BUSINESS LAWS

CA FOUNDATION - PAPER 2A - BUSINESS LAWS

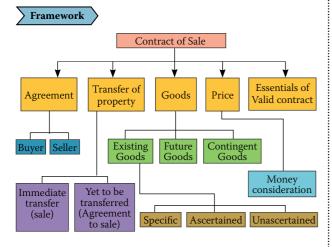
In this capsule, we have summarized the important concepts of the Unit 1 and 2 of the Chapter 2: The Sale of Goods Act, 1930. From Examination point of view, this chapter comprises of around 12 to 14 marks of the paper. In this chapter, students are tested with conceptual understanding of the legal provisions, as well application of the important concepts in the simple practical scenarios. This capsule will help the students to revise and retain essentials of some of the important definitions and various requirements in the formation of the Contract of Sale.

THE SALE OF GOODS ACT, 1930

Primer to the Sale of Goods Act, 1930

- Sale of goods is one of the specific forms of contracts recognized and regulated by law in India.
- It is an Act to define and amend the laws relating to the sale of
- It came into force on 1st July, 1930.
- The provisions of the Act are applicable to the sale of ONLY movable properties and the Act is not applicable to immovable properties.
- It extends to the whole of India.

Formation of the Contract of Sale



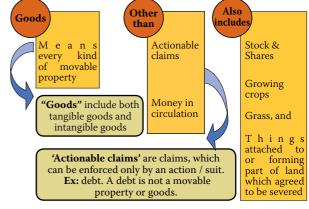
Important Terminologies

is a Buver.

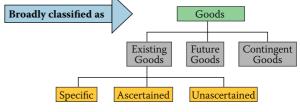
1. Buyer and Seller

A person who buys or agrees to buy goods [Section Buver · A person who sells or agrees to sell goods [Section 2(13)]. Seller • Ex: On 1st June 2021, A agrees to sell 100 bales of cotton to B for Rs. 1000. Here, A is a Seller and B

2. Goods [Section 2(7)] and related terms



3. Classification of Goods



Specific classification of goods Goods in existence at the time of the contract of sale; **Existing Goods** (Section 6) or Goods owned / possessed/ acquired by the seller at the time of Types of existing contract of sale goods

Specific Goods Ascertained

Goods

goods

- Goods identified & agreed upon at the time a contract of sale is made
- Ex: Samsung Galaxy S7 Edge, IFB washing machine of 7 kg
- Goods which are identified in accordance with the agreement after the contract of sale is made.
- Ex: "A" owns 10 Maruti Cars. "B" contracts with "A" to buy one out of them. After the contract, "A" keeps out one car to be given to "B".
- · Goods which are not specifically identified or ascertained at the time of making of the Unascertained
 - Ex: "A" owns 10 Maruti Cars. "B" contracts with "A" to buy any one car out of them.



BUSINESS LAWS

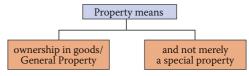
Future Goods [Section 2 (6)].

- Goods to be
- manufactured or
- produced or
- acquired
- · by the seller after making the contract of sale
- Ex: 1000 quintals potatoes to be grown in Mr. A's field.

Contingent Goods [Section 6(2)]

- · The acquisition of which
- by the seller
- · depends upon an uncertain contingency (uncertain event)
- Ex: P contracts to sell 500 pieces of particular item provided the ship which is bringing them reaches the port safely.

7. Property [Section 2(11)]



8. Price [Section 2(10)]



4. Delivery - Meaning [Section 2(2)]



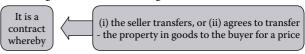
Constructive

delivery

any

Sale and agreement to sell [Section 4]

1. Meaning of Contract of Sale of goods



5. Types of Delivery



Apple

shopkeeper sold one

Actual delivery

change the custody or actua Smart possession watch to B. the thing. Ex: A

without

- warehouseman holding the goods agrees to hold them on behalf of B, at request.
- delivery of thing in token of a transfer of something else Ex: Key of a warehouse containing the
- goods is handed over to buyer.

