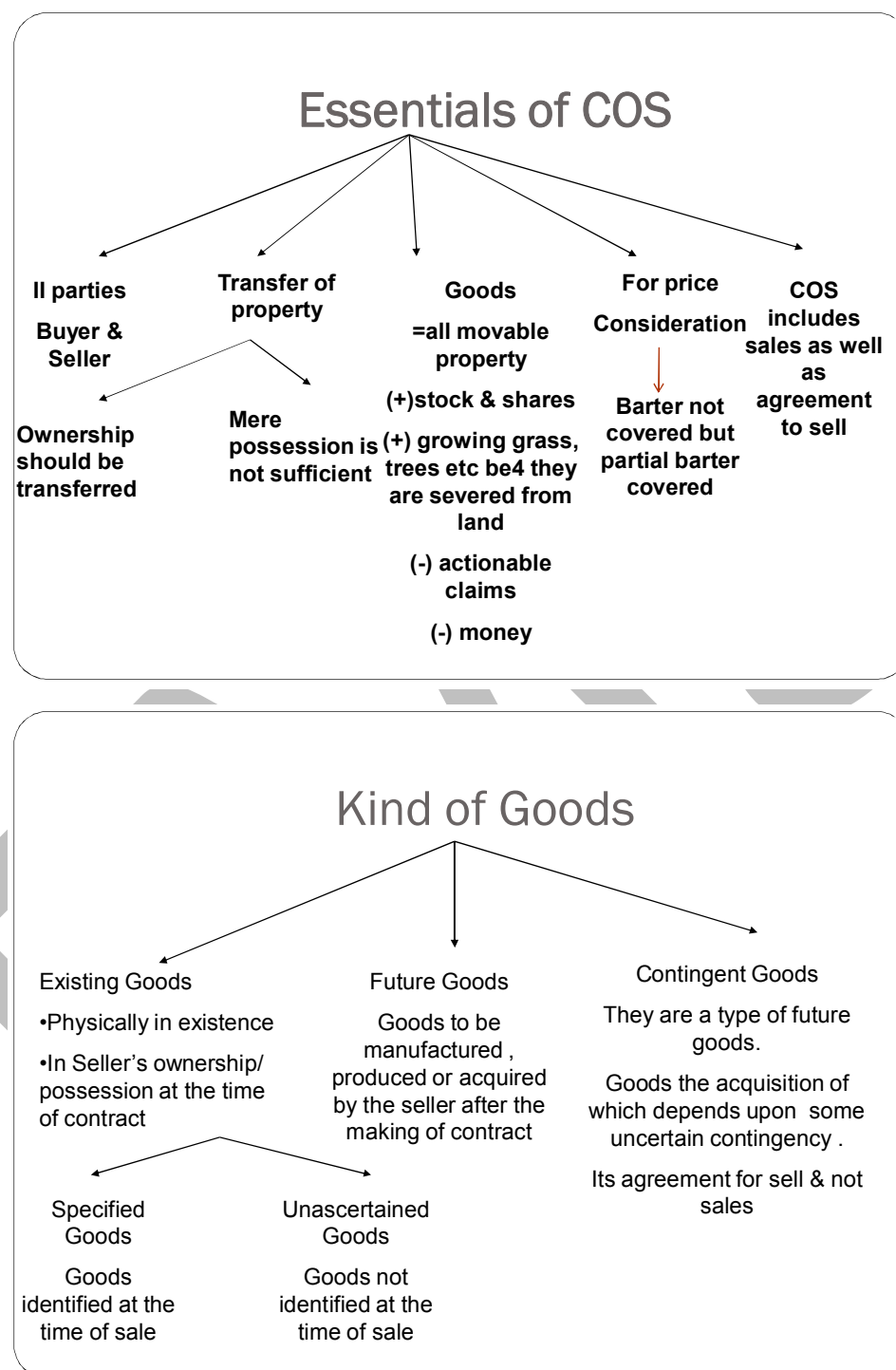


THE SALE OF GOODS ACT, 1930

CHAPTER - 1 FORMATION OF CONTRACT OF SALE

OVERVIEW



1. DEFINITIONS

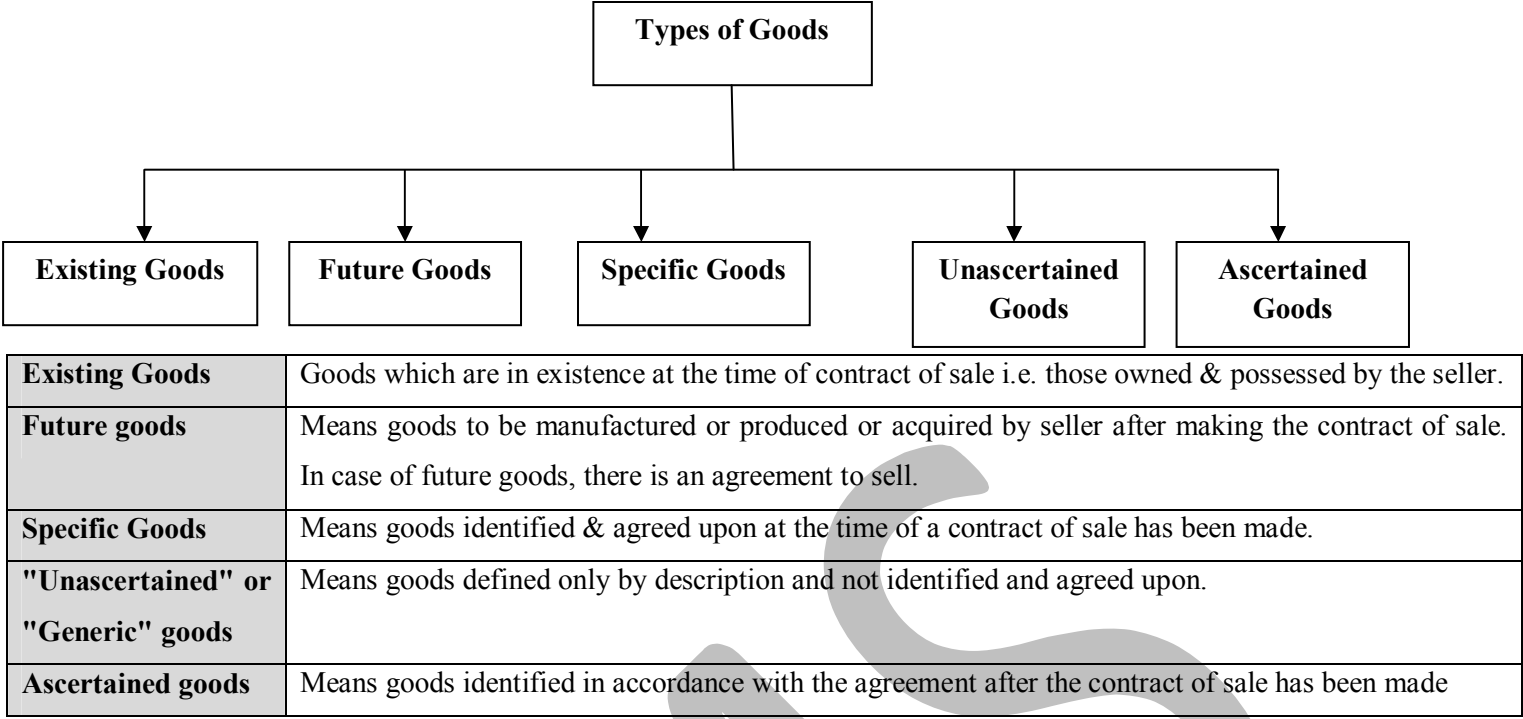
Buyer [Sec 2 (1)] : Buyer means a person who buys or agrees to buy goods.

Seller [Sec 2 (13)] : Seller means a person who sells or agrees to sell goods.

Goods [Sec 2 (7)] : Goods means every kind of movable property other than actionable claims & money and includes:

- Stock and shares
- Growing crops
- Grass &
- Things attached to or forming part of land,

which are agreed to be severed before sale or under the contract of sale.

