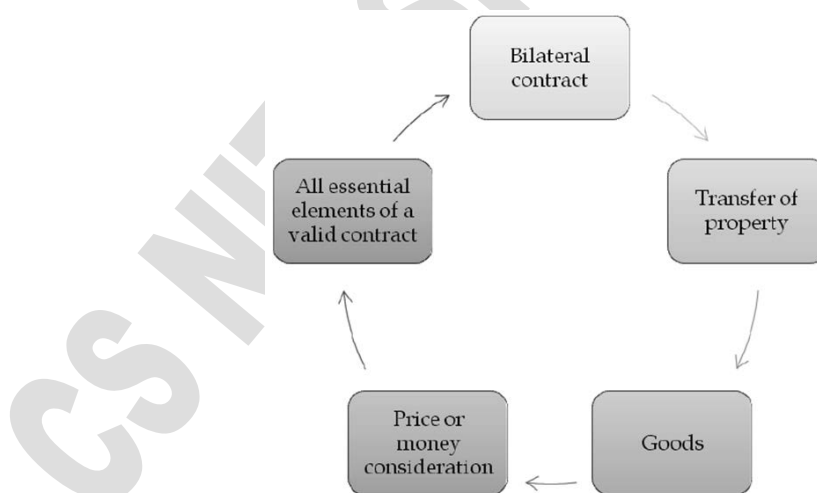
- (i) transfers or agrees to transfer the property in goods,
- (ii) to the buyer,
- (iii) for a money consideration called the price.

It shows that the expression “**contract of sale**” includes both

- A. **a sale** where the seller **transfers** the ownership of the goods to the buyer, and
- B. **an agreement to sell** where the ownership of goods is to be transferred at a **future time** or **subject to some conditions** to be fulfilled later on.

## ESSENTIALS OF A CONTRACT OF SALE OF GOODS

**The following are thus the essentials of a contract of sale of goods:**



(i) **Bilateral contract:** It is a bilateral contract because the property in goods has to pass **from one party to another**. *A person cannot buy the goods himself*.

(ii) **Transfer of property:** The object of a contract of sale must be the **transfer of property (meaning ownership)** in goods from one person to another.

(iii) **Goods:** The subject matter must be **some goods**.

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(iv) **Price or money consideration:** The goods must be sold for **some price**, where the goods are exchanged for goods it is barter, not sale.

(v) **All essential elements of a valid contract** must be present in a contract of sale.

## **DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL**

The following points will bring out the distinction between **sale and an agreement to sell:**

(a) In a sale, the property in the **goods sold passes to the buyer at the time of contract** so that he becomes the owner of the goods.

In an agreement to sell, the **ownership does not pass to the buyer at the time of the contract**, but it passes only **when it becomes sale on the expiry of certain time or the fulfilment of some conditions** subject to which the property in the goods is to be transferred.

(b) A sale is an **executed contract**,

an agreement to sell is an **executory contract**,

(c) A sale is **contract plus conveyance**

An agreement to sell is a **contract** pure and simple.

(d) In a sale, **if goods are destroyed by accident** the *loss falls on the buyer*, even though the goods are with the seller.

If there is an agreement to sell and the goods are destroyed by accident, *the loss falls on the seller*.

(e) if there has been a sale, and the **seller commits a breach by refusing to deliver the goods**, the buyer has not only a **personal remedy against him** but also the **other remedies** which an owner has in respect of goods themselves such as a **suit for conversion or detinue** (*detain*), etc

If there is an agreement to sell and the seller commits a breach, the buyer has **only a personal remedy against the seller**, namely, a claim for damages..

## **SALE AND BAILMENT**

As per **Section 148 of the Indian Contract Act, 1872**

A “**bailment**” is a transaction under which

goods are delivered by one person (**the bailor**) to another (**the bailee**)

***for some purpose***,

upon a contract that **they be returned** or disposed of as directed

***after the purpose is accomplished***

## **SALE AND BAILMENT**

The property (ownership) in the goods is **not intended to and does not pass on delivery** though it may sometimes be the intention of the parties that it should pass in due course.

