

# 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.

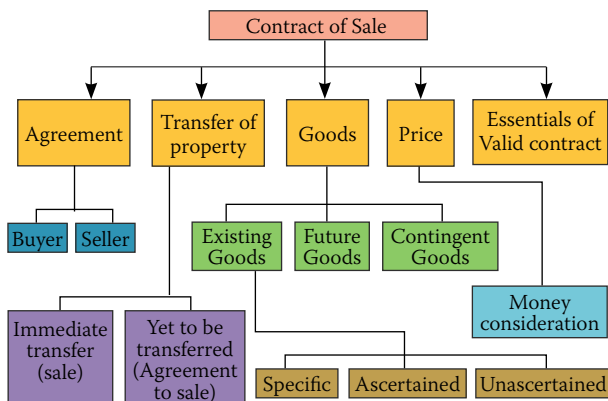
### THE SALE OF GOODS ACT, 1930

#### 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 goods.
- 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.

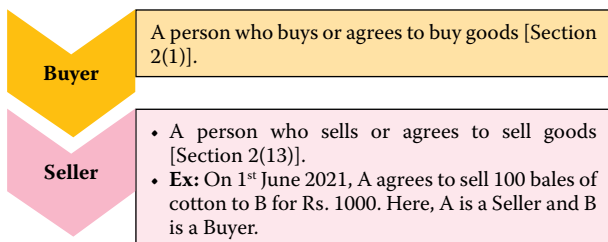
#### Formation of the Contract of Sale

##### Framework

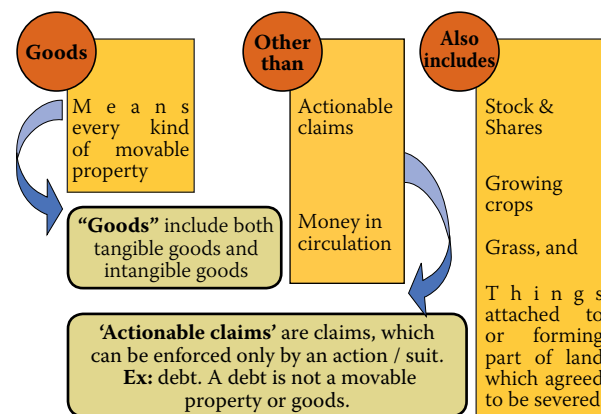


#### Important Terminologies

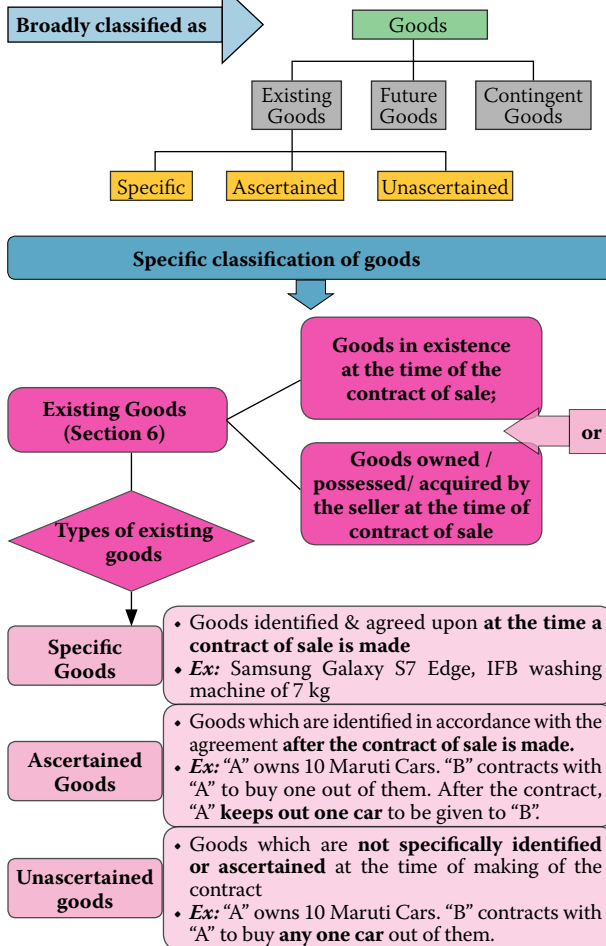
##### 1. Buyer and Seller



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



##### 3. Classification of Goods



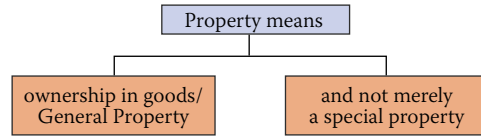
**Future Goods [Section 2 (6)].**

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

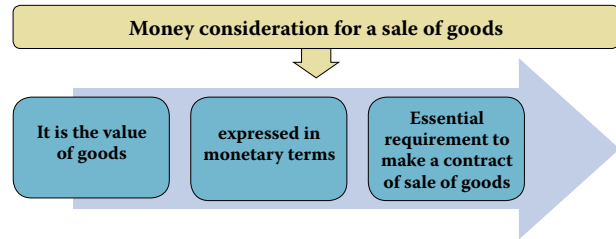
**Contingent Goods [Section 6(2)]**

- 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)]