Symbolic

delivery

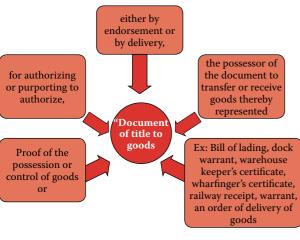
2. Mode for contract of sale of goods



An agreement to sell becomes a sale-

when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. [Section 4(4)]

6. Document of title to goods [Section 2(4)]



3. Differences in Sale and Agreement to Sell

Basis of difference	Sale	Agreement to sell
Transfer of property	Immediately	Future Date or fulfillment of condition
Nature of contract	Executed	Executory
Remedies for breach	Sue for price	Sue for damages only and not for price
Liability of parties	Liability of the buyer	Liability of the seller
Burden of risk	Buyer	Seller
Nature of rights	Jus in rem	Jus in personam
Right of resale	Seller cannot re-sell the goods	Seller may re-sell
Insolvency of seller	Official Assignee • not be able to take over the goods • will recover the price from the buyer.	Official Assignee • acquire control over the goods • the price will not be recoverable.
Insolvency of buyer	Official Assignee • control over the goods.	Official Assignee • no control over the goods.

BUSINESS LAWS

4. Contract of sale - elements must co-exist



Sale Distinguished from other Similar **Contracts**

1. Sale and Hire Purchase

Basis of difference	Sale	Hire- Purchase
Time of passing property	Immediately	On payment of last instalment
Position of the party	Buyer is like that of owner	Position of the hirer is like that of bailee till final payment
Termination of contract	the buyer cannot terminate the contract and bound to pay price	terminate the
Burden of Risk of insolvency of the buyer	risk of seller	Owner takes no risk and has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser	Hirer cannot pass any title even to a bonafide purchaser
Resale	The buyer can	Hirer cannot, unless all installments paid

2. Sale and Bailment

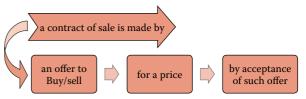
Basis of difference	Sale	Bailment
Transfer of property	Transferred from seller to buyer	Transfer of possession of goods from bailor to bailee
Return of goods	Not possible	Bailee must return the goods to the Bailor on accomplishment of the purpose
Consideration	It is the Price in terms of money	It may be gratuitous or non-gratuitous.

3. Sale and contract for work and labour

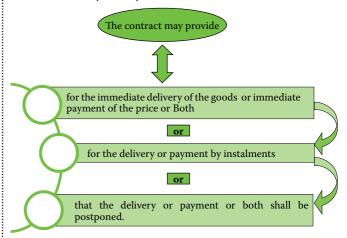
Basis of difference	Sale	Contract for work and labour
Nature of Contract	which some goods are sold or are to be	No goods are sold, and there is only the doing or rendering of some work of labour.

Procedure for conduct of Contract of Sale [Section 5]

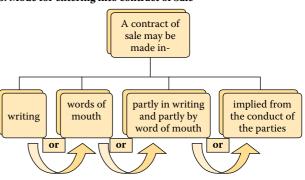
1. Process



2. Mode of delivery and Payment



3. Mode for entering into contract of Sale



Subject matter of Contract of Sale [Section

1. Goods which form the subject matter of a contract of sale

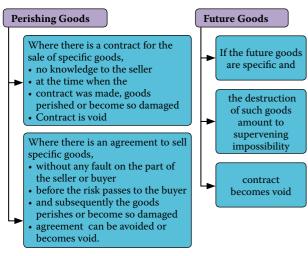
existing goods that are acquired, owned or possessed by the seller

the acquisition of which by the seller depends upon a contingency which may or may not happen

Whereby 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

BUSINESS LAWS





Ascertainment of price [Section 9]

fixed by the contract, or

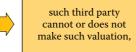
agreed to be fixed in a manner provided by the contract, or

determined by the course of dealings between the parties.

Where price is not determined, the buyer shall pay the seller a reasonable price

Agreement to sell at valuation [Section 10]

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party; and



if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

the agreement is thereby avoided.

