

Demo  
Lee-1.

# \* Jurisprudence Interpretation &

## General Laws. \*

classmate

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• Jurisprudence → knowledge of law.  
↓  
Law                      knowledge.

• Interpretation → knowing the intension of Author.

• General Laws.

### \* Ch. 17 :- Law relating to Sales of Goods \*

• Sales of Goods Act, 1930

- movable property

Rule = Risk follows ownership.

SOGA, 1930

- follows movable property

- doesn't follow immovable property

↓  
Transfer of property Act, 1882

### \* Contract of Sale. (sec 4)

- A contract of sale is a contract whereby,  
The seller → Transfer or → Agrees to

transfer

↓

for consideration ← to buyer ← The property in  
of money called goods  
the price.

## • Essentials :-

1) Two parties ———

↓  
Seller  
who offers goods  
for sale, for  
price

↓  
buyer  
who purchase  
goods from  
seller.

2) Transfer of property :- The ownership of goods transfers from seller to the buyer.

\* 3) Goods, 2(7)

— Goods means every kind of movable property.

It includes



- stock & shares,
- Growing crops,
- Grass &
- Things attached to or forming part of land which can be agree to served ~~at~~ before sale or agreement to sale.

It doesn't includes



- Actionable claims &
- Money.

4) Price :- Price means monetary consideration. Price is important to sale goods without price sale cannot take place.

5) All essentials of valid contract :- It includes all essentials of valid contract i.e. major, sound minded and contract which is enforceable by law.

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\* Difference bet<sup>n</sup> sale & agreement to sale.

Points	Sale	Agreement to sale
1) Transfer of ownership.	Transfer of ownership takes place immediately.	Transfer of ownership takes place on future date or after completion of some conditions.
2) Executed/ Executory.	It is an executed contract.	It is executory contract.
3) Nature	It is absolute in nature.	It may be conditional.
4) Risk	Risk of loss of goods is immediately transferred to buyer.	Risk of loss of goods is not immediately transferred to the buyer as the goods yet not in his p. transferred to him.

against 5) Rights of seller to buyer	Seller can sue the buyer for price even though the goods are in his possession.	Seller can sue the buyer only for damages.
6) Right of buyer against the seller	Buyer can sue seller for damages as well as for the third party who bought those goods i.e. he can claim property, remedy as well.	Buyer can sue the seller for damages only.



### Difference between Sale & Bailment.

Points	Sale	Bailment.
1) Meaning	Sale involves transfer of property in goods from seller to buyer for a buyer.	A 'Bailment' is a transaction under which goods are delivered by one person (bailor) to the another person (bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished.

2) Ownership

Transfer of ownership is must.

It doesn't involves transfer of ownership. It involves transfer a possession.

3) Possession.

Transfer of possession of goods from seller to buyer is not mandatory.

Possession is transferred from bailor to bailee.

4) Governed by

Sales of Goods Act, 1930

Indian Contract Act 1872 (section 148)

# Difference bet<sup>n</sup> Sale & Hire purchase agreement.

Point

Sale

Hire purchase agreement.

1) Nature

It is contract of sale.

It is a contract of hiring agreement to sale.

2) Possession of goods

Possession of goods need not necessarily be transferred immediately.

Possession transfers immediately.

3) Ownership

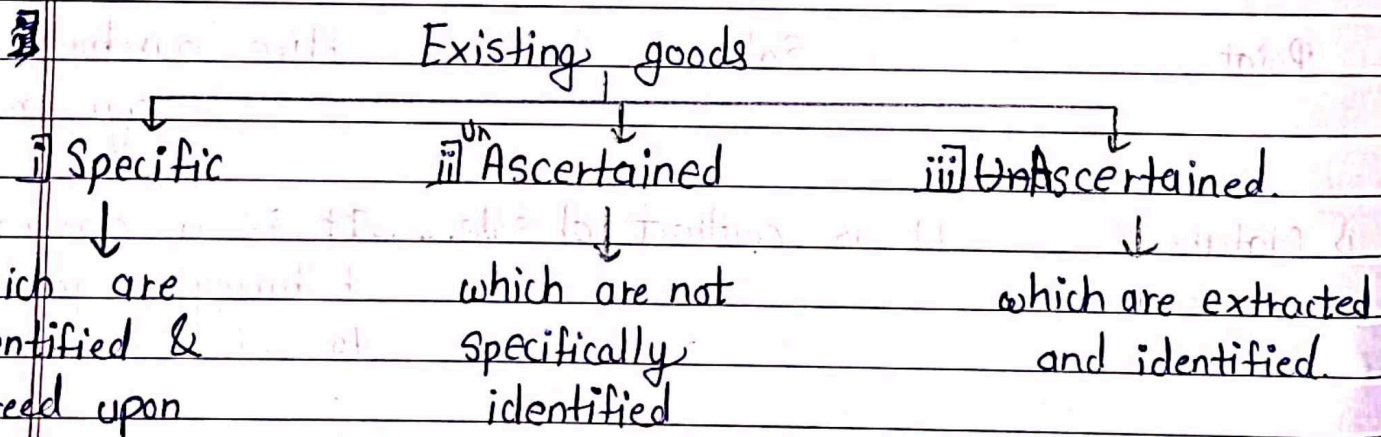
Transfer of ownership from seller to buyer is must immediately.