But where goods are delivered to another on terms which indicate **that the property is to pass** at once the contract must be **one of sale and not bailment**.

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## SALE AND CONTRACT FOR WORK AND LABOUR

**“Sale”, is a contract by which property in goods passes from the seller to the buyer for a price.**

The **distinction between a “sale” and a “contract” for work and labour** becomes important when **question of passing of property arises for consideration**

However, these two are difficult to distinguish.

The test generally applied is that

*if as a result of the contract, property in an article is transferred to one who had no property therein previously for a money consideration, it is a sale,*

where it is otherwise it is a contract for work and labour.

## SALE AND HIRE PURCHASE AGREEMENT

A **“hire purchase agreement” is basically**

a contract of hire,

**but in addition, it gives the hirer an option to purchase** the goods at the end of the hiring period.

Consequently, **until** the final payment, the **hirer is merely a bailee of goods and ownership remains vested in the bailor.**

Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as **hire charges.**

Though the possession is with the hirer, the **ownership of the goods remains with the original owner.**

The essence of hire purchase agreement is **that there is no agreement to buy, but only an option** is given to the hirer to buy by paying all the instalments or put an end to the hiring and return the goods to the owner, at any time before the exercise of the option.

Since the **hirer does not become owner of the goods until he has exercised his option to buy, he cannot pass any title even to an innocent and bona fide purchaser.**

The transaction of hire-purchase **protects the owner of the goods against the insolvency of the buyer,** for if the buyer becomes insolvent or fails to pay the instalments, **he can take back the goods as owner.**

### SALE AND HIRE PURCHASE AGREEMENT

It is important to note the **difference between a hire purchase agreement and mere payment of the price by instalments** because, **the latter is a sale,** only the payment of price is to be made by instalments.

The **distinction between the two** is very important because, **in a hire-purchase agreement the risk of loss or deterioration of the goods hired lies with the owner.** But it is otherwise in the case of a sale where the price is to be paid in instalments.

## SUBJECT MATTER OF CONTRACT OF SALE OF GOODS

### 1. GOODS

The subject matter of the contract of sale is essentially **goods.**

According to **Section 2(7)** of the Sale of Goods Act, **“Goods” means**

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every kind of movable property

other than actionable claims and money and

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

**Actionable claims and money** are **not goods** and cannot be brought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country, *but not old and rare coins which may be treated as goods*.

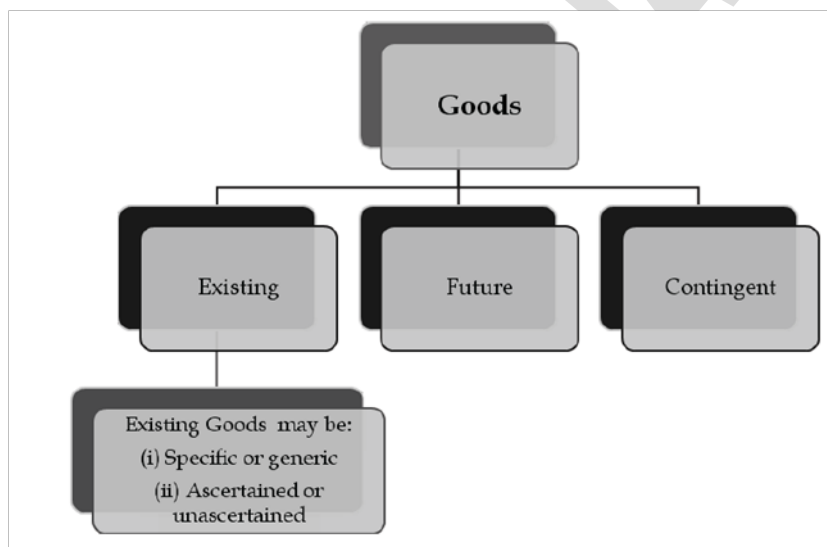
An actionable claim is what a person cannot make a present use of or enjoy, but *what can be recovered by him by means of a suit or an action*. Thus, a **debt due to a man** from another is an actionable claim and cannot be sold as goods, although it can be assigned.