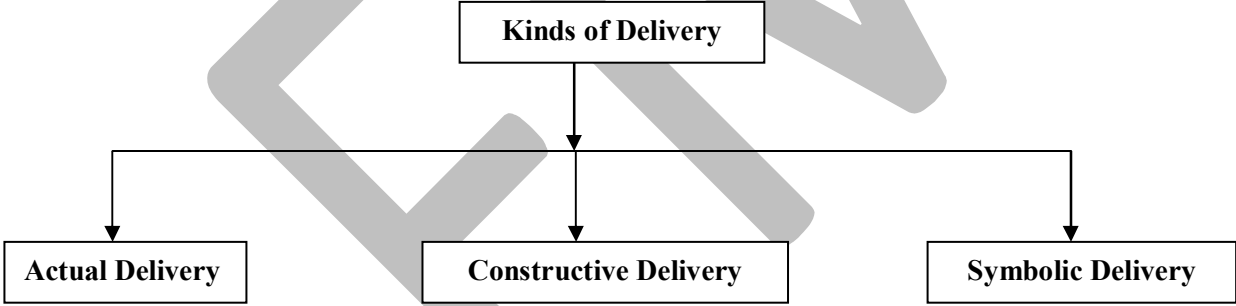


Goods in Deliverable State :-

Goods are said to be in a deliverable state when they are in such a condition that the buyer is bound to take delivery of them under the contract.

E.g. – A contracts to sell timber and makes bundles thereof, Goods will be in a deliverable state, after A has put the goods in such a condition.

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



a. Actual Delivery	It is actual when the goods are physically delivered to the buyer.
b. Constructive delivery	When it is effected without any change in the custody or actual proccession of thing. E.g. Delivery by attornment (acknowledgement) E.g. Where a warehouseman holding the goods of A, agrees to hold them on behalf of B, at A's request.
c. Symbolic Delivery	When there is a delivery of thing in token of a transfer of something else E.g. Delivery of goods in transit by handling over the documents to title (ownership) to goods, B/L, Dock warrant, Delivery of key of a Warehouse.

Mercantile Agent [Sec 2 (9)] :-

It means an agent having in the customary course of business as such agent an authority either

- To sell goods or
- To consign goods for the purpose of sale or
- To buy goods or
- To raise money on the security of the goods.

Property [Sec 2 (ii)]

It means **General property** (Right of ownership in goods) and not merely special property.

Insolvent [Sec 2 (8)]

A person is said to be insolvent when he ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due whether he has committed an act of insolvency or not.

Contract of sale [Sec. 4 (1)]

A contract of sale is a contract whereby the seller transfers (sale) or agrees to transfer (agreement to sell) property (ownership) in goods to the buyer for a price.

Essentials :

- At least two parties
- Subject matter of contract must be Goods
- Price in money only (not in kind) should be paid or promised.
- Transfer of ownership in goods
- A contract of sale must be absolute or conditional.
- Other essentials of a valid contract.

2. SALE Vs. AGREEMENT TO SELL

S. No.	BASIS	SALE	AGREEMENT TO SALE
1.	Property in goods	Transfer	Not transfer
2.	Risk	Transfer	Not transfer
3.	Type	Executed Contract	Executory contract
4.	Sue for Price	Yes	No, only damages unless price was payable at stated date.
5.	Loss of destruction Breach by Seller	Buyer's Right (i) To recover the goods (ii) Suit for damages	Buyer's right to claim damages only.

3. SALE Vs. HIRE PURCHASE

S. No.	BASIS	SALE	HIRE PURCHASE
1.	Transfer of property	Immediate	On the payment of last instalment
2.	Position	Buyer – Owner	Hirer – Bailee till he pays last instalment
3.	Right of termination	Buyer cannot terminate the contract and is bound to pay the price	Hirer may terminate the contract by returning the goods to its owner without any liability to pay remaining instalment.
4.	Buyer's Insolvency	Risk of loss – Seller	Seller has no risk, right to take back goods
5.	Passing of title by buyer	Buyer can pass good title to bonafide purchaser	Hirer cannot pass any title even to a bonafide purchaser
6.	Tax	Tax is levied at the time of contract	Tax is not leviable unless it eventually ripens into sale

6. MODE OF FORMING CONTRACT OF SALE -

There may be :-

- Immediate delivery of goods or
- Immediate payment of price but delivery at the some future date or

- Immediate delivery of goods and immediate payment of price or
- Delivery or payment or both are to be made in instalments or
- Delivery or payment or both are to be made at some future date.

7. DESTRUCTION OF SUBJECT MATTER OF CONTRACT (SEC. 7 & 8) :-

- (a) Goods not existing at the time of contract.
- ❖ Goods destroyed without knowledge of the seller, contract is void – ab – initio.
- (b) If there was agreement to sell & Goods perishing after contract is made.
Without any fault of buyer or seller, agreement becomes void.

