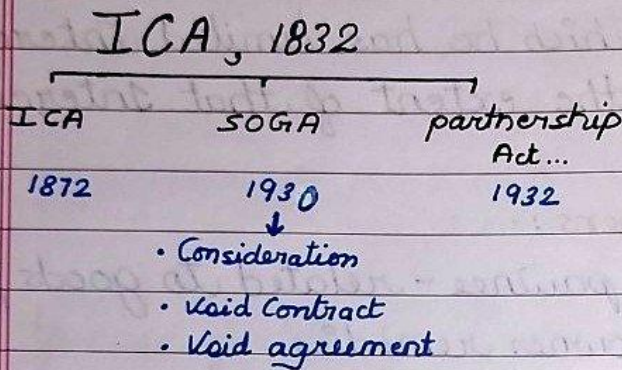


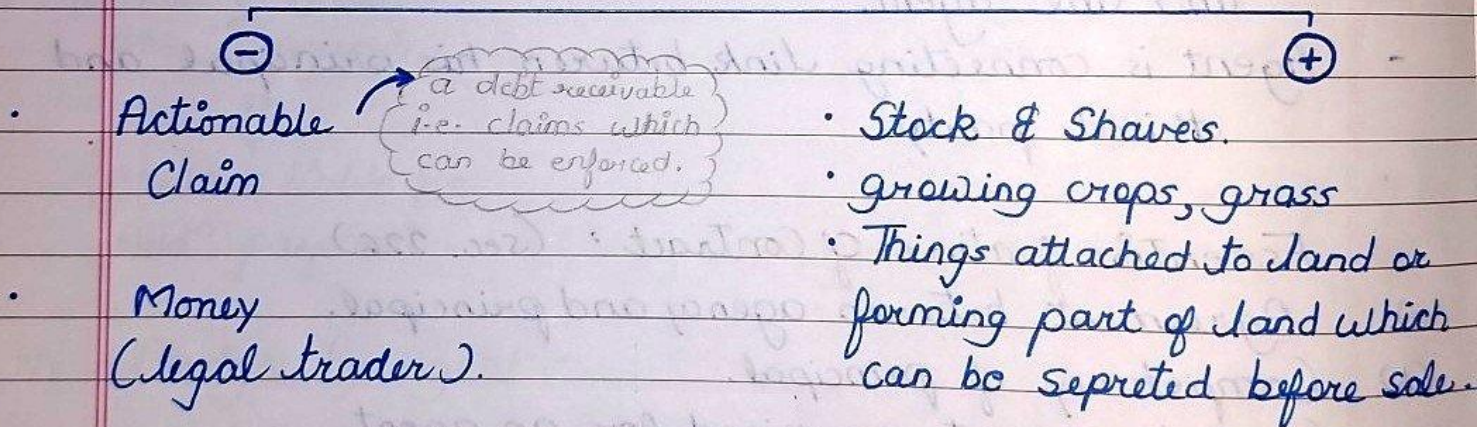
Business Law

MODULE NO. 3 Sales of Goods Act, 1930 (20%)



Goods - Sec. 2(7)

Goods means any kind of moveable property.



* NOTE:-

- (i). jubilee coins are goods.
- (ii). Intangible assets are also goods.
(eg. goodwill, Copyright, patent).
- (iii). Gas, Steam, water, electricity are also goods.
- (iv). FDR are also goods.

fixed
deposit
Reserve

Seller A person who sells or agrees to sell.

Buyer A person who buys or agrees to buy.

Difference between SALE [Cos] and Agreement to sale. [ATS]

points...	Sale	ATS
1. PIG property in Goods	Immediately	At a future date.
2. Types of Contract	Executed.	Executory.
3. Right	Right in Rem (right against the World at Large).	Right in personam. (right against an individual / specific person)
4. Loss Risk.	Buyer ^{even} if the possession is with seller.	Seller, even if the possession is with buyer.
5. Re-sale	Seller cannot resale	Subsequent buyer bought in (i). Good faith; & (ii). W/o knowledge; & (iii). for consideration. The Original / prior buyer can sue for damages.
6. Sales-Tax (G.S.T)	yes, liable for GST.	No, until actual sale.

7. Buyers becomes insolvent.

Buyer becomes Insolvent → before payment



Seller will deliver the goods to official receiver & payment shall be made by such official receiver.

Buyer becomes Insolvent → Seller is not bound to deliver goods.

8. Seller becomes insolvent.

Seller becomes insolvent after payment by buyer.