Goods may be

(a) **existing**, (b) future, or (c) contingent.

The **existing goods** may be

(i) specific or generic, (ii) ascertained or unascertained.



## **Existing Goods**

Existing goods are goods which are either owned or possessed by the seller at the time of the contract. Existing goods are specific goods **which are identified** and agreed upon **at the time of the contract of sale**.

**Ascertained goods** are either **specific goods** *at the time of the contract* or are ascertained or identified to the contract *later on i.e. made specific*.

**Generic or unascertained goods** are goods which are **not specifically identified but are indicated by description**.  
If a merchant agrees to **supply a radio set from his stock of radio sets**, it is a contract of sale of **unascertained goods** because **it is not known which set will be delivered**.

As soon as a *particular set is separated or identified for delivery and the buyer has notice of it*, the **goods are ascertained** and become **specific goods**.

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## Future Goods

### Section 2(6)

Future goods are goods to be manufactured or produced or acquired by the seller **after the making of the contract of sale.**

A agrees to sell all the mangoes which will be produced in his garden **next season.** This is an agreement for the sale of future goods.

## Contingent Goods

Where there is a contract for the sale of goods, the acquisition of which by the seller **depends upon a contingency which may or may not happen**—such goods are known as contingent goods. Contingent goods fall in the class of **future goods.**

A agrees to sell a certain TV set *provided* he is able to get it from its present owner. This is an agreement to sell contingent goods. In such a case, if the contingency does not happen for no fault of the seller, he will not be liable for damages.

## Effect of Perishing of Goods

In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:

### (i) Goods perishing before making a contract

Where in a contract of sale of specific goods, the goods **without the knowledge of the seller** have, **at the time of making the contract** perished or become so damaged, **the contract is void.**

If the **seller was aware** of the destruction and **still entered into the contract**, *he is estopped from disputing the contract.*

### (ii) Goods perishing after agreement to sell

Where there is an agreement to sell specific goods, and **subsequently the goods without any fault of any party** perish or are so damaged before the risk passes to the buyer, **the agreement is thereby avoided.**

## 2. PRICE

*No sale can take place without a price.*

Thus, if there is **no valuable consideration** to support a voluntary surrender of goods by the real owner to another person, **the transaction is a gift, and is not governed by the Sale of Goods Act.**

Therefore, **price, which is money consideration** for the sale of goods, constitutes the essence for a contract of sale.

It may be money actually paid or promised to be paid.

