

SALE OF GOODS ACT, 1930

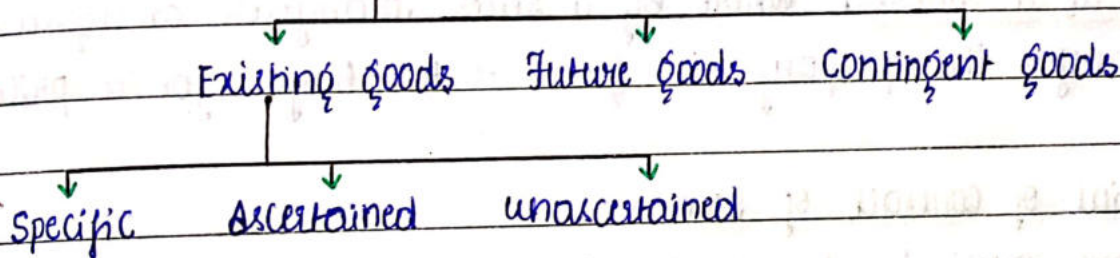
Lesson - 22

Goods [sec 2 (7)] → Includes stocks & shares, growing crops, grass & things attached to or forming a part of land, which are agreed to be sold before sale or under the contract of sale

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Means every kind of movable property other than actionable claim and money

Types of Goods



Existing goods :- The goods which are in existence with seller at the time of formation of contract of sale [ownership & possession is with seller]

i. **Specific goods** :- The goods identified & agreed upon at the time of contract of sale is made

ii **Ascertained goods** :- The goods which are specified after formation of contract

iii **Unascertained goods** :- The goods which are not specified at the formation of contract of sale

Future goods :- The goods which are not in existence with the seller at the time of formation of contract of sale [seller have to manufacture or acquire the goods in order to sell it]

Contingent goods :- The goods' Acquisition which is dependent upon happening or non-happening of any event.

Note:

- i. A Contract for sale of Future goods is always an agreement to sell. It is never actual sale, because a man can't transfer what is not in existence.
- ii. The position as to existing goods depends on time of Identification
- iii. When unascertained goods are specified, they turned as Ascertained.
- iv. Unascertained goods are indicated or define only by description/sample & It will be in existence & in possession of seller at time of contract of sale.

Contract of Sale of Goods [Sec 4]

It is a contract where by a seller transfers or agrees to transfer the property in goods to the buyer for a price.

Essential of Contract of Sale

- i. There must be two parties buyer & seller.
- ii. Subject matter of contract of sale must be goods.
- iii. Transfer must take place for a price [partly in cash & partly in kind is Allowed, but wholly in kind is not]
- iv. It may be absolute or conditional
- v. Transfer must be of general property & not of special property.
[General = ownership rights, Special = any right other than ownership]
- vi. All Essentials of valid contract must be present.

Fixation of price [Sec 9 & 10]

The price may be fixed by any of following modes:

- i. By parties - Any price
- ii. Reasonable price - It depends on facts & circumstances
- iii. Manner provided in contract of sale - Ex: Municipal valuation, Stamp duty valuation etc:-
- iv. Course of dealing - as per customs / usage of trade.
- v. Third party - [If he fail to fix the price, Buyer has to

pay 'Reasonable price' to Seller. & If third party is prevented by one party from fixing price, Innocent party may recover damages from party at fault]

Earnest Money vs. Advance payment.

Earnest Money: Security for due performance of contract

Advance payment: payment of price of goods in advance to be adjusted against final price of goods

If the contract is not performed by fault of buyer → Seller may forfeit earnest money; but not advance payment.

1. Condition vs Warranty.

| Condition | Warranty |
|---|---|
| i. It is a stipulation (Representation) which is essential to main purpose of the contract. | i. It is a stipulation which is collateral to the main purpose of the contract. |
| ii. Breach of conditions give right to cancel the contract & claim damages. | ii. Breach of warranty gives right to claim damages but not to cancel the contract. |
| iii. It may be treated as Breach of warranty | iii. It can't be treated as Breach of Condition. |

Circumstances where condition will be treated as warranty [Sec 13]

This results that buyer loses his right to cancel the contract & can claim for damages only.