8. ASCERTAINMENT OF PRICE (SEC. 9 AND 10)

Price is the monetary consideration for sale of goods [Sec 2 (10)]

Price may be :

- Fixed by the contract or
- Agreed to be fixed in a manner provided by the contract. Eg by a value or
- Determined by the course of dealings between the parties.
- Where price cannot be fixed in any of above ways, buyer is bound to pay a reasonable price to the seller

9. STIPULATION AS TO TIME (SECTION 11)

As regard time for payment of price, unless a different intention appears from the contract, stipulation as regard this is not deemed to be essence of the contract of sale.

But delivery of goods must be made without delay. Stipulations as to time of delivery are usually the essence of contract.

CHAPTER - 2 CONDITIONS & WARRANTIES

1. CONDITION

A condition is a stipulation essential to the main purpose of contract, the breach of which gives the right to repudiate the contract & to claim damages.

2. WARRANTY

A warranty is a stipulation collateral to the main purpose of contract the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

DISTINCTION BETWEEN CONDITION AND WARRANTY

	CONDITION	WARRANTY
1.	Essential to the main purpose of contract.	Collateral to the main purpose of contract.
2.	Aggrieved party can repudiate the contract or claim damages or both in case of breach of condition.	Aggrieved party can claim only damages in case of breach of warranty.
3.	A breach of condition may be treated as breach of warranty.	A breach of warranty cannot be treated as breach of condition.

4. WHEN A CONDITION MAY BE TREATED WARRANTY

- (i) When buyer altogether waives the performance of the condition.
- (ii) Where buyer elects to treat the breach of condition as one of warranty. He may only claim damages instead of repudiating the contract.

(iii)	Contract is non – severable, the buyer has accepted either the whole goods or any part thereof.
(iv)	Where fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

5. EXPRESS & IMPLIED CONDITIONS & WARRANTIES

Express Conditions – are those which are agreed between the parties at the time of contract and are expressly provided in the contract.

Implied Conditions – are those which are presumed by law to be present in the contract. An implied condition may be negated or waived by an express agreement.

❖ Implied Conditions :-

Condition as to title	
In case of sale, seller has right to sell the goods &	
In case of agreement to sell, he will have right to sell the goods at the time when property is to pass.	
If the sellers title turnout to be defective, buyer must return the goods to the true owner and recover the price from the seller.	
Sale by description	In this case, there is implied condition that goods correspond with the description.
Sale by sample	<ul style="list-style-type: none"> ➤ Bulk shall correspond with the sample in quality. ➤ The buyer shall have a reasonable opportunity of comparing the bulk with the sample and ➤ The goods should be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.
Condition by sample as well as description	<ul style="list-style-type: none"> ➤ Bulk must correspond with sample & description
Condition as to quality or fitness	<ul style="list-style-type: none"> ➤ No implied condition as to quality or fitness of the goods sold for any particular purpose. ➤ Condition as to reasonable fitness of goods for a particular purpose is implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill & judgment of the seller to select the best goods and seller has ordinarily dealing in those goods.
Condition as to wholesomeness	In case of eatables & provisions, in addition to merchantable quality, goods shall be wholesome.

IMPLIED WARRANTIES

1.	Warranty as to undisturbed possession	Buyer shall have & enjoy quite possession of goods.
2.	Warranty as to non – existence of encumbrances	Goods shall be free from any charge in favour of a third party not declared or known to the buyer before or at the time contract is entered into.
3.	Disclosure of dangerous nature of goods	Goods are dangerous & buyer is ignorant of danger, seller must warn the buyer of the probable danger.
4.	Warranty as to quality or fitness by usage of trade.	An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

6. CAVEAT EMPTOR

Means let the buyer beware

- It is the responsibility of the buyer to make proper selection of goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

EXCEPTIONS

1.	Where buyer make known to the seller the particular purpose for which the goods are required, so as to show that he relies on seller's skill & judgement.	
2.	Goods purchased under patent name or brand name	No implied condition that the goods shall fit for any particular purpose.
3.	Sale by description	Goods shall correspond with the description. Goods shall be of

		merchantable quality, if purchased from dealer, the rule shall not apply. But if buyer has examined the goods & the defects were such which ought to have been revealed by ordinary examination, the rule shall apply.
4.	Sale by sample	if bulk does not correspond with sample.
5.	Goods by sample as well as description	Goods shall correspond with both description as well as sample.
6.	When quality or fitness assumed by usage of trade	for a particular purpose & seller deviates from that.
7.	Fraud or misrepresentation by the seller	