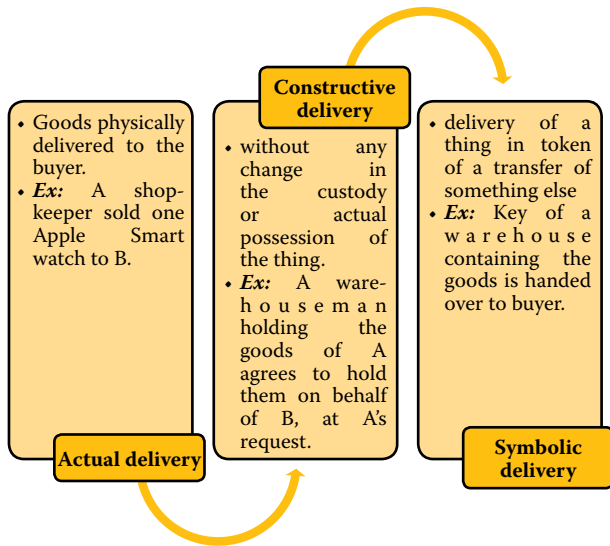
8. Price [Section 2(10)]



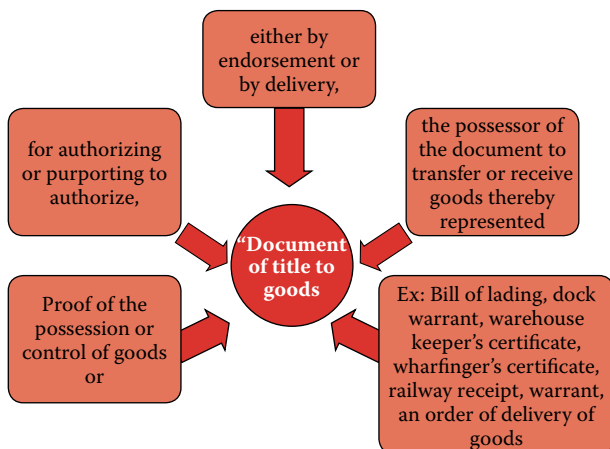
4. Delivery – Meaning [Section 2(2)]



5. Types of Delivery

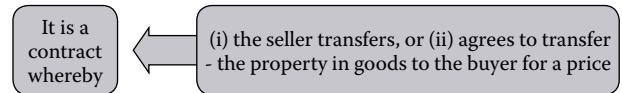


6. Document of title to goods [Section 2(4)]

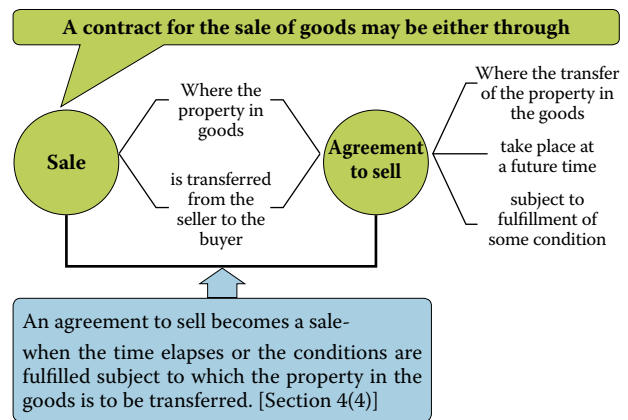


**Sale and agreement to sell [Section 4]**

1. Meaning of Contract of Sale of goods



2. Mode for contract of sale of goods

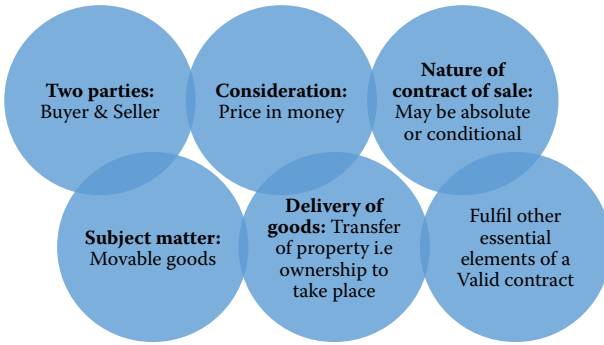


3. Differences in Sale and Agreement to Sell

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 <ul style="list-style-type: none"> <li>• not be able to take over the goods</li> <li>• will recover the price from the buyer.</li> </ul>	Official Assignee <ul style="list-style-type: none"> <li>• acquire control over the goods</li> <li>• the price will not be recoverable.</li> </ul>
Insolvency of buyer	Official Assignee <ul style="list-style-type: none"> <li>• control over the goods.</li> </ul>	Official Assignee <ul style="list-style-type: none"> <li>• no control over the goods.</li> </ul>

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### 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	The hirer may terminate the contract by returning the goods
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

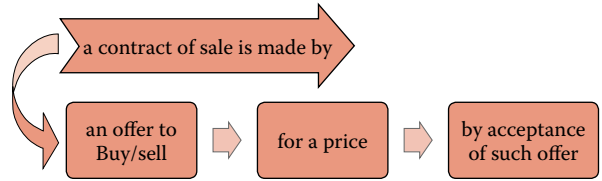
Basis of difference	Sale	Bailment
Transfer of property	Transferred from seller to buyer	Transfer of possession of goods from bailor to bailee
Return of goods	Not possible	Bailee must return the goods to the Bailor on accomplishment of the purpose
Consideration	It is the Price in terms of money	It may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