Where such third party is prevented from making the valuation by the fault of the seller or buyer,

the party not in fault may maintain a suit for damages against the party in default.

Ex: P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided.

Stipulation as to time of Payment and time of delivery [Section 11]

Stipulation as to the time of payment

are not deemed to be of the essence from the terms of the contract of sale, unless terms of contract state otherwise. Stipulations as to time of delivery are usually the essence of the contract

> Delivery of goods must be made without delay

Conditions and Warranties with reference to the goods [Section 12]

1. Meaning -Condition and Warranty

Condition

is a stipulation essential to the main purpose of the contract,

the breach of which gives rise to a right to treat the contract as repudiated.

Warranty

is a stipulation

co-lateral to the main purpose of the 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.

2. Differences

Point of differences	Condition	Warranty
Meaning	A stipulation essential to the main purpose of the contract.	collateral to the
Right in case of breach	Repudiate or claim damages or both	Claim only damages
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

3. Waiver of conditions [Section 13]

Voluntary Waiver

- Waives performance of contract
 Floct to treat condition as
- Elect to treat condition as warranty

Compulsory Waiver

- Non-severability of contract
- Fulfilment of conditions excused by law

Mode of Conditions and Warranties

'Conditions' and 'Warranties' may be either express or implied

BUSINESS LAWS

1. Express and Implied Conditions-Meaning

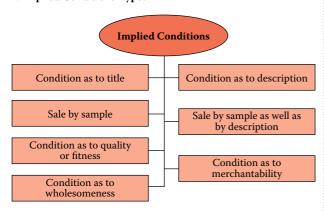
Express conditions

- Agreed upon between the parties at the time of contract and
- are expressly provided in the contract.

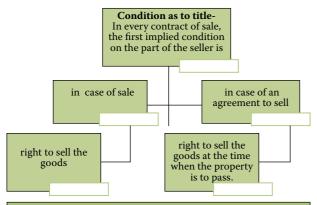
Implied conditions

Which are presumed by law to be present in the contract.
an implied condition may be negated or waived by an express agreement.

2. Implied Conditions-Types



3. Condition as to title [Section 14]



Ex: A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

4. Sale by description [Section 15]

Contract of sale of **goods by description**

the goods shall correspond with the description

there is an implied condition that

Ex: A ship was contracted to be sold as "copper-fastened vessel" but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

5. Sale by sample [Section 17]

Sale by sample

bulk shall correspond with the sample in quality buyer shall have a reasonable opportunity of comparing the bulk with the sample goods shall be free from any latent defect i.e. a hidden defect.

Ex: A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.

6. Sale by sample as well as by description [Section 15]

Sale by sample as well as by description bulk of the goods supplied shall correspond both with the sample and the description

In case the goods correspond with the sample but do not tally with description or vice versa or both, buyer **can repudiate the contract.**

Ex: A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil. B can reject the goods.

7. Condition as to quality or fitness [Section 16(1)]

the goods
supplied shall be
reasonably fit for the
purpose for which the
buyer wants them, provided
the stated Condition as to
quality or fitness
are fulfilled

- The buyer should have made known to the seller the particular purpose for which goods are required.
- The buyer should rely on the skill and judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not

Ex: 'A' bought a set of false teeth from 'B,' a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

8. Condition as to Merchantability [Section 16(2)]

Condition as to Merchantability

- · Goods should be bought by description.
- The seller should be a dealer in goods of that description.
- Exception: If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

Ex: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken



BUSINESS LAWS

9. Condition as to wholesomeness

Condition as to wholesomeness

- In the case of eatables and provisions,
 in addition to the implied
- condition as to merchantability,
 there is another implied condition that the goods shall be wholesome.

Ex: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

Implied Warranties Implied Warranties warranty as to undisturbed possession Warranty as to non-existence of encumbrances warranty as to duality or fitness by usage of trade disclosure of dangerous nature of goods

11. Implied warranty

Warranty as to undisturbed possession buyer shall have and enjoy quiet possession of the goods. If the buyer having got possession of the goods, is later on disturbed in his possession. he is entitled to sue the seller for the breach of the warranty. Ex: A Purchased a second hand typewriter which happened to be stolen

Warranty as to non-existence of encumbrances

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 the contract is entered into.