If a **consideration other than money** is to be given, **it is not a sale.**

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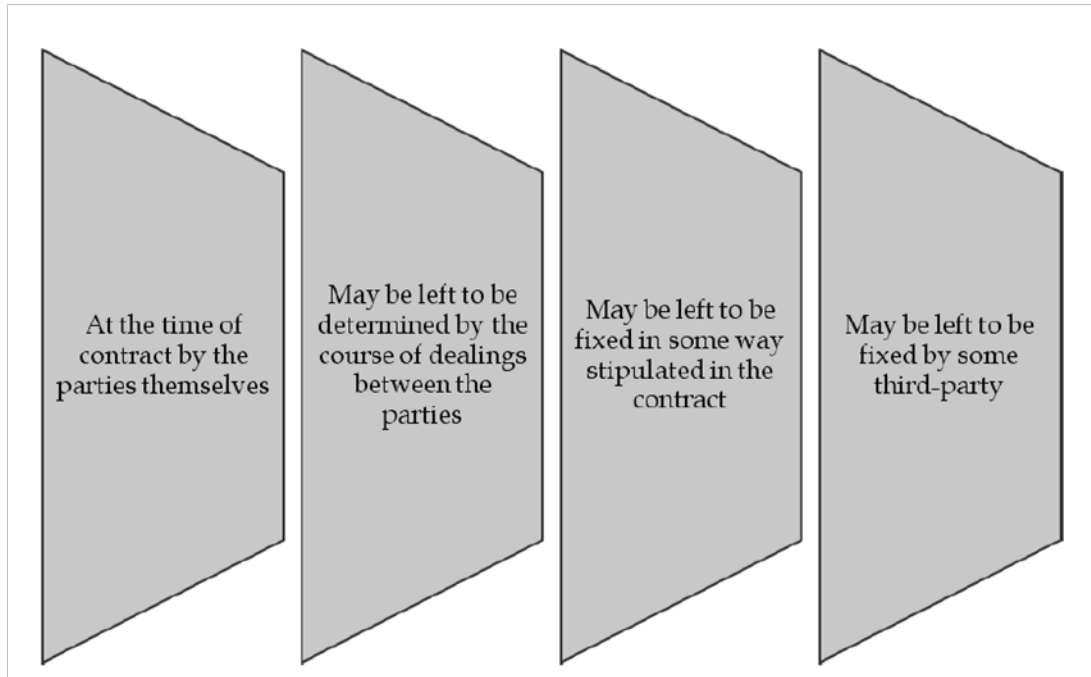
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## MODES OF FIXING PRICE (SECTIONS 9 AND 10)

The price may be fixed:



Where the contract states that the **price is to be fixed by a third-party** and such third-party fails to do so, the **contract is void**. But if the buyer **has already taken the benefit of the goods**, he must **pay a reasonable price for them**.

## CONDITIONS AND WARRANTIES

(SECTIONS 12-17)

The parties are at liberty to enter into a contract with any terms they please.

As a rule, before a contract of sale is concluded, certain statements are made by the parties to each other.

The statement **may amount to a stipulation**, forming part of the contract or

a **mere expression of opinion** which is not part of the contract.

If it is a statement by the seller **on the reliance of which the buyer makes the contract**, it will amount to a **stipulation**.

If it is a **mere Recommendation** by the seller of his goods **it does not amount to a stipulation and does not give the right of action**.

The stipulation may either be a condition or a warranty.

## CONDITIONS

If the stipulation forms the **very basis of the contract or is essential** to the main purpose of the contract, it is a condition.

The **breach** of the condition gives the **aggrieved party a right to treat the contract as repudiated**.

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## WARRANTIES

If the stipulation is **collateral to the main purpose** of the contract, i.e., is a **subsidiary promise**, it is a warranty. The effect of a breach of a warranty is that the **aggrieved party cannot repudiate the contract but can only claim damages**.

### When condition sinks to the level of warranty

In some cases a condition sinks or descends to the level of a warranty.

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| (a) A condition will become a warranty <b>where the buyer waives the condition</b> ; or   |
| (b) A condition will sink to the level of a warranty where <b>the buyer treats the breach of condition as a breach of warranty</b> ; or   |
| (c) Where the <b>contract is indivisible</b> and the buyer has accepted the goods or part thereof, <b>the breach of condition can only be treated as breach of warranty</b> . The buyer <u>can only claim damages and cannot reject the goods or treat the contract as repudiated</u> . |

## IMPLIED WARRANTIES

Implied warranties are those **which the law presumes to have been incorporated** in the contract of sale *in spite of the fact that the parties have not expressly included them in a contract of sale*.

Subject to the contract to the contrary, **following are the implied warranties in a contract of sale:**

### (i) Warranty as to quiet possession:

Section 14(b) of the Sale of Goods Act provides **that there is an implied warranty that the buyer shall have and enjoy quiet possession of goods**. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the *buyer is entitled to hold the seller liable for breach of warranty*.

### (ii) Warranty as to freedom from encumbrances:

Section 14(c) states that in a contract of sale, there is an implied warranty that the **goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made**. But if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.

### (iii) Warranty to disclose dangerous nature of goods:

If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the **seller must warn the buyer of the probable danger**.