#### 3. Sale and contract for work and labour

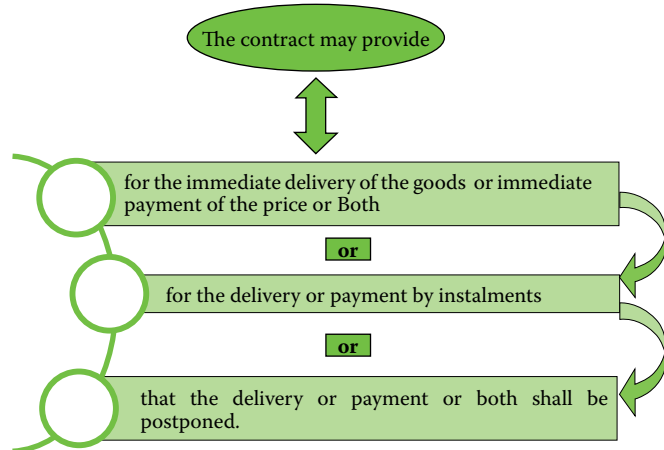
Basis of difference	Sale	Contract for work and labour
Nature of Contract	It's a contract in which some goods are sold or are to be sold for a price	No goods are sold, and there is only the doing or rendering of some work of labour.

### Procedure for conduct of Contract of Sale [Section 5]

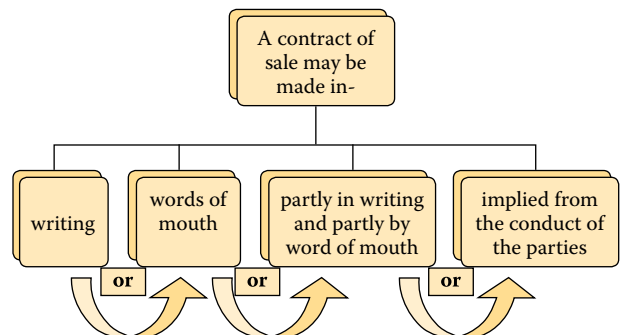
#### 1. Process



#### 2. Mode of delivery and Payment



#### 3. Mode for entering into contract of Sale



### Subject matter of Contract of Sale [Section 6, 7, & 8]

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

##### Existing goods

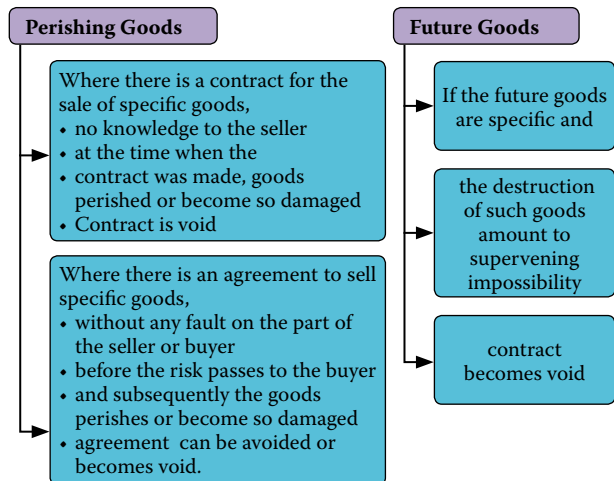
existing goods that are acquired, owned or possessed by the seller

##### Future goods

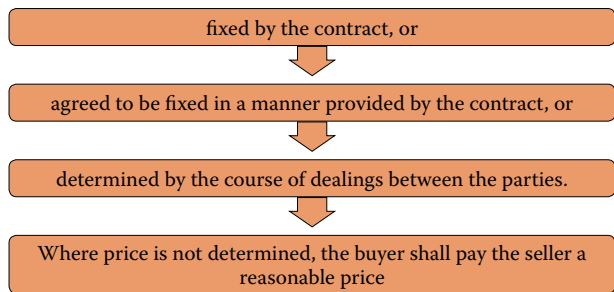
the acquisition of which by the seller depends upon a contingency which may or may not happen

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

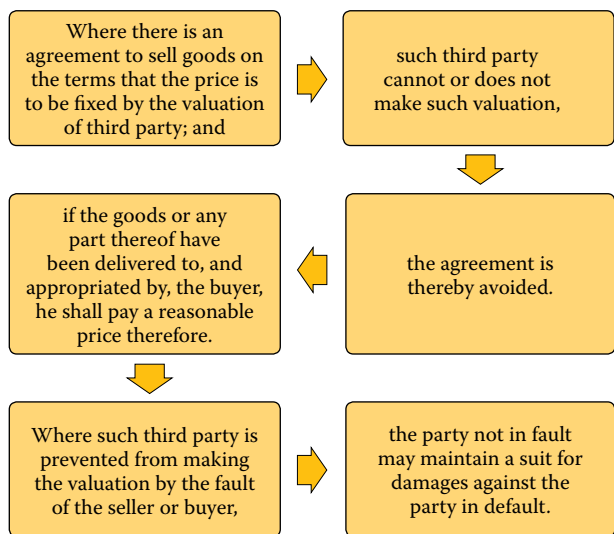
2. Nature of contract of sale with respect to perishing goods