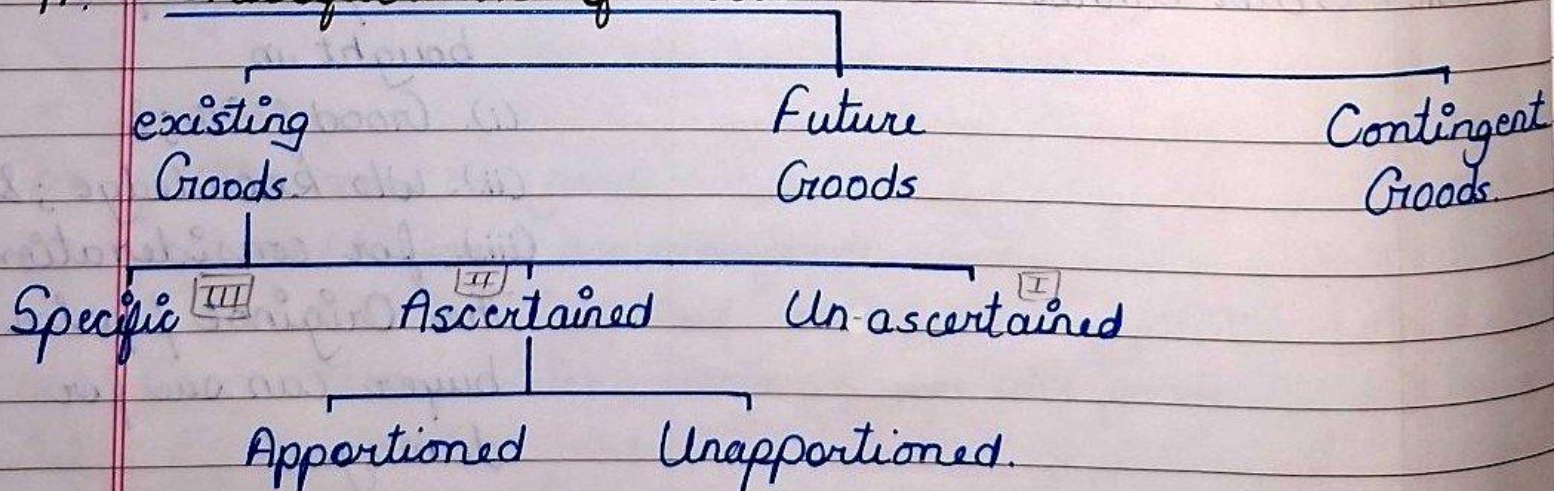
Buyer can claim the goods from official receiver of seller.

Buyer cannot claim the goods.

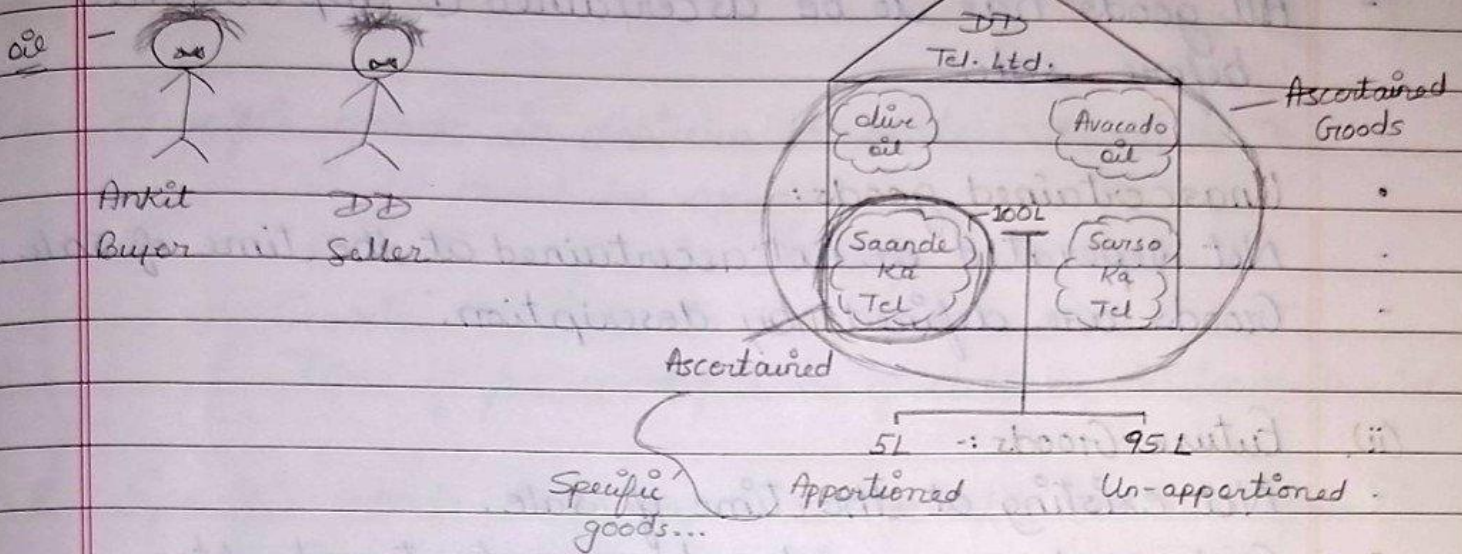
But,

He can claim [the price paid ⊕ dividend thereon.