### (iv) Warranties implied by the custom or usage of trade:

Section 16(3) provides that an implied warranty or condition as to quality or fitness for a particular purpose **may be annexed by the usage of trade**.

## DOCTRINE OF CAVEAT EMPTOR

The term "*caveat emptor*" is a Latin word which means "*let the buyer beware*".

This principle states that it is for the **buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires**. If he buys goods for a particular purpose, **he must satisfy himself that they are fit for that purpose**.

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The doctrine of caveat emptor is embodied in **Section 16 of the Act** which states that “subject to the provisions of this Act and of 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”.

In simple words, ***it is not the seller’s duty to give to the buyer the goods which are fit*** for a suitable purpose of the buyer. **If he makes a wrong selection, he cannot blame the seller** if the goods turn out to be defective or do not serve his purpose.

### **Exceptions:**

**Section 16 lays down the following exceptions to the doctrine of Caveat Emptor:**

- (1) Where the seller makes a false representation and the buyer relies on it.
- (2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
- (3) When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
- (4) Where goods are bought by description from a seller who deals in goods of that description.

## **PASSING OF PROPERTY**

### **PASSING OF PROPERTY OR TRANSFER OF OWNERSHIP**

#### **(Sections 18-20)**

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the **precise moment of time at which the property in the goods passes** from the seller to the buyer for the following reasons:

- (a) The general rule is that **risk follows the ownership**, *whether the delivery has been made or not*. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, **the loss falls on the owner of the goods at the time they are lost or damaged**.
- (b) When there is a danger of the goods being **damaged by the action of third parties**, **it is generally the owner who can take action**.

Thus in this context, **ownership and possession are two distinct concepts** and these two can at times remain separately with two different persons.

### **PASSING OF PROPERTY IN SPECIFIC GOODS**

In a sale of specific or ascertained goods, the property in them passes to the buyer ***as and when the parties intended to pass***. The intention must be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case.

### **OWNERSHIP IN UNASCERTAINED GOODS**

The property in unascertained or future goods **does not pass until the goods are ascertained**.

Unascertained goods are goods **defined by description only**, for example, 100 quintals of wheat; and not goods identified and agreed upon when the contract is made.

## **PASSING OF RISK**

### **(Section 26)**

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The **general rule** is that **goods remain at the seller's risk until the ownership is transferred to the buyer**. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not.

**For example**, 'A' buys goods of 'B' and property has passed from 'B' to 'A'; but the goods remain in 'B's warehouse and the price is unpaid. Before delivery, 'B's warehouse is burnt down for no fault of 'B' and the goods are destroyed. 'A' must pay 'B' the price of the goods, as he was the owner. The rule is *resperit domino*- the loss falls on the owner.

But the parties **may agree that risk will pass at the time different** from the time when ownership passed. For example, the seller may agree to be responsible for the goods **even after the ownership is passed to the buyer or vice versa**.

*In Consolidated Coffee Ltd. v. Coffee Board*, one of the terms adopted by coffee board for auction of coffee was the property in the coffee knocked down to a bidder would not pass until the payment of price and in the meantime the goods would remain with the seller but at the risk of the buyer, In such cases, risk and property passes on at different stages.

## TRANSFER OF TITLE BY PERSON NOT THE OWNER

### (Section 27-30)

#### GENERAL RULE

The **general rule** is that **only the owner of goods can sell the goods**.

Conversely, the sale of an article by a person **who is not or who has not the authority of the owner, gives no title to the buyer**. The rule is expressed by the maxim;

**"Nemo Dat Quod Non Habet"** i.e. **no one can pass a better title than he himself has**.

As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess. Thus, **even a bona fide buyer who buys stolen goods from a thief** or from a transferee from such a thief can get no valid title to them, **since the thief has no title**, nor could he give one to any transferee.

#### Example:

- (1) A, the hirer of goods under a hire purchase agreement, sells them to B, then B, though a bona fide purchaser, does not acquire the property in the goods. At most he can acquire such an interest as the hirer had.
- (2) A finds a ring of B and sells it to a third person who purchases it for value and in good faith. The true owner, i.e. B can recover from that person, for A having no title to the ring could pass none the better.