Ownership is transferred at time of payment of last instalment.

4) Termination of Right	The buyer has no right to terminate the contract of sale.	The hirer has right to terminate the contract before payment of last instalment.
5) Written agreement	Sale agreement may or may not be written.	Hire purchase agreement must be written.

### \* Types of Goods

1) Existing goods :- Those goods which exist at the time of contract or at the time of sale are called as existing goods.



2) Future Goods :- Those goods which are yet to be manufactured or produced after making the contract of sale are called "Future goods".

3) Contingent goods :- Those goods which are acquired by the seller on the happening of something which may or may not be happen.

\* Destruction of specific goods :-

(Sec. 7) If goods are perishing before making contract

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then contract is void.

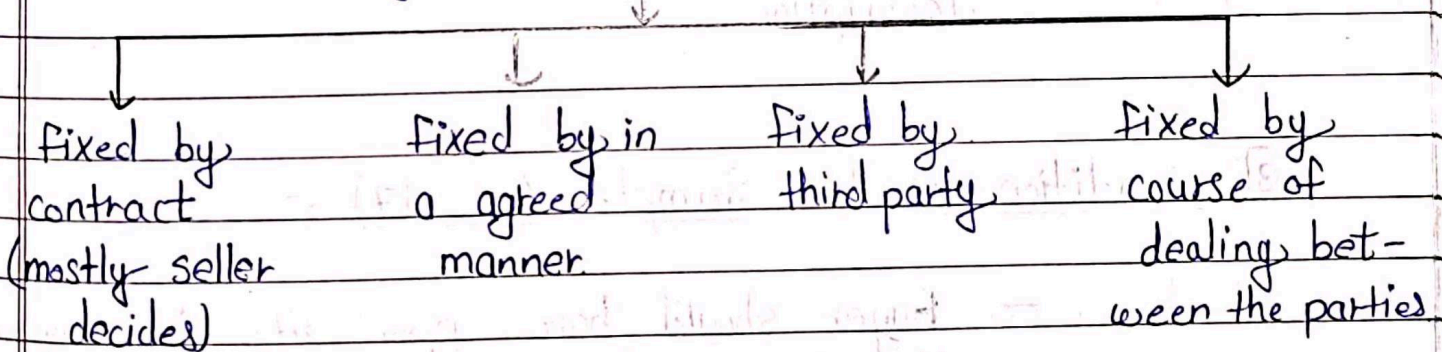
(Sec. 8) Goods perishing after making agreement

↓  
then contract is void.

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22<sup>nd</sup> May.

\* Modes of fixing price :-



\* Consequences of not determining the price.

If price is not decided then it should be determined at 'reasonable price.'

\* Consequence if price is not fixed by third party

↓  
void

\* Conditions :- Which is essential for main performance of the contract.

1] Condition as to title, Sec 14(a) :-

- who has ownership only he can sale the goods.

- if breach

↙  
Cancel

the contract

↘  
claim

the damages

2] Condition as to Description (Sec 15) :-

- Goods must be correspond with the description.

3] Condition as to Sample (Sec 17) :-

- Buyer should have opportunity to compare the bulk and sample

- Bulk must correspond with sample.

- Bulk must be at a good quality.

#### 4] Condition as to sale by Sample & description. (Sec. 15) :-

- Goods must be correspond with description.
- Buyer should have opportunity to compare the bulk & sample.
- bulk must correspond with sample.
- bulk must be at a good quality.

#### 5] Condition as to merchantable quality, sec. 16 (2) :-

- Goods must be of good quality.
- Goods must be free from defect.

#### 6] Condition as to wholesomeness. :-

- It is applicable to eatable products which are for human consumption.
- 'Wholesomeness' means 'purity'.
- Eatable products must be free from impurity they should be pure.

#### 7] Condition as to Quality or fitness :-

- When buyer is reliable to seller's skill or judgement.
- If buyer buys goods under the brand name then seller is innocent.

\* Implied Warranties :-

- Which is collateral to the main performance of contract.
- If breach then only claim for damages.

1] Warranty as to quiet possession Section 14(b) :-

- If ownership is yours then possession is also yours.

2] Warranty as to freedom from encumbrances Sec 14(c)

- Goods must be free from encumbrances or charges.