Classification of Goods :-



Example of Existing Goods -



(i) Existing goods :-

- Goods exists at the time of sale.
owned ⊕ possessed by seller.
- Sometimes goods may be owned by the seller, but possessed by another & such person may sell ^{the} goods.
eg. Agent / Mercantile agent.

• Specific Goods :-

- Goods are - Identified ⊕ agreed
at the time of COS.

- It is important that goods are < Identified and Separated.

• Ascertained Goods :-

- Goods are identified → after contract of sale.
- 2 types of ascertained goods < Appertioned
Unappertioned

- All goods has to be ascertained ⊕ apportioned before sale.
- Unascertained goods :-
 - Not seperated or not ascertained at the time of sale.
 - Goods are defined by description.
- (ii). Future Goods :-
 - Not existing at the time of sale.
 - Such goods are produced / manufactured after contract of sale.
 - This is agreement to sale.
- (iii). Contingent Goods :-
(happening or not happening of future event):
 - Types of future goods
 - Acquisition depends upon happening / non happening of future events.
 c.g- (i). goods on arrival.
(ii). Future crops.

Transfer of Ownership :-

- * Transfer of property - (i). Goods shall be ascertained ⊕ Specific
- (ii). Intention of parties - to sale
By contract (pata Chalega)

But If - Intention of parties cannot be determined then follow below provisions :-

I. Specific Goods :-

1. Specific goods in deliverable state : (Unicorn)
 - Goods must be specific.
 - PIG transfer immediately upon contract.
 - Goods must be in deliverable state.
 - Time of payment / Time of delivery is immaterial.

2. Specific goods to be put in deliverable state : (Cycle).
 - Goods must be specific.
 - Seller has to do something to put such goods into deliverable state.
 - PIG transfer - when goods are put in DS.

⊕
A Notice is given to the buyer by seller.

3. Specific goods is in deliverable state, but seller has to do an act to ascertain the price : (Rope)
 - Goods are specific.
 - Goods are in deliverable state.
 - But seller has to measure / weight or do anything to ascertain the price.
 - PIG transfer - when such act is done.

II. Unascertained Goods :-

- Goods are unascertained.
- Shall be as per description.
- Must be in deliverable state.
- PIG transfer goods unconditionally appropriated.

By the Seller - with the assent of buyer.

By the Buyer - with the assent of seller.

III. Deliver to carrier :-

- Where the seller delivers the goods to carrier → for the purpose of transmission to Buyer.
- ⊕
- Seller → do not reserves right to disposal (RTD) deemed deliver to buyer.

IV. Goods on approval or on sale or return :-
(pahle istemaal karne, fir vishwas karne).

- In such situation property does not passes on to buyer.
- In the following cases - it is deemed the PIG has been transferred to buyer :

- (1). Buyer gives his assent.
- (2). On expiry of the stipulated time, if did not stipulated time - reasonable time.
- (3). Does any act ⇒ adopting the transaction.

* Risk Prima Facie passes with property :-
↳ (This is the general rule).

Exceptions:

- If there is agreement between parties.
- Risk and property has been separated by agreement.
eg: Warrantee / Guarantee
- If delivery of goods has been delayed due to seller's default or buyer's default, so
RISK = PARTY IN DEFAULT.

NEMO DAT QUOD NON HABET - No one can give what he himself does not have.

To protect - The Interest of Real Owner.