- i. Voluntary waiver of condition by the buyer
- ii. Where buyer elects to treat condition as warranty
- iii. Contract is indivisible & buyer has accepted either whole/part of goods
- iv. If there exist an impossibility for the performance of condition/warranty [where seller has excused by Law]

Express & Implied Conditions & Warranties.

- i. Conditions & warranties may be either 'expressly stated' or may be 'implied by law'.
- ii. Implied Condition can be negated or waived by an express agreement.
- iii. In this chapter, our focus is to study C & W which are 'implied by law' & not 'expressed', because every day thousands of contracts are made. Every contract has various & different express C & W, that no one can assume.

Implied Condition :-

- i. Condition as to Title :- If the seller's title is defective, then Buyer's title also becomes defective. In this case goods must be returned to true owner & recover price & compensation from owner.
- ii. Condition as to description :- The goods shall correspond to the description or else it will be breach of condition & buyer would be entitled to reject goods.
- iii. Condition as to sample :-
 - Goods shall correspond to sample
 - Buyer shall get reasonable opportunity of comparing bulk with sample
 - Goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of sample.
- iv. Condition as to sample & description :- Both (ii) & (iii) must be satisfied.
- v. Condition as to merchantability :- Goods are commercially saleable & they are fit for the purpose of use.
- v. Condition as to wholesomeness :- Goods must be fit for human consumption.

VI. Condition as to Quality & Buyer's purpose.

- Buyer must check & confirm that goods will serve his purpose will.
- In case of Multi-purpose goods, then Buyer has to state the purpose [Other wise Seller will not be responsible]
- In case of Single-use goods, then Buyer need not to disclose his purpose.
- Seller will not liable, if:
 - i. Buyer has purchased goods on Brand name
 - ii. There are abnormal conditions with buyer.

Implied Warranty :-

- i. Warranty as to undisturbed possession :- If the ownership has been transferred to Buyer, he can enjoy the use or possession of goods [with out disturbance / Interference from any person]
- ii. Warranty against encumbrances :- Goods shall be free from any charge/encumbrances of third party unknown to buyer.
- iii. Warranty to disclose dangerous Nature of goods :- Seller has to warn buyer regarding probable damage.
- iv. Warranty as to Quality & Fitness by usage of Trade :- Goods shall have proper quality which is reqd as per the custom or usage of Trade.

DOCTRINE OF COVEAT EMPTOR

Meaning

General Rule

Exception

Let the Buyer Beware.

* Buyer must check the goods before purchase. E shall ensure that goods are free from defects & suitable for his purpose.

* In case of Breach of Implied conditions
* In case of Fraud Committed by Seller

Other wise, seller is not responsible & Buyer can't claim compensation

Seller is responsible & Buyer entitle to damages

Transfer of Title [Sec 27-30]

- Nemo dat quod non-habit :- NO one can transfer a better title than he himself has.
- Sometimes goods are sold by person who don't have ownership of goods. In such case, buyer will not become true owner of goods. Ex:- When thief sells the goods, buyer will not get a valid title.
- But for protect int of innocent buyers - Exceptions are given to this rule. Those are following:-

[Sale by non-owner Circumstances]

- i] Sale by Mercantile Agent :- In the ordinary course of Business + Buyer's good faith + Agent had possession with owner's consent.
- ii] Sale by Joint owner :- Joint owner is on sole possession of goods + consent of co-owner + Buyer's good faith.
- iii] Sale by a person in possession under a voidable contract :- Seller obtained good's possession under voidable contract + Contract should be in existence at time of sale + Buyer's good faith.

- iv. Sale by Seller in possession of goods after their sale:
- v. Sale by a buyer in possession of goods after their sale but before transfer of ownership
- vi. Sale by Estoppel: True owner (expressly or implied) + Lead buyer to believe that seller has authority to sell + then owner is estopped from denying seller's authority to sell.
- vii. Sale by unpaid seller: unpaid seller exercised right of lien + or Stoppage in transit + Resells goods
- viii. Sale by finder of goods: If goods are perishable + If lawful charges (min $\frac{2}{3}^{rd}$) not paid by owner + If owner has not found
- ix. Sale under provision of other Act: official Assignee/Receiver, Liquidator, officers of court selling under a decree, Executors, Administrators + Pawnee