3] Warranty as to disclose dangerous nature of goods :-

- If goods are of dangerous nature and seller knows it then seller should disclose it to buyer.
- If breach → claim damages.

4] Warranty as to quality or fitness by usage of trade sec 16(3)

- A particular purpose may be annexed by the usage of trade.

## → Doctrine of caveat Emptor (Sec. 16)

Caveat Emptor



"Let the buyer be aware"

- Sometimes buyer himself have to choose or select the goods.

Exeptions - 1) Seller makes false representation

2) Seller actively conceals a defect

3) Buyer relies on seller's skill or judgement

4) Sale by description.

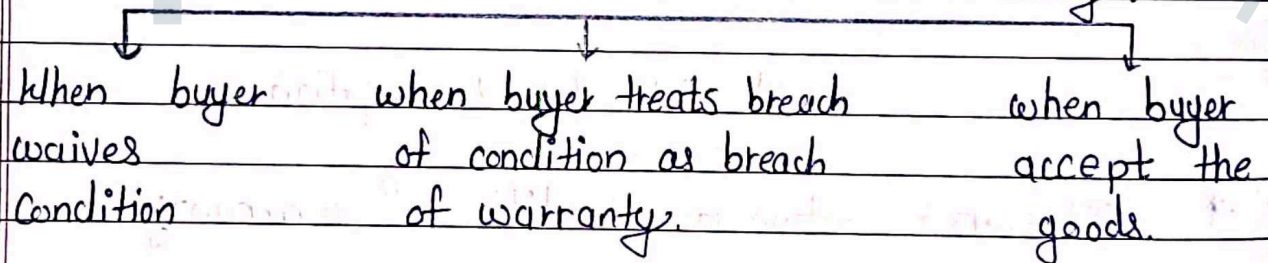
Seller responsible

## \* Difference between Condition & warranty.

Point	Condition	Warranty
1) Meaning	Which is essential for the main performance of the contract.	Which is collateral to the main performance of the contract.
2) Significance	It is essential for very performance of contract that it's non-performance may be considered as failure to perform the contract.	It is not treated as failure to perform the contract.

iii) Consequence of breach	The party may cancel i.e. repudiate the aggrieved contract.	The aggrieved party cannot repudiate the contract, can only claim damages.
iv) Treatment Vis-a-vis	A breach of condition may be treated as breach of warranty.	A breach of warranty can never be treated as breach of condition.

\* When will condition be treated as warranty?

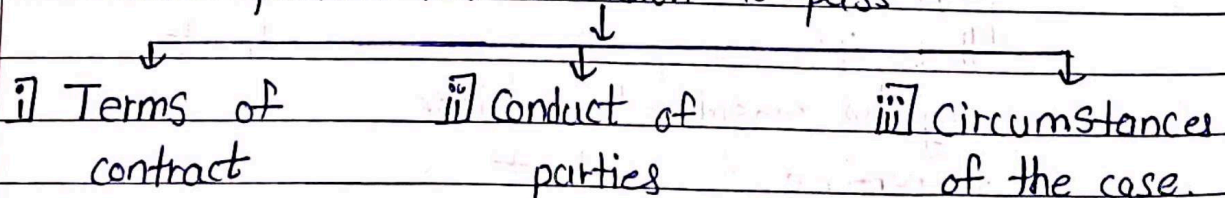


\* Passing of property of transfer of ownership.

It is important to determine the exact point when the ownership transfers from seller to buyer.

General Rule -

- when parties have intention to pass



\* If specific goods are in delivery state,

- then ownership transfers

↓  
when contract is made.

\* When specific goods to be put in deliverable state.  
(Sec. 21).

↓ (goods) ↓  
when become of & Buyer has  
deliverable state notice of it

\* In case of goods weighting & measuring. (Sec. 22)

↓ ↓  
When the weighting & measuring of specific goods is done & Buyer has notice of it.

\* Transfer of ownership of unascertained goods.

- When goods becomes ascertained by appropriation of goods.

- Appropriation of goods means when goods identified by seller or buyer by mutual consent of the seller or the buyer.

\* Transfer of ownership of goods sent 'on approval basis' or 'sale return basis' (Sec. 24)

When buyer signifies his approval

When return of goods becomes impossible

When buyer adopts goods by his act

When he retains goods without signifying approval.

\* Sale by Non-owner

• General rule :- nobody can pass a better title than he himself has.

Exeptions —

- Sale by merchantile agent.
- Sale by joint owner.
- Sale by person in possession of goods under voidable contract.
- Sale by seller in possession after sales.
- Sale by buyer in possession of goods before the transfer of ownership.
- Sale by unpaid seller.
- Estopple
- Sale by pawnee on default of pawnor to repay loan.
- Sale by artificial assignee / receiver.

↳ Sale by finder of goods.

when goods are perishable and owner is not found.

when lawful charges are not given by owner, but damages should be  $\frac{2}{3}$ rd of price of goods

\* Rules of delivery of acceptance.