Ex:: S sells a car which was given as security by Y against a loan

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 or attached by the usage of trade

Ex: Shares purchased from broker expected to be free from bad deliveries Disclosure of dangerous nature of goods

> the goods are dangerous in nature and

the buyer is ignorant of the danger,

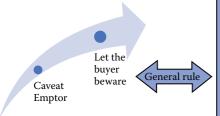
the seller must warn the buyer of the probable danger.

If there is a breach of warranty, the seller may be liable in damages.

Ex: Lid of disinfectant powder to be opened with care.

Caveat Emptor [Section 16]

1. Meaning of doctrine



Ex: A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

It is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them.

${\bf 2.}\ Required\ conditions\ when\ doctrine\ is\ not\ attracted:$

Conditions to be satisfied

- Buyer had made known to the seller the purpose of his purchase, and
- buyer relied on the seller's skill and judgement, and
- seller's business to supply goods of that description

3. Exceptions to Doctrine of caveat Emptor:

Exceptions

- · Fitness as to quality or use
- Goods purchased under patent or brand name
- Goods sold by description
- · Goods of Merchantable Quality
- · Sale by sample
- · Goods by sample as well as description
- Trade Usage
- · Seller actively conceals a defect or is guilty of fraud

33

BUSINESS LAWS

CA FOUNDATION - PAPER 2A - BUSINESS LAWS

In this capsule, we have summarized the important concepts of the Unit 3 and 4 of the Chapter 2: The Sale of Goods Act, 1930. From Examination point of view, this chapter comprises of around 12 to 14 marks of the paper. In this chapter, students are tested with conceptual understanding of the legal provisions, as well application of the important concepts in the simple practical scenarios. This capsule will help the students to revise and retain essentials of some of the important provisions related to transfer of ownership, delivery of goods and unpaid seller.

THE SALE OF GOODS ACT, 1930

(I) Provisions related to transfer of Ownership [Section 18-26]

(i) Stages involved in transfer of ownership:

Passing of property

Delivery of Goods Passing of

Passing of Property



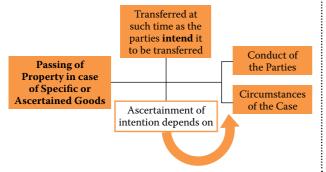
- Passing of Ownership
- If the property has passed to the buyer, the RISK in the goods sold is that of the buyer and NOT of the seller

Rules regarding transfer of property in goods Depends on two basic factors:

Identification of goods **Intention of parties** Property in goods Goods must be ascertained transferred at the timein order to pass the when parties intend it to property in goods to buyer be transferred Ascertaing of intention shall Goods must be specific be on the basis ofand ascertained to acquire · terms of contract the ownership right on the conduct of the parties, and goods by buyer · circumstances of the case

Primary Rules: For determination of passing of property from seller to Buver

1. Passing of Property in Case of Specific or Ascertained Goods



Different stages of Goods while passing of property under this category:

Specific Goods in Deliverable Stage

Property in goods passes to the buyer when the contract is made

irrespective of time of the payment or delivery or both.

Example: X buys a Washing Machine and asks for home delivery. The washing machine immediately becomes the property of X.

Specific Goods to be put in Deliverable Stage

When there is a contract for the sale of specific goods;

seller is bound to do something to the goods for putting them into deliverable state;

the property does not pass until such thing is done and buyer has notice thereof.

Example: X purchased a laptop and asks for home delivery but that laptop does not have a Windows operating system installed. The property transfers to X only after shopkeeper installed OS making the laptop ready for delivery and intimated the buyer about it.

Specific Goods in a Deliverable Stage when seller has to do anything to put it in deliverable stage

- Contract for sale of specific goods
- seller is bound to weigh, measure, test or do something for purpose of ascertaining price
- then the Property in goods passes to
- only when such thing is done and buyer has notice of it.

Example: A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company.