Transfer of Risk [Sec. 26]

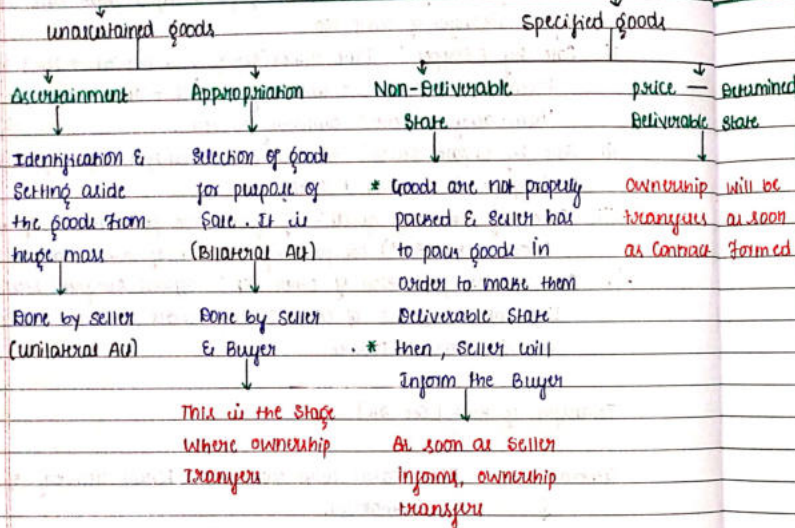
General Rule: Risk passes with ownership: Actual delivery of goods
 ↓
 is immaterial.

- Exception →
- i. Agreement b/w the parties
 - ii. Goods are at the risk of party in default
 - iii. Trade Customs.

Remedies of Buyer against the Seller [only when transfer is registered]

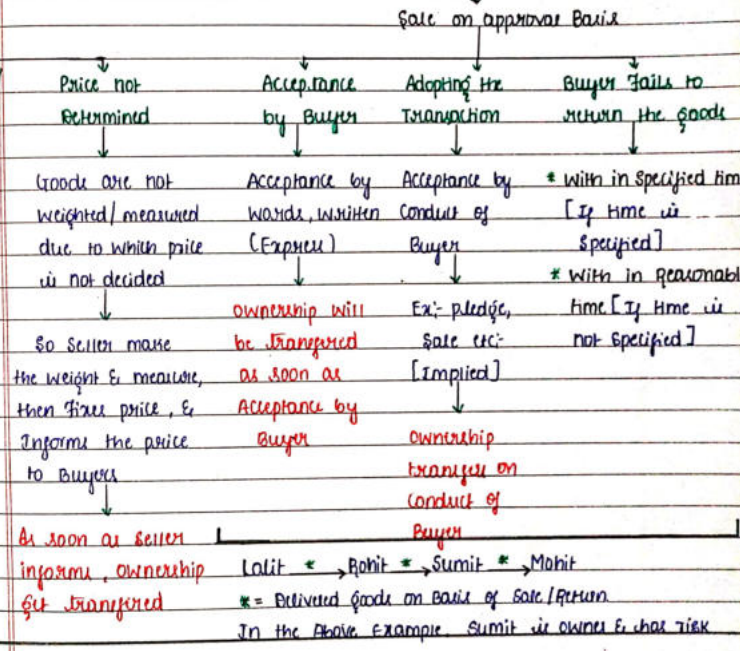
- i. Damages for non-delivery.
- ii. Suit for specific performance.
 - court enforce it. If:
 - a] Goods are specific + ascertained
 - b] Goods are unique + costly
 - c] Damages are inadequate remedy
- iii. Sue for damages for cancellation of contract by seller before due date
- iv. Suit for breach of warranty:
 - In this case, Buyer may
 - a] claim price deduction
 - b] Refuse to pay price (if loss = ↓)
 - c] claim damages (if loss > price)
 - d] May sue seller but he is not entitled to reject goods.
- v. Suit for Interest.