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CHAPTER - 3 TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

1. PASSING OF PROPERTY (PASSING OF OWNERSHIP)

Rules :

(i)	No transfer of property to the buyer, unless & until goods are ascertained.	
(ii)	Where there is a contract of sale of specific or ascertained goods, property passes to the buyer at the time when parties intend to pass it.	
(iii)	Where there is an unconditional contract of the sale of specific goods in a deliverable state, property in goods passes to the buyer when the contract is made. (Sec 20). The property shall not pass when the goods are made in deliverable state but shall pass only when the buyer has notice of it. (Sec. 21)	
(iv)	Where the goods are in deliverable state, but the seller is bound to weigh, measure, test or to do same act or thing for the purpose of ascertaining price, the property does not pass until such act or thing is done. When the seller has done its part the property passes even if the buyer has to do something for his own satisfaction. (Sec. 22)	
(v)	Unascertained goods Property passes when <ul style="list-style-type: none"> ➤ There is ascertainment of goods & ➤ There unconditional appropriation to the contract. 	
Appropriation in goods		It involves selection of goods with the intention of using them in performance of contract and with the mutual consent of seller & the buyer.
(vi)	Goods sent on approval or 'sale' or 'pattern' Property passes – <ul style="list-style-type: none"> ❖ When buyer signifies his approval or acceptances to the seller. ❖ When he does any act adopting the transaction & ❖ If he does not signifies his approval or acceptance to the seller but retained the goods beyond a reasonable time. (Sec. 24) 	
(vii)	Sale for cash only or return	Property pass only when the cash is paid for.
(viii)	Conditional appropriation When the seller reserves the right of disposal until certain conditions are fulfilled, the property therein will not pass to the buyer till the condition imposed, if any, by the seller has been fulfilled.	

2. PASSING OF RISK [Sec. 26]

"Risk follows ownership". The general rule is "Risk passes with property".

Exceptions –

If there is delay of delivery due to fault of seller or buyer, the goods shall at the risk of the party in default, as regards loss which might not have arisen but the default.

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

3. TRANSFER OF TITLE [Sec. 27 to 30]

The general rule regarding transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of the goods, then the buyer also will not become the owner. i.e., the title of buyer shall be the same as that of the seller. Latin maxim "Nemo dat quod non habet". which means no one can give what he has not got.

Exceptions – Sale by non – owner → valid

Sale by Mercantile Agent	<ul style="list-style-type: none"> ❖ For documents of title of goods ❖ Agent in possession of goods with consent of owner ❖ Sale made acting in ordinary course of business as mercantile agent & ❖ Buyer acted in good faith & at the time of contract of sale, no notice of fact that seller has no authority to sell.
Sale by one of the joint promisors	Buyer – Good title (Purchase in good faith + No knowledge of fact that seller has no authority to sale).
Sale by person in possession under voidable contract provided contract has not been rescinded until the time of sale.	
Sale by one who already sold the goods but continues to be in possession thereof. (Person obtain delivery in good faith + No notice of previous sale)	
Sale by buyer obtaining possession before property in goods has vested in him.	