- when transfer of possession from one person to another person is called delivery.

Symbolic

when delivery of goods takes place symbolically.

Actual

when goods are actually transferred & physically handover

Delivery

Constructive

delivery of goods by acknowledgement

29<sup>th</sup> May

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- Modes of delivery (Sec. 33)
  - Delivery should have the effect of putting the buyer in possession
  - By doing anything to which parties have agreed
  - possession may give to buyer or his agent
- Payment & delivery to be concurrent (Sec. 32)
  - Payment & delivery should be concurrent.
  - The seller should give possession to buyer and the buyer should repay for it at the same time.
- Buyer should apply for delivery (Sec. 35)
  - Buyer should apply for delivery of goods
  - The seller is not bound to deliver the goods until the buyer applies for the delivery of the goods.
- Part Delivery
  - When intension of giving the delivery of goods as whole, will amount to delivery of whole with respect to ownership of goods.
  - When part delivery is not with intension to delivery as whole then it is not amount to whole delivery.
- Time of delivery [Sec. 36(2)]
  - Delivery should be given at the time when parties have agreed upon.

- If contract cannot specified the time of delivery, then it is considered at reasonable time.

• Delivery when the goods are in possession of third party [Section 36(3)].

- When the goods are in possession of third person at the time of sale then, that person acknowledge the buyer that he holds goods on behalf of the seller.

• When demand delivery is treated as ineffectual. [Sec. 36(4)]

- Demand delivery, is treated as ineffectual when it is done at any other time than reasonable business hours.
- The buyer cannot reject the goods of negligible shortage or excess of goods.
- The mixing of goods with inferior quality, should not be treated as mixing of goods.

• When the seller becomes unpaid? (Sec. 45)

- Who's whole price has not been paid
- or tendered
- and conditional payment made by bills of exchange or any other instrument
- and instrument has been dishonored.

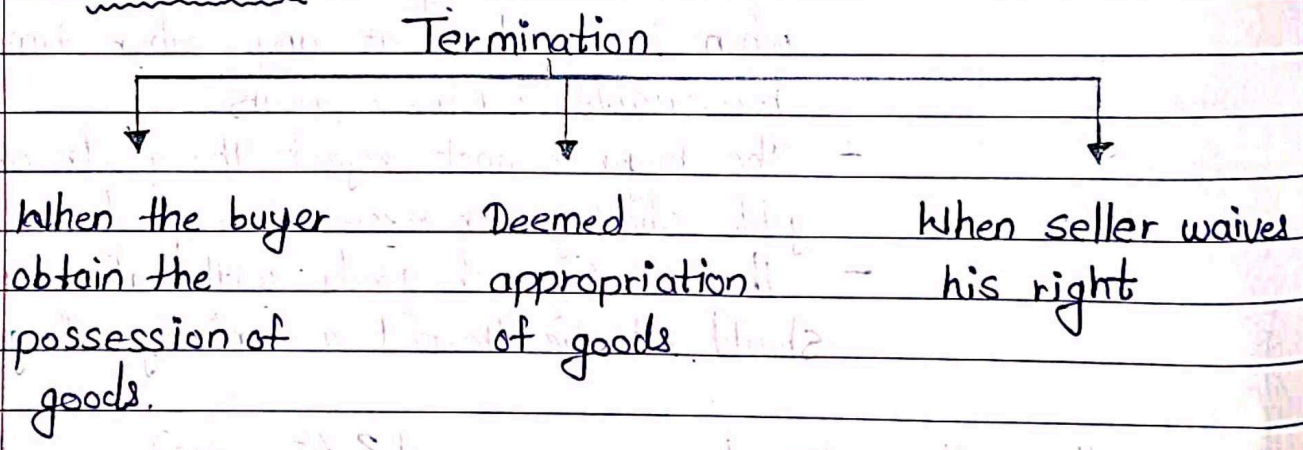
• Rights of unpaid seller :-  
- Rights of unpaid seller against the goods & against the buyer.

• Right to lien :- Right to lien means right to retain the possession until whole payment is made.

♦ When it is used?

- i] When sold the goods without stipulation.
- ii] When goods sold on credit but credit period has expired.
- iii] When buyer becomes insolvent.

♦ Termination :-



• Right to Stoppage in Transit :-  
- Right to stoppage & transit means right to regain the possession of goods while transit.

### □ When it is used?

→ When the possession of goods is not <sup>with</sup> the seller.

→ When the possession of goods is not with the buyer.

→ When goods are in possession of the middle men who can be courier service, etc.

### □ Conditions :-

→ The seller is unpaid.

→ Seller do not have the possession of goods.

→ The goods have not yet reached to the buyer.

→ Goods are in transit.

→ The buyer must have become insolvent.