Transfer of Ownership



* TO Execute a valid sale, there must be transfer of ownership (Complete rights over the goods)

[Sec 18-20]



Lalit * → Rohit * → Sumit * → Mohit
* = Received goods on basis of sale/return
In the Above Example Sumit is owner & has risk

3. Unpaid Seller

Meaning :-

- i. When Complete price is not paid by buyer.
- ii. When payment is not made within credit period
- iii. When Negotiable Instrument provided by Buyer gets dishonoured.
- iv. Any decree/order transferred in favour of Seller gets dissatisfied.

Rights of Unpaid Seller

Against Goods

Against Buyer

Right of Lien

Right of Stoppage in Transit

Right to Resell the Goods

- i. To Sue Buyer
- ii. To claim price/int
- iii. To claim Damages

i. Seller → unpaid

ii. owner → Buyer

iii. possession → Seller

iv. Right to Retain the possession

v. Situation: 4

Points written in Meaning + Buyer becomes Insolvent

i. Seller → unpaid

ii. owner → Buyer

iii. possession → carrier

iv. Right to Regain the possession

v. Situation: Buyer becomes Insolvent

perishable

Notice giving is not mandatory

- * Loss can be Recovered
- * Profit need not to return

Non-perishable

Notice shall be given. [Notice provided]

- Yes → Seller can recover Loss & profit need not to return
- NO → Loss can't be recovered profit has to return

Right of Lien Termination

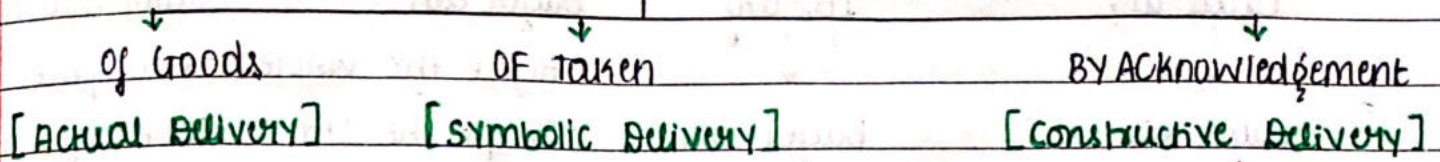
When transit comes to end

- i. When buyer paid price
- ii. possession transp to carrier
- iii. Buyer obtain possession
- iv. Seller waive the right
- v. By Estoppel

- i. Goods delivered to Buyer/Agent
- ii. Where carrier started to act as agent of Buyer.
- iii. Where goods have been delivered partially & remaining - implies fulfillment of contract

4. Delivery of Goods

Delivery means voluntary Transfer of possession of goods from one person to another.