EXCEPTIONS :-

- (1) Agent / Mercantile agent :-
 - Goods must be in possession of agent.
 - Must have consent of Owner.
 - Agent must work in ordinary course of business.
 - Buyer acted in good faith.
- (2) Transfer of title by estoppel :-
 - Real Owner may lead to the buyer to believe that the seller is the owner of goods.
 - In this situation - seller authority cannot be denied.
 - Sale is valid.
 - Buyer - good faith.
- (3) Sale by joint Owners :-
 - There are several joint owners.
 - One of them has the SOLE POSSESSION.
 - Must have permission of all the co-owners.
 - Buyer - Good faith.
 - Sale is valid.
- (4) Sale by a person in possession under voidable contract :-

- Person in possession of goods under voidable contract and such contract has not been rescinded.
 - May transfer good title to buyer provided that:
 - (1). Buyer
 - (2). w/o knowledge - of seller defective title.
 - (3). in consideration.
- (5). Sale by Seller - possession after sale:-
- Person sold goods, but he continues possession of goods and services.
 - He resales it to third person.
 - In this case, 3rd person gets the good title of:
 - * w/o knowledge.
 - * With good faith (G.F)
 - * In consideration.
- (6). Sell by an unpaid seller:-
- If the unpaid seller has exercised.
 - * Right of Lien.
 - * Stoppage in transit.
 - * Right to resale.
 - Buyers gets → G.F
- (7). Sale by officers of Court, official receiver or liquidator :-
- (8). Sale by a finder of goods:-
- In case of finder of lost goods.
 - True owner could not be find.
 - The finder of lost goods can sell the goods, if:

- * Goods are perishable.
- * Finder of goods - paid Charges amounting to $\frac{2}{3}$ rd value of goods.

Goods perishing before making of Contract :-

- Cos. of SG.
- Such goods w/o knowledge of seller - perishes.
- Contract was entered between buyer and seller for such specific goods.
- Such agreements are void.

Goods perishing before sale after agreement to sell :-

- There is an agreement to sale of specific goods.
- Good w/o any fault of other parties.
- Contract is void.

Essentials Elements of Contract of Sale :-

Elements of a valid contract :-

1. Two parties - seller and Buyer.
2. Subject matter - Goods (movable property)
3. Transfer of property - Transfer of ownership Rights i.e. absolute ownership (General property).
4. Delivery - Immediate, delivery in installments, delivery at a future date.
5. Price - It means money consideration for sale of goods.
6. A Contract of sale maybe absolute or conditional.
7. Essential elements of a valid Contract.

CONDITIONS AND WARRANTIES : *

STIPULATIONS...

Chikni Chupdi
Baatni

Condition
Stipulations which are essential to the main purpose of contract.

Warranty
collateral to the main purpose of contract.

Breach of Condition
2 remedies

Breach of Warranty
1 remedies

~~Cancel~~ → **Repudiate** the contract. claim the DAMAGES...

Only can claim damages...

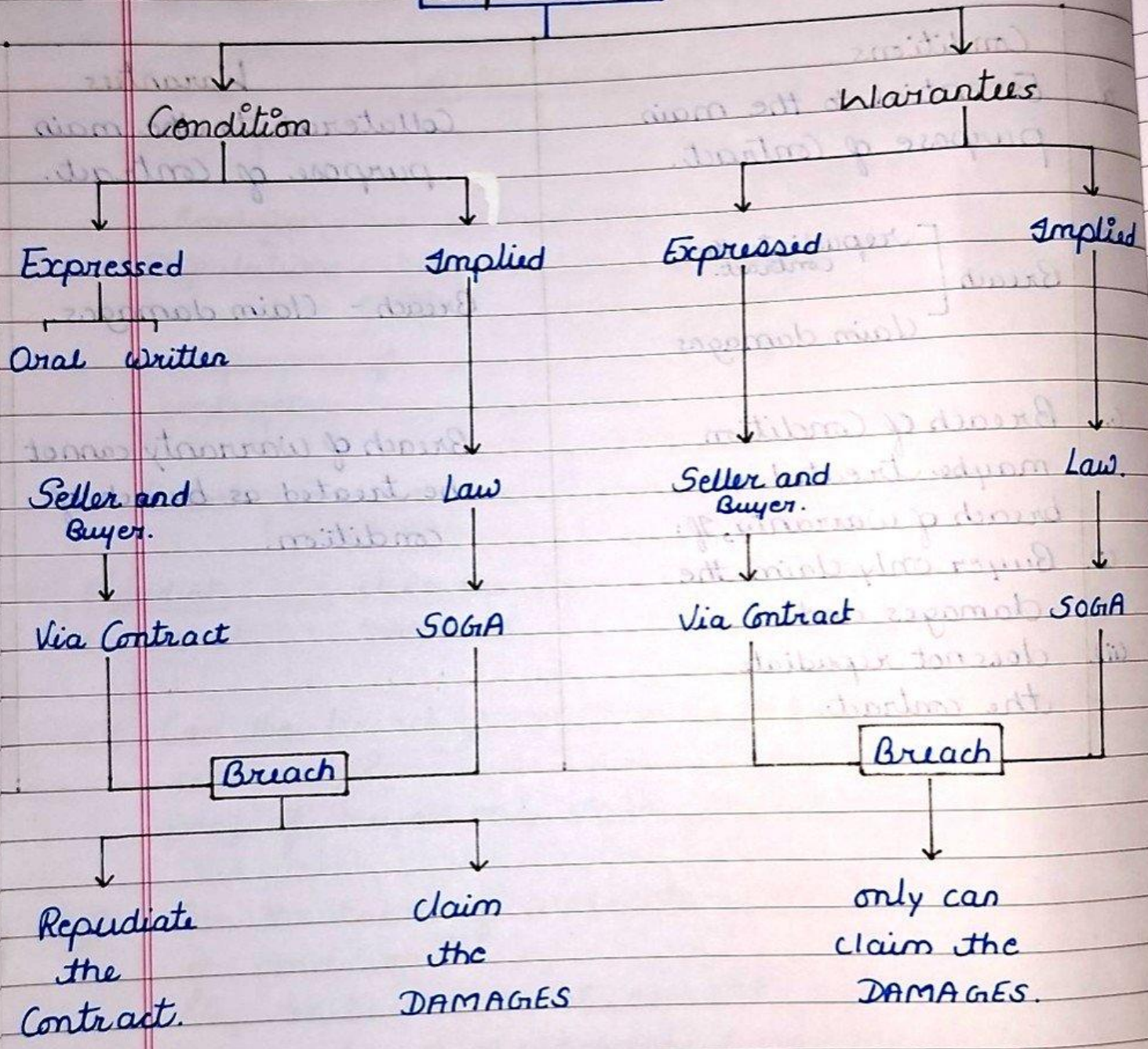
Que 1: Can the breach of condition be treated as breach of warranty?
yes, if buyer only claims the damages.