2. Sale of Unascertained Goods

When there is a sale of Unascertained Goods.

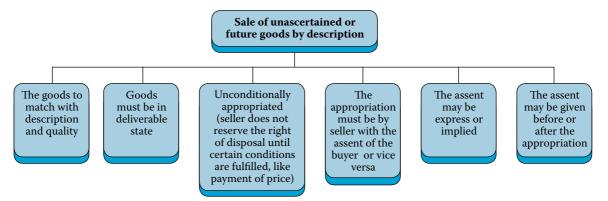
no property is transferred to the buyer

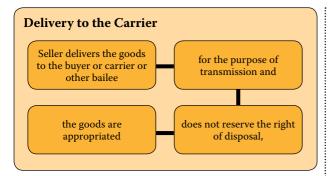
unless the goods are ascertained

The Chartered Accountant Student December 2021 29

BUSINESS LAWS

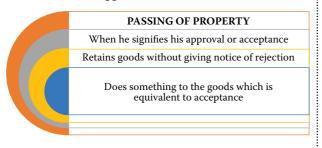
Rules in respect of passing of property under this category





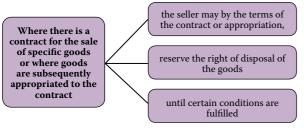
Example: A bill of lading of railway parcel is made out in the name of the buyer and is sent to him, the ownership in the goods passes from the seller to the buyer. In case the goods are subjected to accidental loss or by theft, the seller will not be liable.

3. Goods sent on Approval or "Sale Or Return"



Example: A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

4. Reservation of Right of Disposal



Example: X sends furniture to a company by a truck and instructs the driver not to deliver the furniture to the company until the payment is made by company to him. The property passes only when the payment is made.

Risk Prima Facie passes with Property

Until the property therein is transferred to the buyer

the goods remain at the seller's risk

when the property therein is transferred to the buyer

the goods are at the buyer's risk whether delivery has been made or not.

If delivery is delayed by the fault of the seller or the buyer

the goods remain at the risk of the party in default (seller or buyer as per the case)

The duties and liabilities of the seller or the buyer as bailee of goods for other party

will not be affected even when risk has passed.

Example: A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

30

December 2021 The Chartered Accountant Student

BUSINESS LAWS

(II) Transfer of Title by Non Owners (Section 27-30) : Types of Delivery

Where goods are sold by a person who is not the owner; and

who does not have the authority or with the consent of the owner

buyer does not acquire a good title

Example: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

NEMO DAT QUOD NON HABET - No one can give what he has not got.

Exceptions:

Sale by a Mercantile Agent

Sale by one of the joint owners

Sale by a person in possession under voidable contract

Sale by a person who has already sold goods but continues in possession thereof

Effect of Estoppel

Sale by an unpaid seller

Sale by a buyer obtaining possession before the property vested in him

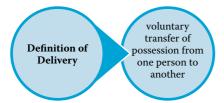
Sale under provisions of other Acts

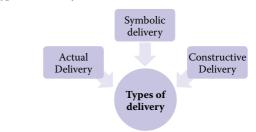
Examples: 1. A, B, and C are three brothers and joint owners of a T.V and VCR and with the consent of B and C, the VCR was kept in possession of A. A sells the T.V and VCR to P who buys it in good faith and without notice that A had no authority to sell. P gets a good title to VCR and TV.

2. During IPL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. S gets a good title.

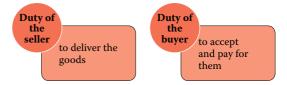
(III) Performance of the Contract of Sale (Section 31-44)

Meaning of delivery

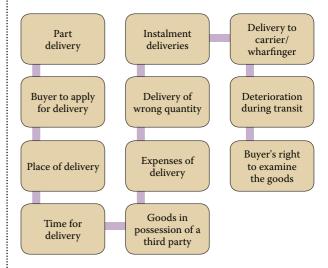




Duties of seller and Buyer



Rules regarding Delivery of Goods



Examples: 1. 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.