**Ascertainment of price [Section 9]**

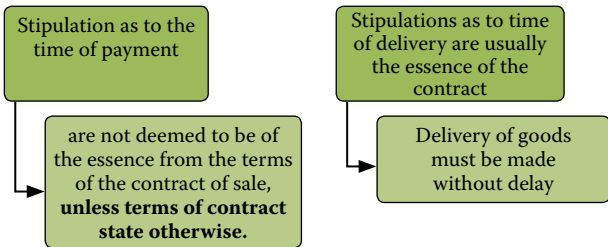


**Agreement to sell at valuation [Section 10]**



**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]**



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

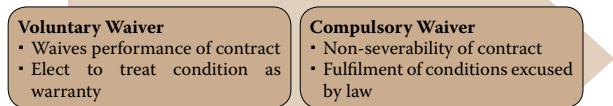
1. Meaning -Condition and Warranty

Condition	Warranty
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.	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.

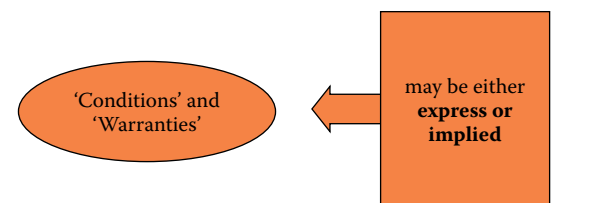
2. Differences

Point of differences	Condition	Warranty
<b>Meaning</b>	A stipulation essential to the main purpose of the contract.	A stipulation collateral to the main purpose of the contract.
<b>Right in case of breach</b>	Repudiate or claim damages or both	Claim only damages
<b>Conversion of stipulations</b>	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]

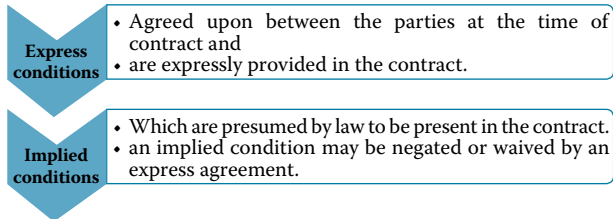


**Mode of Conditions and Warranties**

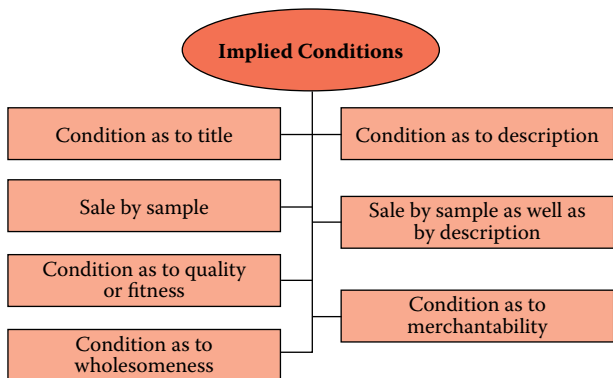


# BUSINESS LAWS

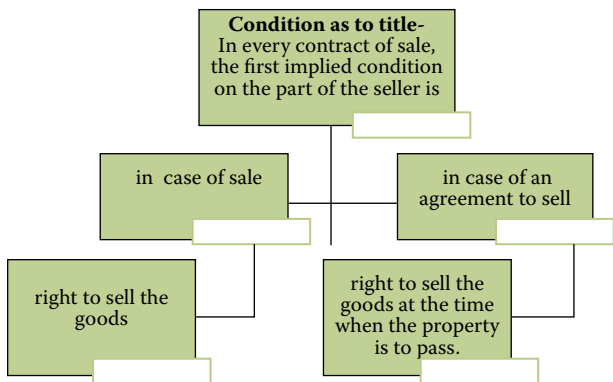
## 1. Express and Implied Conditions-Meaning



## 2. Implied Conditions-Types



## 3. Condition as to title [Section 14]



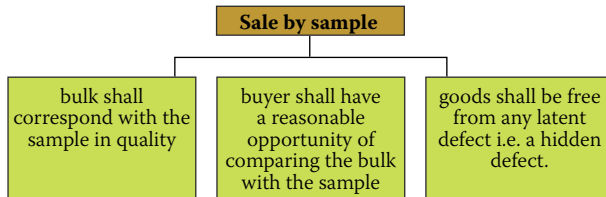
**Ex:** A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

## 4. Sale by description [Section 15]



**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]



**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.

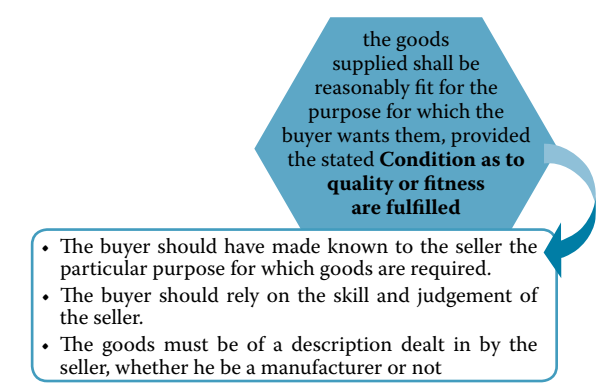
## 6. Sale by sample as well as by description [Section 15]