## EXCEPTION TO THE GENERAL RULE

The Act while recognizing the general rule that no one can give a better title than he himself has, laid down important exceptions to it. Under the exceptions **the buyer gets a better title to the goods than the seller himself**. These exceptions are given below:

(a) **Sale by a mercantile agent**: A buyer will get a good title if he buys in **good faith** from a mercantile agent who is in possession either of the goods or documents of title to the goods with the consent of the owner, and who sells the **goods in the ordinary course of his business**.

(b) **Sale by a co-owner**: A buyer who buys in good faith **from one of the several joint owners who is in sole possession of the goods with the permission of his co-owners** will get good title to the goods.

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(c) <b>Sale by a person in possession under a voidable contract:</b> A buyer buys in good faith from a person in possession of goods under a contract <b>which is voidable, but has not been rescinded at the time of the sale.</b>
(d) <b>Sale by seller in possession after sale:</b> Where a seller, <u>after having sold the goods, continues or is in possession of the goods or of the documents of title</u> to the goods <b>and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale</b> , such a buyer gets a good title to the goods.
(e) <b>Sale by buyer in possession:</b> If a person has brought or agreed to buy goods obtains, <b>with the seller's consent</b> , possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer <b>who takes in good faith without notice of any lien or other claim</b> of the original seller against the goods, will give a <b>good title to the buyer</b> . In any of the above cases, <b>if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.</b>
(f) <b>Estoppel:</b> If the true owner <b>stands by and allows an innocent buyer to pay over money to a third-party</b> , who professes to have the right to sell an article, <b>the true owner will be estopped from denying the third-party's right to sell.</b>
(g) <b>Sale by an unpaid seller:</b> Where an <b>unpaid seller has exercised his right of lien or stoppage in transit</b> and is in possession of the goods, <b>he may resell them and the second buyer will get absolute right to the goods.</b>
(h) <b>Sale by person under other laws:</b>
<b>A pawnee</b> , on default of the pawnor to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods.
<b>The finder of lost goods</b> can also sell under certain circumstances.
The <b>Official Assignee or Official Receiver, Liquidator</b> , Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

## PERFORMANCE OF THE CONTRACT OF SALE

### Performance of the Contract of Sale

It is the <b>duty of the seller and buyer</b> that the contract is performed.
The duty of the seller is to deliver the goods and
that of the buyer is to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, **payment of the price** and the **delivery of the goods** are **concurrent conditions**, i.e., they both take place at the same time as in a cash sale over a shop counter.

## DELIVERY

### **(Sections 33-39)**

Delivery is the **voluntary transfer of possession from one person to another.**

Delivery may be actual, constructive or symbolic.
<b>Actual or physical delivery</b> takes place where the goods are <b>handed over by the seller to the buyer</b> or his agent authorised to take possession of the goods.
<b>Constructive delivery</b> takes place when the <b>person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer</b> . For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.

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**Symbolic delivery** is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the “**means of obtaining possession**” of goods is delivered, e.g, by **delivering the key** of the warehouse where the goods are stored, **bill of lading** which will entitle the holder to receive the goods on the arrival of the ship.

## **RULES AS TO DELIVERY**

The following rules apply **regarding delivery of goods**:

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| (a) Delivery should have the effect of <b>putting the buyer in possession</b> .  |
| (b) The seller must deliver the goods <b>according to the contract</b> .   |
| (c) The seller is to deliver the goods <b>when the buyer applies for delivery</b> ; it is the duty of the buyer to claim delivery.   |
| (d) Where the goods at the time of the sale are in the possession of a <b>third person</b> , there will be delivery only when <b>that person acknowledges to the buyer that he holds the goods on his behalf</b> . |
| (e) The <b>seller</b> should tender delivery <b>so that the buyer can take the goods</b> .   |
| (f) The place of delivery is usually stated in the contract. Where it is so stated, <b>the goods must be delivered at the specified place during working hours on a working day</b> .                              |
| (g) <b>The seller has to bear the cost of delivery</b> unless the contract otherwise provides.   |