4. RULES REGARDING DELIVERY OF GOODS

(i) Buyer to apply for delivery	The seller is not bound to deliver the goods until the buyer has applied for delivery, unless otherwise agreed
(ii) Place of Delivery	<ul style="list-style-type: none"> ➤ If there is no contract to the contrary, goods must be delivered at the place where they were at the time of sale. ➤ In case of agreement to sell, goods agreed to be sold are required to be delivered at the place where they were at the time when agreement was entered into. ➤ If goods were not in existence when agreement to sell was entered into, then delivery will be made at the place where they would be manufactured or produced.
(iii) Time of Delivery	If not fixed by the parties, the seller must send them within reasonable time.
(v) Goods with third party	In this case, there will be no delivery unless and until such third person acknowledges to the buyer that he holds goods on his behalf.
	In case, there is a transfer of document of title to goods, it will be treated as symbolic delivery. Even if the goods are in custody of a third person, no acknowledgement is required.
(iii) Time for tender of Delivery	Demand or tender of delivery should be made at a reasonable hour otherwise such demand is ineffectual. What is reasonable hour is a question of fact.
(iv) Expenses for Delivery	Expenses related to putting the goods into a deliverable state must be borne by the seller, unless there is a contract to the contrary.
(v) Delivery of wrong quantity	<ul style="list-style-type: none"> ➤ In case of delivery of lesser quantity of goods, the buyer may either accept the same and pay for it or reject it. ➤ In case of excess delivery, the buyer may accept or reject the delivery, if he accepts the whole of goods, he shall pay for them at the contract rate. ➤ In case goods mixed with goods of a different description and delivery is made, the buyer may accept the relevant goods and reject the rest or reject the whole. ➤ Note : Mixing of goods with inferior goods does not amount to a mixing of goods of different description.
(vi) Part Delivery	Part Delivery would have the same effect for the purpose of passing of property in such goods as delivery of the whole. But delivery of part of goods will not be treated as delivery of the whole.
(vii) Installment deliveries	<p>Unless otherwise agreed, the buyer is not bound to accept delivery in installments.</p> <ul style="list-style-type: none"> ➤ The parties to the contract thereon may determine the rights and liabilities in case of delivery by installments and payments.
(x) Delivery of carrier	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.
(xi) Goods deteriorate 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.
(xii) Buyer's right to examine the good	If goods are not previously examined by the buyer, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods.

5. ACCEPTANCE OF DELIVERY OF GOODS

- ❖ Acceptance is deemed to take place when the buyer :
 - Intimates to the seller that he had accepted the goods; or
 - Does any act to the goods which is inconsistent with ownership of the seller, or
 - Retain the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

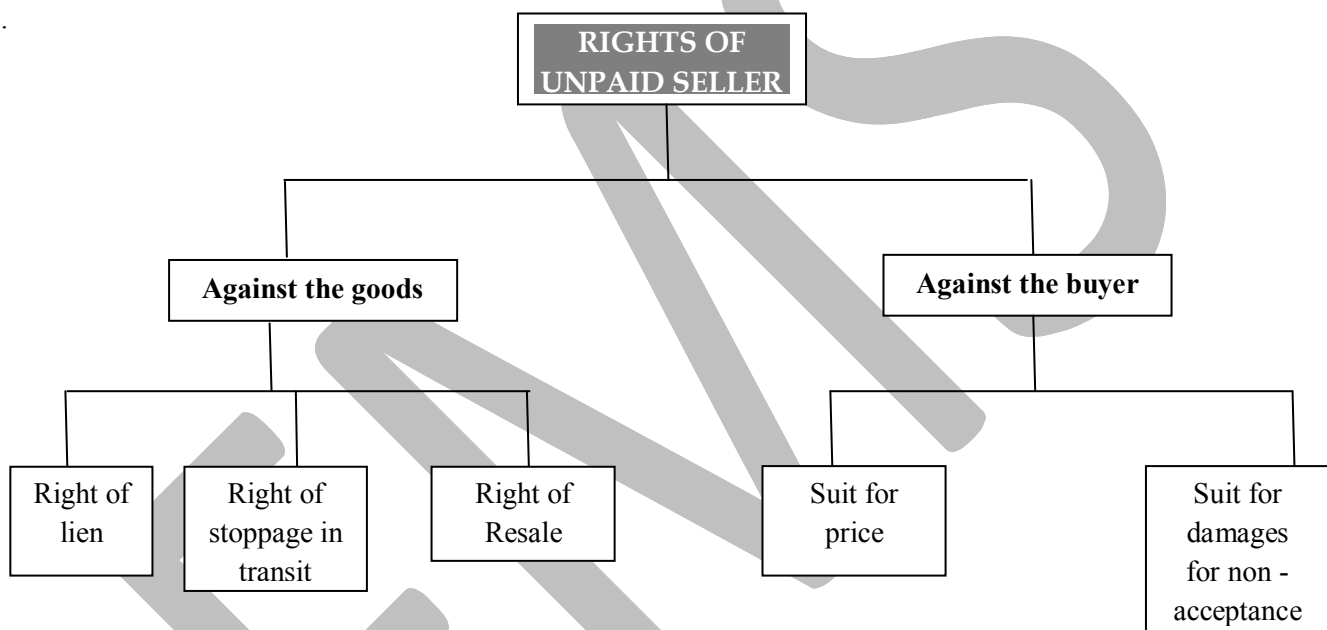
CHAPTER - 4 UNPAID SELLER

1. UNPAID SELLER -

The seller of goods is deemed to be an unpaid seller when –

The whole of the price has not been paid or tendered and the seller has an immediate right of action for the price. A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute, and not a conditional payment.