**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)]



**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.

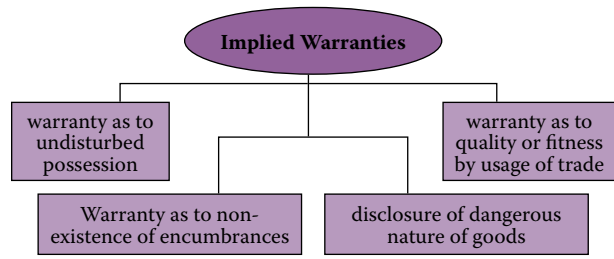
9. Condition as to wholesomeness

**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.

10. Implied Warranties-Types



11. Implied warranty

Warranty as to undisturbed possession	Warranty as to non-existence of encumbrances	Warranty as to quality or fitness by usage of trade	Disclosure of dangerous nature of goods
buyer shall have and enjoy quiet possession of the goods.	the goods shall be free from any charge or encumbrance	An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade	the goods are dangerous in nature and
If the buyer having got possession of the goods, is later on disturbed in his possession,	in favour of any third party not declared or known to the buyer	<i>Ex:</i> Shares purchased from broker expected to be free from bad deliveries	the buyer is ignorant of the danger,
he is entitled to sue the seller for the breach of the warranty.	before or at the time the contract is entered into.		the seller must warn the buyer of the probable danger.
<i>Ex:</i> A Purchased a second hand typewriter which happened to be stolen	<i>Ex:</i> S sells a car which was given as security by Y against a loan		If there is a breach of warranty, the seller may be liable in damages.
			<i>Ex:</i> Lid of disinfectant powder to be opened with care.

**Caveat Emptor [Section 16]**

1. Meaning of doctrine

Caveat Emptor

Let the buyer beware

General rule

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.

*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.

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

CA FOUNDATION - PAPER 2A - BUSINESS LAWS

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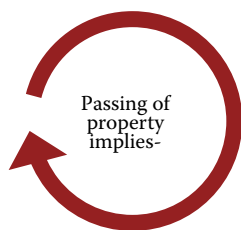
THE SALE OF GOODS ACT, 1930

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

(i) Stages involved in transfer of ownership:



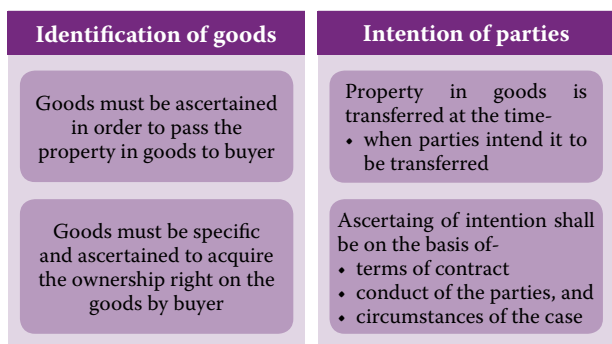
Passing of Property



- 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

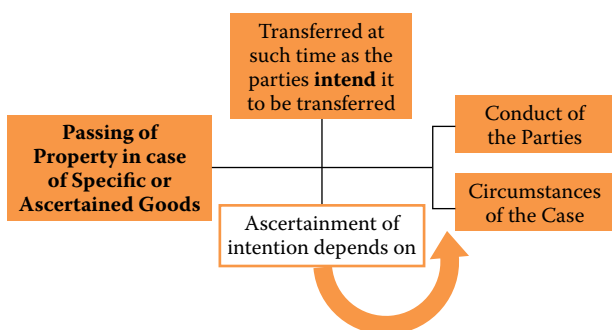
Rules regarding transfer of property in goods

Depends on two basic factors:



**Primary Rules:** For determination of passing of property from seller to Buyer

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



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

<b>Specific Goods in Deliverable Stage</b>	Property in goods passes to the buyer when the contract is made irrespective of time of the payment or delivery or both.
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**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.

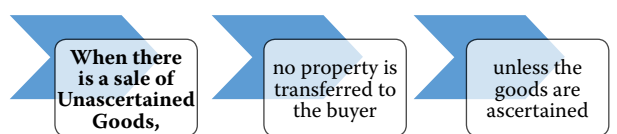
**Example:** X purchased a laptop and asks for home delivery but that laptop does not have a Windows operating system installed. The property transfers to X only after shopkeeper installed OS making the laptop ready for delivery and intimated the buyer about it.

**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 the buyer
- only when such thing is done and buyer has notice of it.