## **ACCEPTANCE OF GOODS BY THE BUYER**

Acceptance of the goods by the buyer takes **place when the buyer**:

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| (a) <b>intimates to the seller</b> that he has accepted the goods; or  |
| (b) <b>retains the goods</b> , <i>after the lapse of a reasonable time</i> without intimating to the seller that he has rejected them; |

## **SUITS FOR BREACH OF CONTRACT**

Where the **property in the goods has passed** to the buyer, **the seller may sue him for the price**.

Where the **price is payable on a certain day** regardless of delivery, **the seller may sue for the price**, if it is **not paid on that day**, although the property in the goods has not passed.

Where the **buyer wrongfully neglects or refuses to accept** the goods and pay for them, **the seller may sue the buyer for damages for non-acceptance**.

Where the **seller wrongfully neglects or refuses to deliver** the goods to the buyer, **the buyer may sue him for damages for non-delivery**.

If the **buyer has paid the price and the goods are not delivered**, the buyer can sue the seller for the **recovery of the amount paid**. In appropriate cases the **buyer can also get an order from the court that the specific goods ought to be delivered**.

## **UNPAID SELLER**

### **UNPAID SELLER**

**(Sections 45-54)**

**Who is an unpaid seller?** (Section 45)

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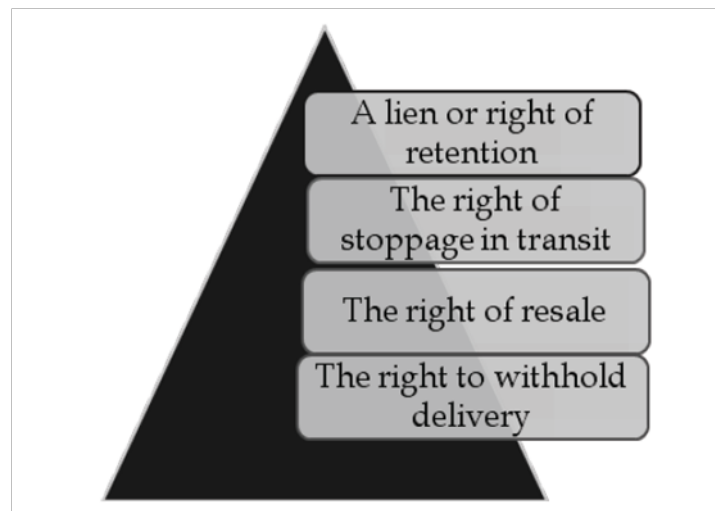


The seller of goods **is deemed to be unpaid seller:**

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| (a) When the <b>whole of the price has not been paid or tendered</b> ; or   |
| (b) When a <b>conditional payment was made by a bill of exchange or other negotiable instrument</b> , and the <b><i>instrument has been dishonoured</i></b> . |

## RIGHTS OF AN UNPAID SELLER AGAINST 'THE GOODS'

An unpaid seller's right against the goods are:



### (a) **RIGHT OF LIEN**

(Sections 47-49 and 54)

An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., **keep the goods in his possession and refuse to deliver them** to the buyer *until the fulfilment or tender of the price in cases where:*

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| (i) the goods have been sold without stipulation as to credit; or               |
| (ii) the goods have been sold on credit, but the term of credit has expired; or |
| (iii) the buyer becomes insolvent.  |

The lien depends on **physical possession**. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. **It can only be exercised for the non-payment of the price** and not for any other charges.

**A lien is lost –**

- |   |
|---|
| (i) When the seller 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; |
| (ii) When the buyer or his agent lawfully obtains possession of the goods;  |
| (iii) By waiver of his lien by the unpaid seller.   |

### (b) **STOPPAGE IN TRANSIT**

(Sections 50-52)

The right of stoppage in transit is a **right of stopping the goods while they are in transit, *resuming possession of them and retaining possession*** until payment of the price.