Que 2: Can the breach of warranty be treated as breach of condition?
No, as buyer cannot repudiate the contract in case of breach of warranty & can only claim the damages.

Differentiation !!!

	Conditions	Warranties
a.	Essential to the main purpose of Contract.	Collateral to the main purpose of Contract.
b.	Breach [<ul style="list-style-type: none"> repudiate the contract. claim damages 	Breach - Claim damages.
c.	Breach of Condition may be treated as breach of warranty, if: <ul style="list-style-type: none"> (i) Buyer only claim the damages and (ii) does not repudiate the contract. 	Breach of warranty cannot be treated as breach of condition.

Stipulations



IMPLIED CONDITIONS :-

- Condition as to title :-
- It is an Implied condition that the Seller has the right to sell the goods.

- If seller sells without having title - buyer may
 - repudiate the contract.
 - claim the damages

- Condition as to description :- (Type writer)
- The goods shall corresponds with the description.
- If not buyer may
 - Repudiate the contract.
 - Claim the damages.

- Condition as to Sample :- (Shoadi)
- When the goods are sold by sample, there is Implied condition that:
 - (1). Bulk shall corresponds with sample.
 - (2). Buyer shall have opportunity to Compare (Bulk and Sample)
 - (3). Goods must be free from Latent defects. (defects jo dekhrne se pada nhi chalte)

- Condition as to description and Sample :-
- The Goods shall corresponds with description and Sample.
- If they do not - buyer can
 - repudiate the Contract
 - claim the damages.

- Condition as to fitness or quality :-
- General Rule - No Implied condition as to quality.
- There is implied condition as to quality, if:
 - (1). Buyer - Seller [tells the purpose / description]
 - (2). Buyer depends upon the skill and judgement of Seller.
 - (3). Seller shall deal in such goods.

- Condition as to mercantable quality :-
- Mercantable means acceptable in market.
- Goods must be in mercantile quality.
- eg; Pen, Watch etc.

(Fit to Consumer)

- Condition as to wholesomeness :-
- Condition applied - May in case of CONTRACT OF Eatables.
- Goods / Eatable = Description + Mercantable quality + wholesome
- eg. salad
- It should be free from any defects.

IMPLIED WARRANTIES :-

- Warranty of quiet possession:
 - Buyer shall have to ^{enjoy} quiet possession.
 - If buyer is disturbed - can sue for damages.
- Warranty of free from encumbrances:
 - Goods shall be free from - CHARGES...
- Warranty as to fitness quality:
 - Must fulfill the basic purpose [usage of trade]
- Warranty of disclosing dangerous nature of goods:
 - If goods are dangerous.
 - Seller shall warn the buyer - about probable danger.

Rights of an Unpaid Seller...