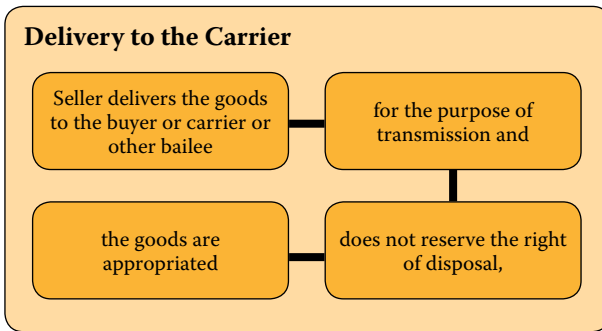
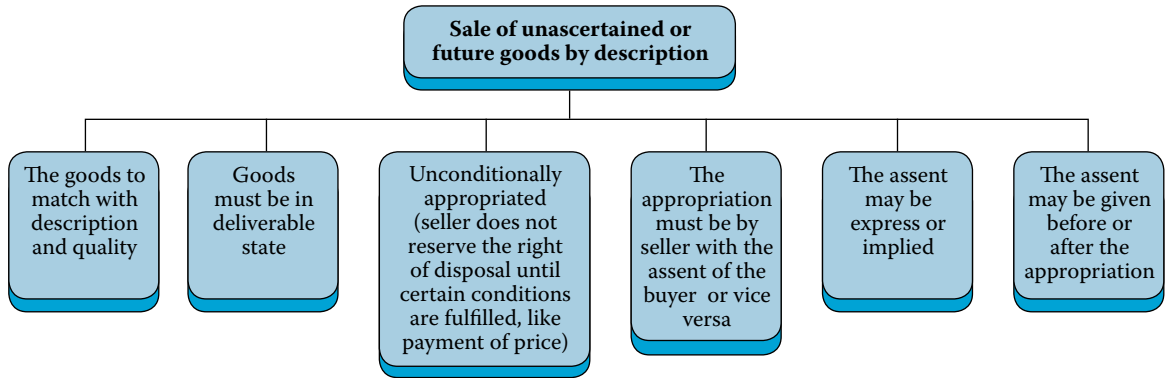
**Example:** A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had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

2. Sale of Unascertained Goods



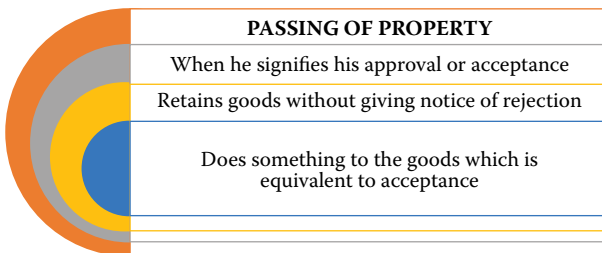
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Rules in respect of passing of property under this category



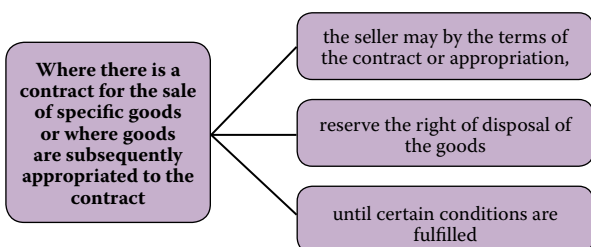
**Example:** A bill of lading of railway parcel is made out in the name of the buyer and is sent to him, the ownership in the goods passes from the seller to the buyer. In case the goods are subjected to accidental loss or by theft, the seller will not be liable.

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



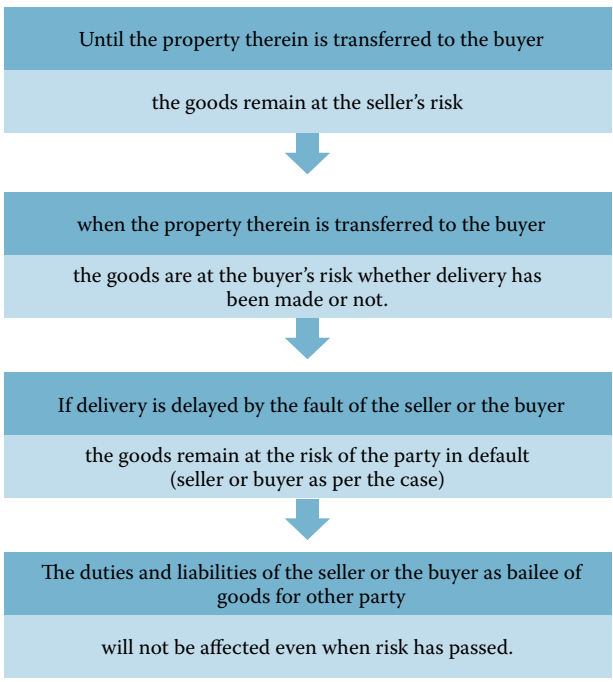
**Example:** A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

### 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.

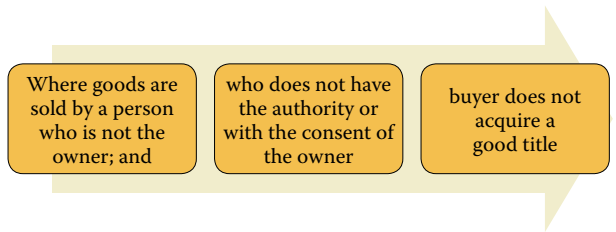
### Risk Prima Facie passes with Property



**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.



**(II) Transfer of Title by Non Owners (Section 27-30)**



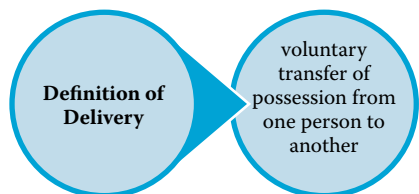
**Example:** P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