The right to stop goods is available to an unpaid seller

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(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is **not necessary that he has actually been declared insolvent** by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a warehousekeeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The **transit comes to an end** in the following cases:-

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the **goods are rejected by the buyer** and the carrier or other bailee holds them, *the transit will be deemed to continue even if the seller has refused to receive them back.*

The **right to stop in transit** may be exercised by the unpaid seller

**either by taking actual possession** of the goods or

**by giving notice of the seller's claim to the carrier** or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller's right of lien or stoppage in transit is **not affected by any sale on the part of the buyer unless the seller has assented to it.**

### (c) **RIGHT OF RE-SALE**

(Section 54)

The unpaid seller **may re-sell:**

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a **re-sale**, *there is a deficiency between the price due and amount realised*, **he is entitled to recover it from the buyer.**

If **there is a surplus**, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

### (d) **RIGHTS TO WITHHOLD DELIVERY:**

If the *property in the goods has passed*, **the unpaid seller has right as described above**. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

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## **RIGHTS OF AN UNPAID SELLER AGAINST 'THE BUYER'** **(Sections 55 and 56)**

An unpaid seller **may sue the buyer** for the price of the goods in case of breach of contract where

the **property in the goods has passed** to the buyer or

he has **wrongfully refused to pay the price** according to the terms of the contract.

The seller may sue the buyer **even if the property in the goods has not passed** where the **price is payable on a certain day**.

Under **Section 56**, the seller **may sue the buyer for damages or breach of contract** where the buyer wrongfully **neglects or refuses to accept and pay for the goods**.

Thus an unpaid seller's rights against the **buyer personally are:**

(a) a suit for the price.

(b) a suit for damages.

## **AUCTION SALES**

### **(Section 64)**

A sale by auction is a **public sale** where *goods are offered to be taken by bidders*.

It is a proceeding at which **people are invited** to complete for the **purchase of property by successive offer of advancing sums**.

**Section 64** lays down the **Rules Regulating Auction Sales**.

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

The sale is **complete** when the auctioneer announces its completion by

**the fall of the hammer** or

**in other customary manner**.

Until such announcement is made, any bidder may retract his bid.

## **TRADING CONTRACTS INVOLVING RAIL OR SEA TRANSIT**

In the case of a contract for the sale of goods which are to be shipped by sea a number of conditions are attached by the parties or by custom and practice of merchants.

Some of the important **types of such contracts are given below:**

### **(a) F.O.B. (FREE ON BOARD):**

Under an F.O.B. contract, **it is the duty of the seller to put the goods on board a ship at his own expenses**.

The **property in goods passes to the buyer only after the goods have been put on board** the ship, and **they are at buyer's risk as soon as they are put on board the ship**, usually named by the buyer.

The **seller must notify the buyer immediately that the goods have been delivered on board**, so that the **buyer may insure them**. If he fails to do so the goods shall be deemed to be **at seller's risk during such sea transit**.

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**(b) F.O.R. (FREE ON RAIL):**

Similar position prevails in these contracts as in the case of F.O.B. contracts.

**(c) C.I.F. OR C.F.I. (COST INSURANCE AND FREIGHT):**

A CIF contract is a contract for the sale of insured goods lost or not lost to be implemented by transfer of proper documents.

In such types of contracts, the **seller not only bears all the expenses of putting the goods** on board the ship as in an F.O.B. contract, **but also to bear the freight and insurance charges.**

**He will arrange for an insurance of the goods for the benefit of the buyer.**

**(d) EX-SHIP:**

Here the **seller is bound to arrange the shipment of the goods to the port of destination**, and to such **further inland destination as the buyer may stipulate.**

The buyer is not bound to pay until the goods are ready for unloading from the ship and all freight charges paid.

The **goods travel at the seller's risk**, but he is not bound to insure them.

CS NITESH KR. JAISWAL