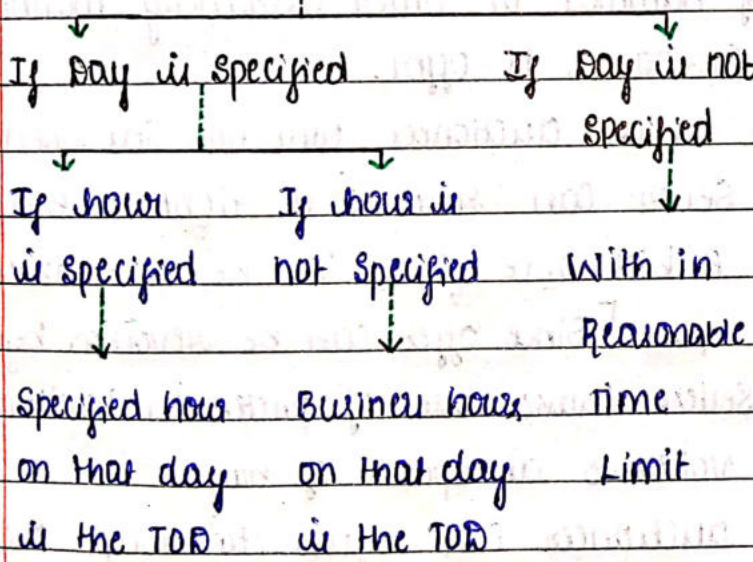


Goods will be physically handed over to Buyer

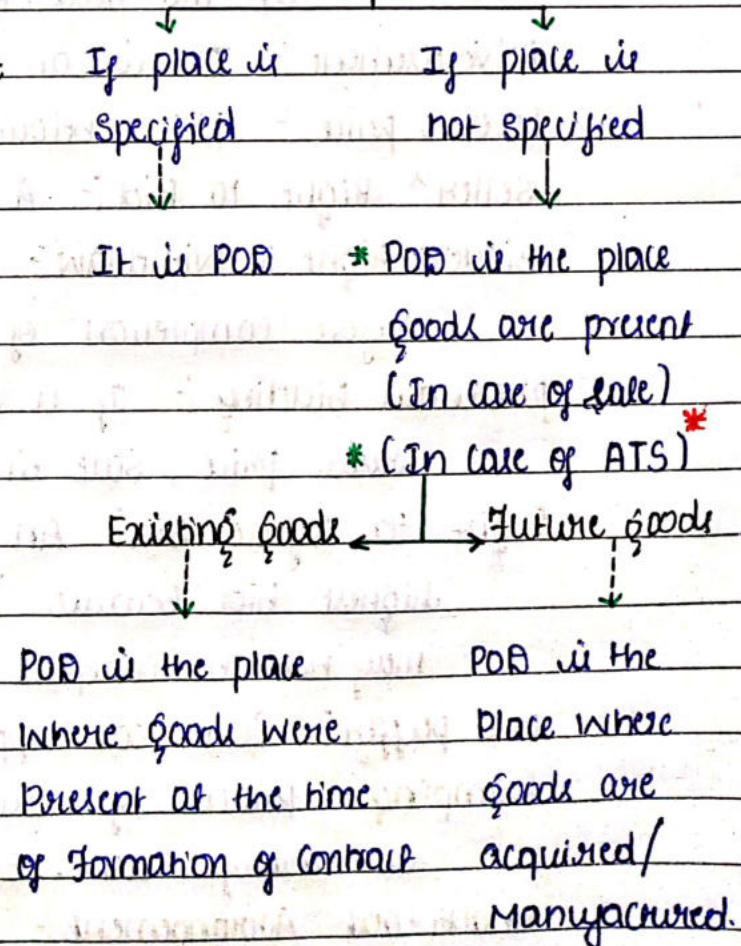
Goods are not transferred physically. Any token of control will be transferred
 Ex: Delivery of Document of Title

Third party will start holding goods on behalf of buyer.