- * Rights against goods :-
- * Right of lien. (PIG - Buyer)
- * Right of stoppage of goods in transit. (PIG - Buyer)
- * Right of Resale. (PIG - Buyer)
- * Right of withholding delivery. (PIG with seller)

- * Right against Buyer :-
- * Suit for price.
- * Suit for damages for non acceptance.
- * Suit for interest.
- * Suit for repudiation.

Meaning of Unpaid Seller :-

A Seller who has -

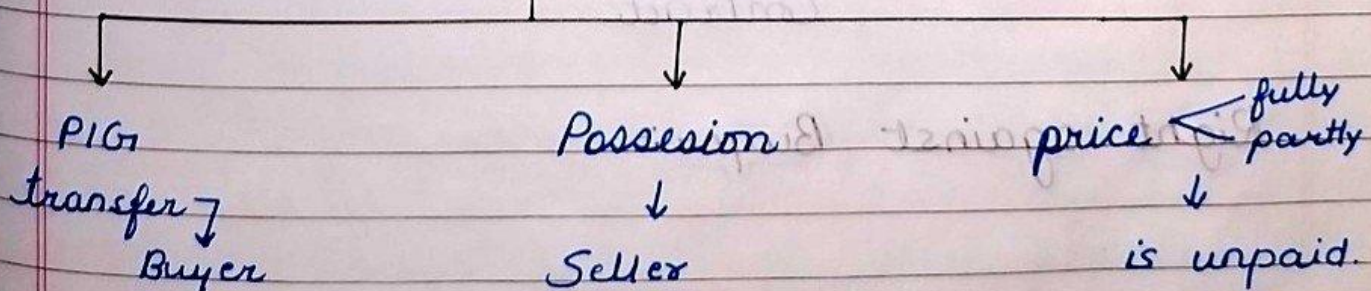
- (1). Not been paid fully.
- (2). Not been paid partly.
- (3). BOE / Cheque / PN → N.I → has been dishonoured.

Rights of Unpaid Seller :-

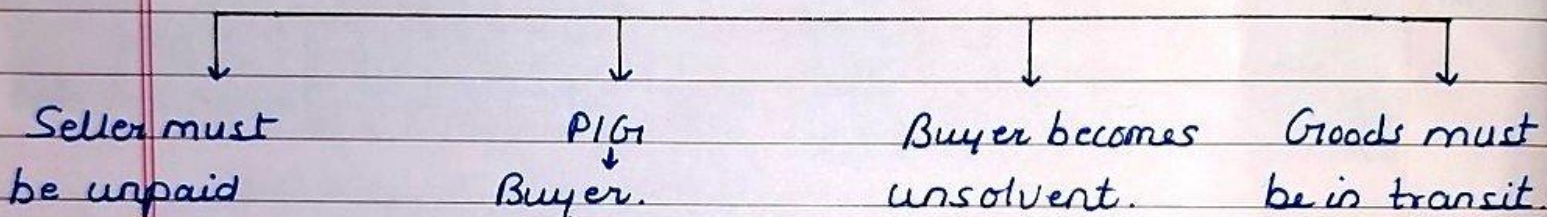
(1). Rights against goods :-

- Right to Lien - Seller has the right to lien i.e. right to retain possession of goods until payment.

Conditions precedent :-

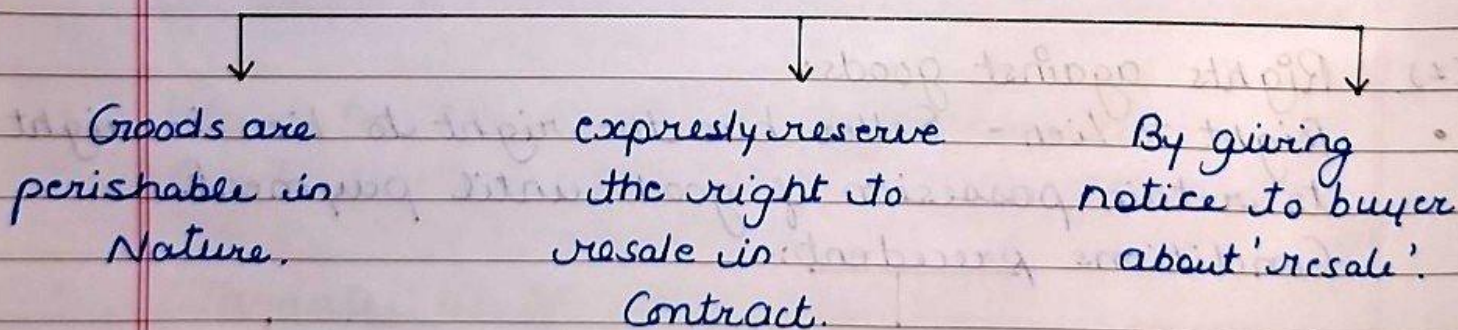


- Right to stoppage of goods in transit :-
- It's a right where seller can :
 - (a) Stop the goods when in transit,
 - &
 - (b) Retain the possession of goods until payment.
- Condition precedent :-