2.



(A) RIGHTS OF UNPAID SELLER AGAINST THE GOODS

(i) **Right of Lien (Section 47)**

Goods are in possession of seller

Lien until the payment or tender of the price of such goods.

Cases where right of lien can be exercised :

- (a) Goods sold without any stipulation of credit or
- (b) Goods sold on credit but term of credit has expired or
- (c) Buyer becomes insolvent

Cases under which seller loses his right of lien

- Where 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 goods.
- Where the buyer or his agent lawfully obtains possession of the goods.
- Where seller has waived the right of lien.
- By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

(ii) **Right of stoppage in transit –**

- This right can be exercised only if all the following conditions are fulfilled:
- Seller must be unpaid.
- Seller must have parted with the possession of the goods.

- Goods are in transit.
- Buyer has become insolvent.

(iii) **Right of re-sale –**

The right to re-sell the goods can be exercised by the unpaid seller under the following conditions:
Goods are of perishable nature, no need to inform to the buyer of intention of resale.

In case of other goods, when notice of intention of resale is given by unpaid seller to the buyer & buyer does not within reasonable time pay or tender the price.

(B) RIGHT OF UNPAID SELLER AGAINST THE BUYER

- (i) Suit for price (Section 55)
 - (a) Property has not passed to the buyer. (ownership)
Buyer wrongfully neglects or refuses to pay price of goods.
 - (b) Property has not passed to the buyer.
Price is payable on a particular date irrespective of delivery.
Buyer wrongfully neglects or refuses to pay price of goods.
- (ii) Suit for damages for non – acceptance (Section 56)
When buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non – acceptance.
- (iii) Suit for damages for Breach (Section 60) –
Where the contract is repudiated by the buyer before the date of delivery, the seller may treat the contract as rescinded and sue for damages for the breach.
- (iv) Suit for interest – Where there is -
 - Specific agreement between seller and buyer as to interest on price of goods from the date.
 - On which payment becomes due, the seller may recover the interest from the buyer.

3. RIGHT OF LIEN Vs. RIGHT OF STOPPAGE IN TRANSIT

S. No.	RIGHT OF LIEN	RIGHT OF STOPPAGE IN TRANSIT
1.	It is right to retain possession.	It is a right regain possession.
2.	Seller should be in possession of the goods.	Seller should have parted with the possession. Possession should be with a carrier & Buyer has not acquired the possession.
3.	The right of lien can be exercised even when the buyer is not insolvent.	It can be exercised only if buyer is insolvent.
4.	The right of stoppage in transit starts where right of lien ends.	Its starting point is the end of right of lien.

4. EFFECT OF SUB- SALE OR PLEDGE BY THE BUYER ON UNPAID SELLER'S RIGHT

The unpaid seller's right of lien or stoppage in transit is not effected by any further sale or other disposition of goods by the buyer.

Exceptions –

When seller has given his assent to such sale, mortgage or other disposition of goods made by the buyer.

When a document of title of goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought the goods in good faith & for value.

5. RIGHT OF BUYER AGAINST THE SELLER IN CASE OF BREACH OF CONTRACT (Sec. 57 to 59)

(i)	Suit for non – delivery [Section 57]	Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non –delivery.
(ii)	Suit for specific performance [Section 58]	Where property has passed to the buyer, the buyer can also exercise the right to sue for specific performance.
(iii)	Suit for damages for Breach of	Buyer is entitled to claim damages from the seller.

	warranty [Section 59]	
(iv)	Suit for recovery of price [Section 61]	The buyer has right to recover the money paid to the seller where the consideration for payment of it has failed.

6. AUCTION SALE

It is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.

An auctioneer is an agent governed by law of agency.

PROVISIONS RELATED TO AUCTION SALE

Where goods are put for sale in lot, each lot is prima facie deemed to be subject matter of a separate contract of sale.
The sale is complete when auctioneer announces its completion : <ul style="list-style-type: none"> ➤ By fall or hammer or ➤ Any other customary manner.
Any bidder may retract from his bid until announcement is made.
Right to bid may be reserved expressly by or 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.
If seller's right to bid has not been expressly reserved, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale.
Reserve Price :- The sale may be notified to be subject to reserve or upset price.
Pretended bidding – If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.