<b>NEMO DAT QUOD NON HABET – No one can give what he has not got.</b>	Sale by a Mercantile Agent
<b>Exceptions:</b>	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

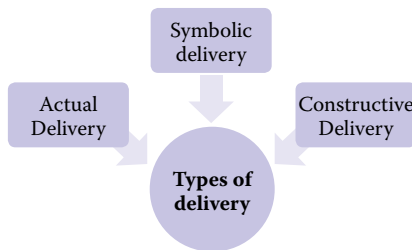
**Examples:** 1. A, B, and C are three brothers and joint owners of a T.V and VCR and with the consent of B and C, the VCR was kept in possession of A. A sells the T.V and VCR to P who buys it in good faith and without notice that A had no authority to sell. P gets a good title to VCR and TV.  
 2. During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

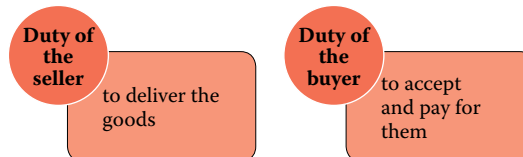
**Meaning of delivery**



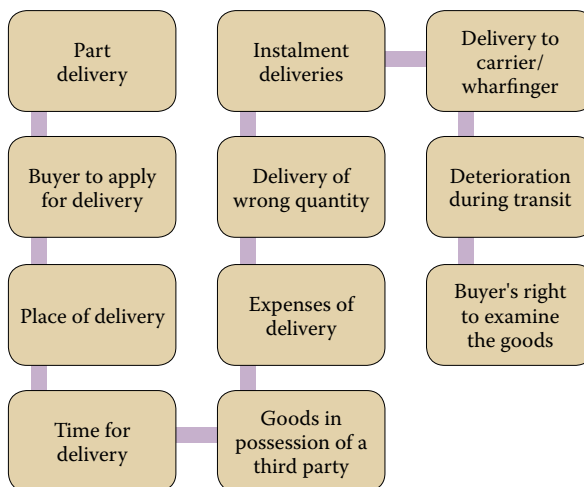
**Types of Delivery**



**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.

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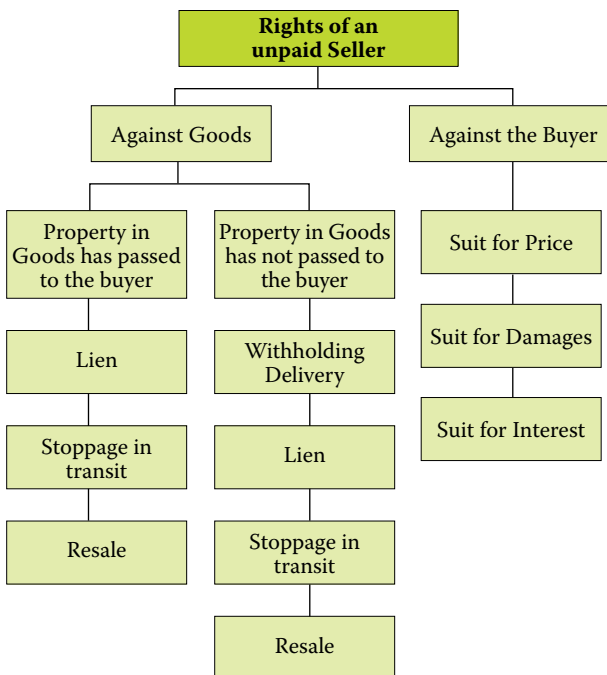
### (IV) Unpaid Seller (Section 45-61)

#### UNPAID SELLER

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

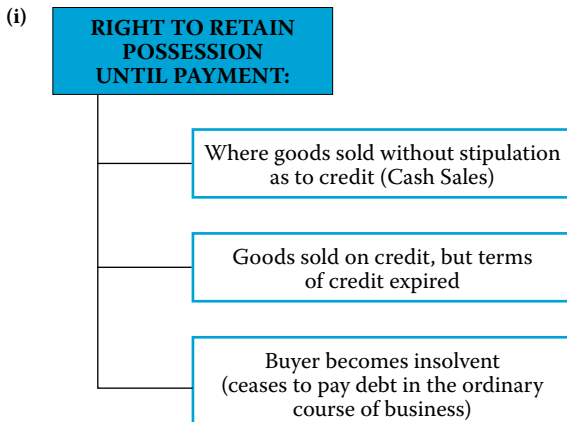
**Example:** P sold some goods to R for ₹60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

#### Rights of an Unpaid Seller



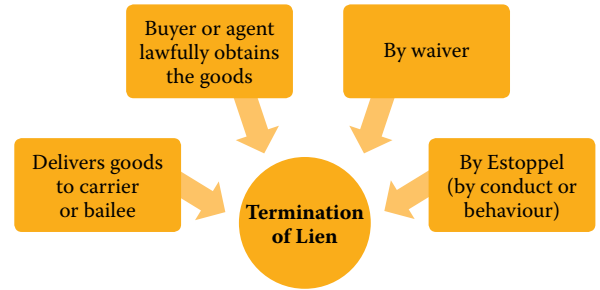
#### Right of Unpaid Seller against the Goods