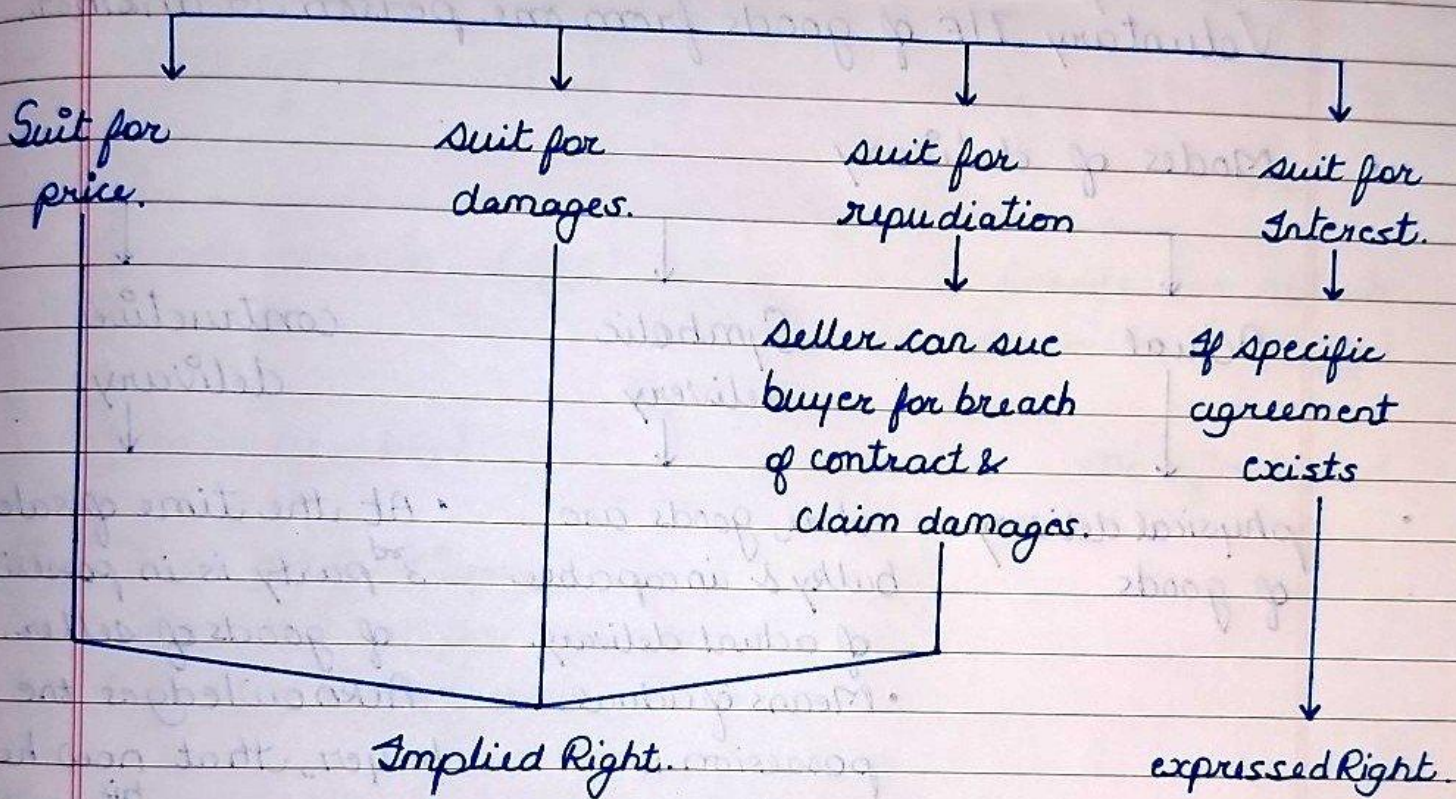


- Right to Resale :-
- Seller has exercised \leftarrow Right to Lien OR Right to stoppage of goods in transit.

Many seller resale in following cases -



(2) Right against Buyer :-



* Performance of the Contract of Sale :-

* Performance of contract means due discharge of contract.

Performance of Contract -

w.r.t seller - deliver the goods to buyer.