Time of delivery

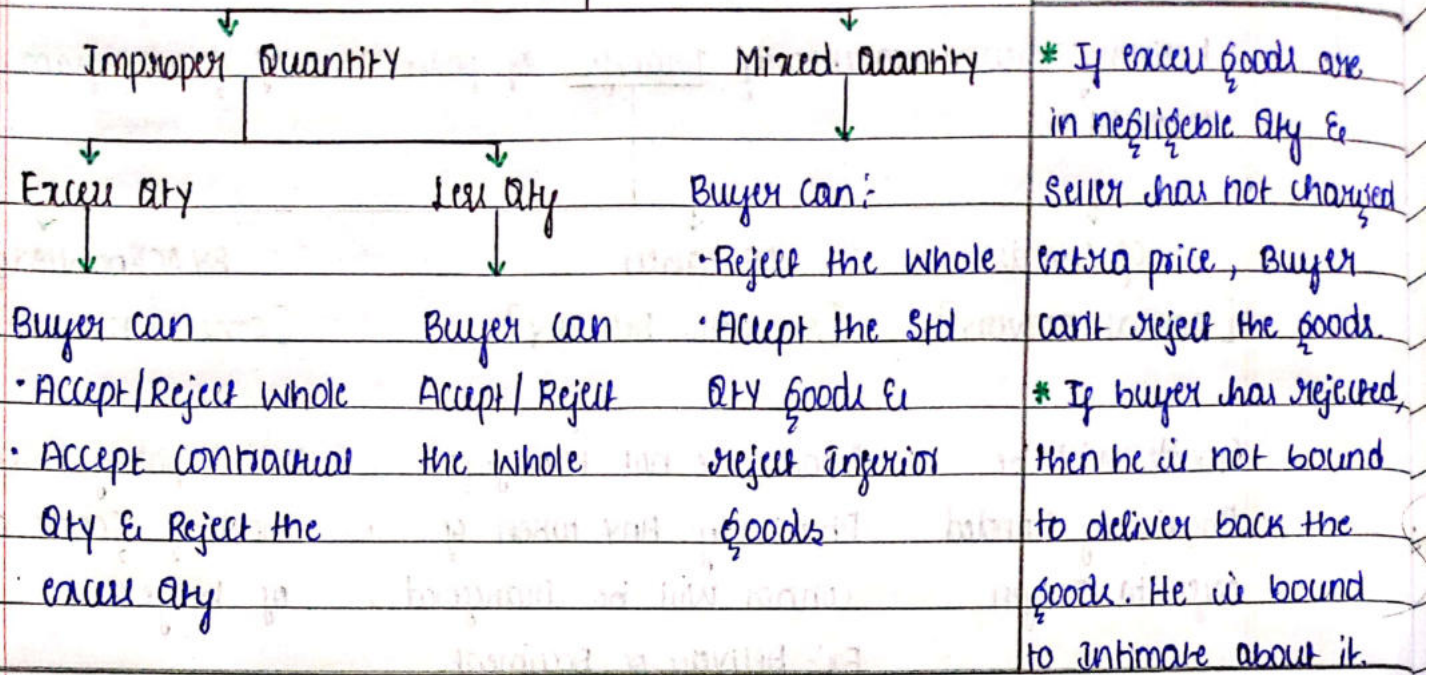


Place of Delivery



* ATS = Agreement to sell

Improper Delivery



4. Auction sale :- [Sec 64]

Meaning :- Sale is complete when auctioneer announces its completion by the fall of Hammer or other customary manner.

Advertisement :- It is an invitation to offer.

Reserve price :- price below which auctioneer will not sell goods.

Seller's Right to Bid :- A seller can reserve a right to bid to auction

Bidder's Right to Withdraw :- A bid once given can be withdrawn before completion of sale [since offer can be revoked before accept]

pretended bidding :- If a seller makes use of pretended bidding to raise price, sale is voidable at option of buyer

Right to Refuse Bid :- An auctioneer can refuse to accept even highest bid, because 'bid' is only an offer which may or may not be accepted.

one puffery :- Seller can appoint only one puffery to raise the bid.

Dampening :- process of discouraging bidder from bidding. It is an unlawful act. Ex: showing defect in goods.

Knock-out Arrangement :- It is made b/w buyers not to bid against each other. It is lawful unless it is made to defraud a third party.

Liabilities of an Auctioneer :- In following cases.

- If he had no authority to sell goods.
- If there is a defect in principle's title.
- If he refuses to give possession on payment of price.
- If buyer's possession is distributed by his principal/agent.

Sale in Lot :- Each lot is deemed as separate contract of sale.

5. Imp Differences :-

| Sale | Hire-purchase |
|---|--|
| i. Buyer makes lump sum payment ii. ownership is transferred to the buyer immediately. iii. payment is only of price. iv. Governed by SGA, 1930 v. Once sale is done, the seller or buyer can't terminate contract vi. Seller can't take back the goods on non-payment | i. payment is made in installment ii. ownership is transferred on payment of all installments. iii. payment is for price + interest iv. Governed by HP Act, 1972 v. Here seller or buyer can terminate the contract. vi. Seller can take back the goods on non-payment. |
| Sale | Bailment |
| i. parties are buyer & seller ii. goods will not return to owner iii. Transfer of ownership iv. Sale concept includes both movable & immovable property v. Consideration is the price in terms of money. vi. Buyer may use the goods in any way he likes. | i. parties are bailor & bailee ii. goods will be returned iii. No transfer of ownership iv. Bailment concept includes only movable property v. consideration may be gratuitous or non-gratuitous. vi. Bailee can use goods only as per bailor's direction |

Sale

- i. Ownership Transferred to Buyer
- ii. It is executed contract
- iii. Risk Transferred to Buyer
- iv. Jus-in-rem
- v. Seller is entitled to sue for the price, right of lien.
- vi. It does not cover Future Goods
- vii. Seller can't resell the Goods

Agreement to Sell

- i. Ownership remains with the Seller
- ii. It is executory contract
- iii. Risk remain with Seller
- iv. Jus-in-personem
- v. Seller has right to sue for damages only.
- vi. It covers Future Goods also.
- vii. Seller can Resell the Goods