##### 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.

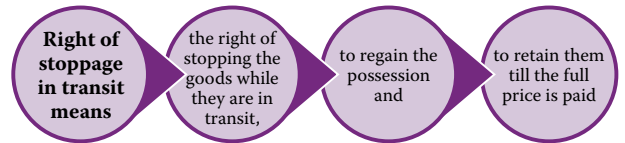
(ii)



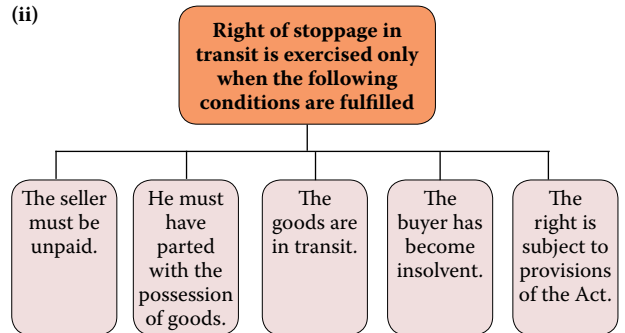
**Example:** A sold a car to B for ₹1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

##### 2. Right of stoppage in transit:

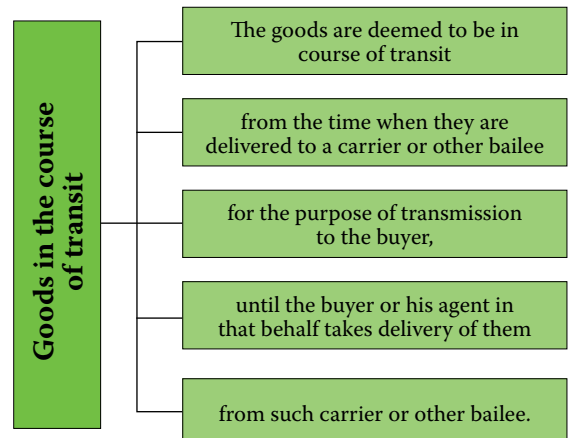
(i)



(ii)



(iii)



(iv)

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

(v)



(vi)

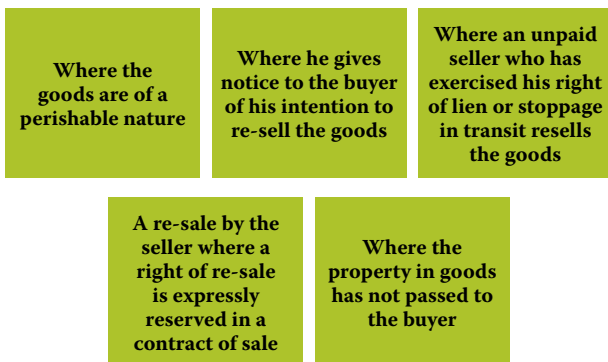
**Exceptions where unpaid seller's right of lien and stoppage in transit are defeated**

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

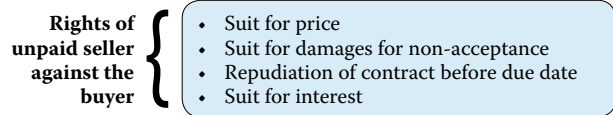
When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value

**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**

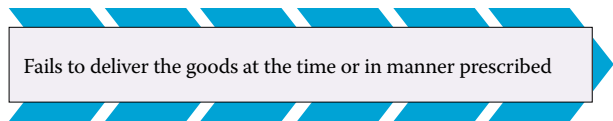


**Rights of Unpaid Seller against the Buyer**



**Breach of Contract by Seller**

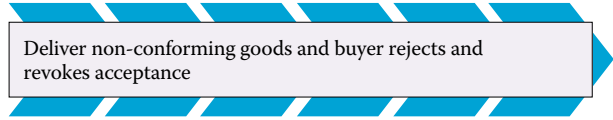
Breach of contract by seller, where he-



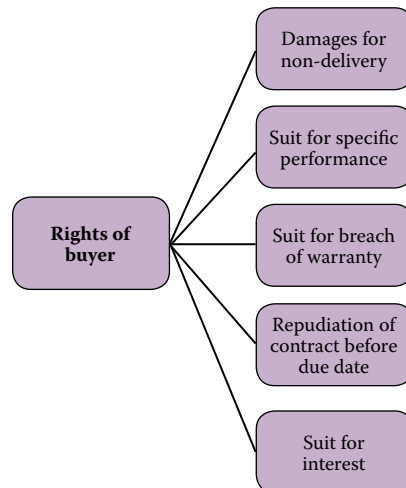
Breach of contract by seller, where he-



Breach of contract by seller, where he-



**Right of Buyer in case of breach of contract by seller**

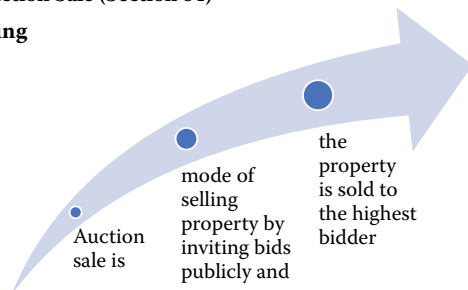


## BUSINESS LAWS ||

**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



### 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.