2. A agrees to sell 100 quintals of wheat to B at `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.

Rule Related to 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 the ownership of the seller; or

retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

The Chartered Accountant Student December 2021

BUSINESS LAWS

(IV) Unpaid Seller (Section 45-61)

UNPAID SELLER

- 1. The Whole price has not been paid or tendered and the seller has an immediate right of action for the price
- When a bill or exchange or other negotiable instrument has been received as conditional payment and it has been dishonoured.

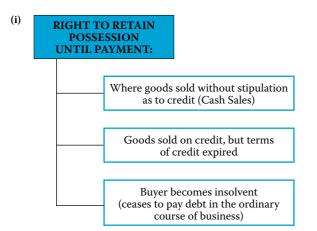
Example: P sold some goods to R for \ref{fo} 60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

Rights of an Unpaid Seller



Right of Unpaid Seller against the Goods

1. Seller's Lien



Example: A sold certain goods to B for a price ₹50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

Buyer or agent lawfully obtains the goods

Delivers goods to carrier or bailee

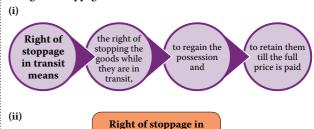
Termination of Lien

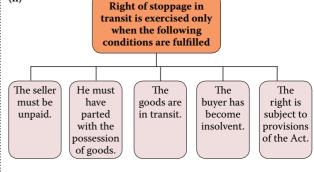
By Waiver

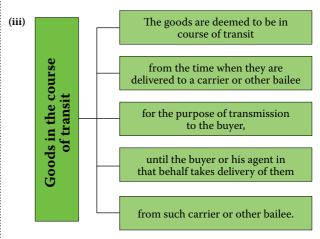
By Estoppel (by conduct or behaviour)

Example: A sold a car to B for $\le 1,00,000$ and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

2. Right of stoppage in transit:







BUSINESS LAWS

(iv) When does the transit come to an end? Where the part When the buyer **Buyer obtains** Where the carrier If the carrier Where goods Where the or other bailee delivery before or other bailee wrongfully are delivered delivery of the goods are obtains delivery. goods has been acknowledges to the refuses to to the carrier delivered to a the arrival of goods at buyer or his agent that deliver the hired by the made to the ship chartered destination he holds the goods as goods to the buyer buyer, the transit by the buyer, soon as the goods are buyer. will come to the transit loaded on the ship, an end for the comes to an unless the seller has remaining goods end. which are yet reserved the right of disposal of the goods. in the course of transmission.

(v)

Stoppage in transit

By taking actual possession of goods by giving notice to the carrier not to deliver the goods.

(vi)

Exceptions where unpaid seller's right of lien and stoppage in transit are defeated When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer

When a document of title to 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

Example: A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result, A's right to lien is defeated.

3. Right of re-sale

Where the goods are of a perishable nature Where he gives notice to the buyer of his intention to re-sell the goods Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods

A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale

Where the property in goods has not passed to the buyer Rights of Unpaid Seller against the Buyer

Rights of unpaid seller against the buyer

- Suit for price
- Suit for damages for non-acceptance
- Repudiation of contract before due date
 - Suit for interest

Breach of Contract by Seller

Breach of contract by seller, where he-

Fails to deliver the goods at the time or in manner prescribed

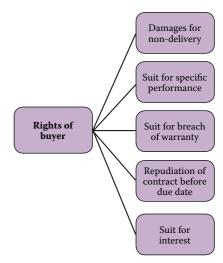
Breach of contract by seller, where he-

Repudiates the contract

Breach of contract by seller, where he-

Deliver non-conforming goods and buyer rejects and revokes acceptance

Right of Buyer in case of breach of contract by seller



The Chartered Accountant Student | December 2021

BUSINESS LAWS

Example: A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

(V) Auction Sale (Section 64) Meaning property mode of is sold to selling the highest property by Auction bidder inviting bids sale is publicly and

Legal Rules of Auction Sale

Rules

- Where goods are sold in lots
- Completion of the contract of sale
- Right to bid may be reserved
- Where the sale is not notified by the seller
- Reserved price
- · Pretended bidding

Example: P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.