AND

w.r.t buyer - Acceptance of delivery ⊕ payment of price.

delivery goods ↔ payment of price.

Seller shall ← con. current condition → Buyer willing
willing to make delivery & to take delivery & pay the price.

I. Delivery

Voluntary t/f of goods from one person to another.

Modes of delivery

Actual

Symbolic
delivery

constructive
delivery.

physical delivery
of goods

- Here, goods are bulky & incapable of actual delivery.
- Means of actual possession is delivered

- At the time of sale 3rd party is in possession of goods of seller.
- Acknowledges the buyer, that now he holds goods on ^{his} behalf.

Rules of Delivery

- (1) # Effect of part goods -
- Effect of part goods in progress of delivery of whole.
 - part deliver has same effect as if P/G is t/f of whole.
- (2) # Buyer shall apply for delivery -
- Seller is bound to deliver goods to buyer only when buyer applies for it.
 - (-) express contract.

(3) # Place of delivery -

- Normally - as per contract.
- But if contract is silent.

Goods are in (C.O.S)
existence.



Goods are kept

Goods are not in
existence (A.T.S)



Manufactured.

(4) # Time of Delivery -

Decided as per agreement
If not - Reasonable time.

(5) # Goods in possession of a third person - (Constructive delivery)

- At the time of sale, goods are in possession of 3rd party.
- No Sale, unless third party acknowledges that goods are being held on his behalf.

(6) # Time for tender of delivery

- As per agreement.
- If not then - Reasonable time

(7) # Expenses for delivery.

- Seller
- (-) Contract.

(8) # Delivery of Wrong quantity -

a). Quantity of goods
Less than contracted → Reject all - or
→ Accept & claim refund.

b). Quantity of goods
Larger than contracted → Accepted the contracted goods and reject the remaining
→ Reject all - or
→ Accept all and pay for remaining goods -
(at contract rate)

c). Delivers { contracted goods
⊕
Mixed goods
(of diff. discription) → Accepted the Contracted goods and reject the remaining.
→ Reject all.

(9) # Delivery to carrier or Warfinger :

- Seller is authorized - to deliver goods to carrier/
Warfinger.

- So, the delivery to carrier = delivery to buyer.
If,

The seller has
contracted.

<p>ABOUT THE NATURE OF GOODS.</p>

with the carrier/
Warfinger.

- If seller omits to do so, the buyer may -
decline that - delivery to carrier ≠ delivery

To Buyer.

- hold seller responsibility for damages.
- ↳ In case of 'SEA TRANSIT'
- Seller shall insure the goods
- If not insured, give notice to buyer, that Buyer shall insure the goods.
- If failed to give NOTICE ⇒ Goods are at SELLER'S RISK.

- (10) # Installment delivery -
- Buyer is not bound to accept goods in installment.
 - (c) Express Contract.

- (11) # Buyer's Right of examination of goods -
- Buyer shall examine the goods, not examined previously.

- (12) # Risk where goods are delivered at distant place -
- Buyer's Risk

CAVEAT EMPTOR -

Let the buyer be aware.

No Implied

Condition Warranty

As to quality or fitness of goods.

Not the seller's duty to satisfy buyer about quality of goods.

Exceptions:

- (1). Skill or judgement :
Where buyer
 (a) made known the purpose of goods to seller.
 (b) depends on the skill & judgement of seller.
 (c) Seller is the dealer of such goods.
- (2). Condition as to merchantable quality / Usage of trade
- (3). Goods are sold by description.
- (4). Condition as to wholesomeness.
- (5). Seller commits fraud.

Auction Sale :

- (1). ~~Each~~ Each lot → Separate agreement.
- (2). Complete → on fall of hammer.
- (3). Right to Bid maybe reserved expressly,
 If not & bid → immoral and fraudulent.
 notified → aggrieved party = Buyer
 → Voidable.
- (4). There may be reserve price / setup price / Base price
- (5). Pretented Bidding → Voidable.

EXTRA'S

- (1). A delivery order enabling a person to obtain delivery of payment of price is deemed as document of title.

(8). Determination of price of goods -
 * price must be certain & definite and shall
 be determined by:

V.V. Imp

(i). Fixed in Contract.

(ii) Agreed to be fixed by a manner provided
 in contract.

Eg: By Valuer or any third person.

(iii). By Course of dealings between parties.

* Where price is to be fixed by 3rd party -

(i). If third person fail to determine price => Buyer will pay reasonable price.

(ii). If third person fail to determine price due to fault of ~~either~~ either parties. => The party not in fault may SUE for damages.

(9). Law related to Immovable property -
 Transfer of property act, 1882.