

UNIT – II

LESSON-18

LAW OF SALE OF GOODS

CONTENTS

2.18.1 Essential elements of a contract of sale

2.18.2 Sale and Agreement to sell

2.18.3 Sale and Hire purchase

2.18.4 Sale and Bailment

Check your progress: 18

AIMS AND OBJECTIVES

This unit aims at providing knowledge to the students about contract of sale, agreement to sell and hire purchase. The students will be able to get a clear idea about

- i. Types of goods
- ii. Rights and duties of buyers
- iii. Rights of unpaid seller and
- iv. The doctrine of caveat emptor after reading this unit.

INTRODUCTION

The Sale of Goods Act, 1930, extends to the whole of India except the State of Jammu and Kashmir.

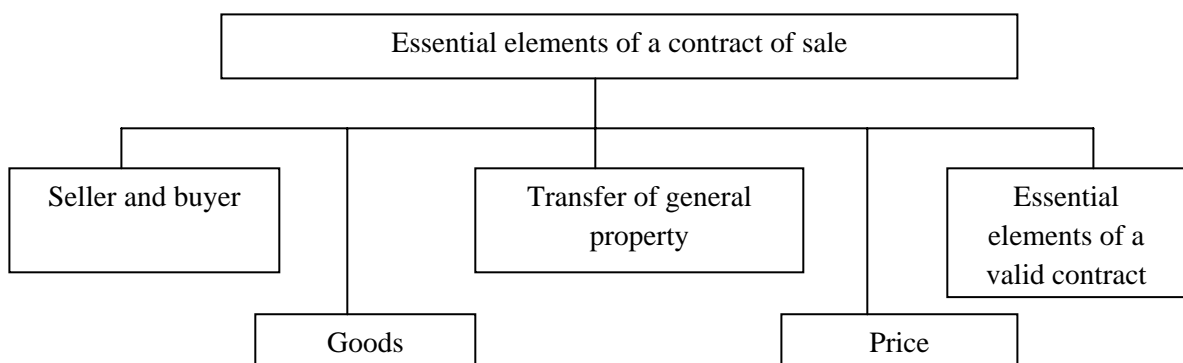
The Sale of Goods Act, 1930

Contract of Sale:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price [Sec.4]. A contract of sale may be absolute or conditional.

2.18.1 ESSENTIAL ELEMENTS OF A CONTRACT OF SALE

The essential elements of a contract of sale are as follows:



Seller and buyer:

There must be a seller as well as a buyer. 'Buyer' means a person who buys or agrees to buy goods [Section 2 (1)]. 'Seller' means a person who sells or agrees to sell goods [Section 2(13)]. A person cannot be a seller as well as a buyer as a person cannot buy his own goods.

Goods:

There must be some goods. 'Goods' means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Sale 2(7)]. Contracts relating to actionable claims, immovable property and services are not covered by this Act.

- i. The 'actionable claims' mean a claim which can be enforced through the courts of law. Eg., a due from one person to another is an actionable claim.
- ii. The 'money' here means the legal tender (i.e., currency of the country) and not old coins.

Transfer of Property:

Property means the general property in goods, and not merely a special property [Section 2(11)]. General property in goods means ownership of the goods. Special property in goods means possession of goods. Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

Price:

There must be a price. Price here means the money consideration for a sale of goods. When the consideration is only goods, it amounts to a 'barter' and not sale. When there is no consideration, it amounts to gift and not sale. However, the consideration may be partly in money and partly in goods because the law does not prohibit as such.

Essential elements of a valid contract:

In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act, 1872 must also be present since a contract of sale is a special type of a contract.

2.18.2 SALE AND AGREEMENT TO SELL

The term 'Contract of sale' includes both a 'sale' and 'agreement to sell'.

Distinction between Sale and Agreement to Sell

	Basis of distinction	Sale	Agreement to sell
1	Transfer of ownership	Transfer of ownership of goods takes place immediately	Transfer of ownership of goods is to take place at a future time or subject to fulfilment of some condition
2	Executed contract or Executory contract	It is an executed contract because nothing remains to be done	It is an executor contract because something remains to be done
3	Conveyance of property	Buyer gets a right to enjoy the goods against the whole world including seller. Therefore, a sale creates jus in rem (Right against property)	Buyer does not get such right to enjoy the goods. It only creates jus in personam (Right against the person)
4	Transfer of risk	Transfer of risk of loss of goods takes place immediately because ownership is transferred. As a result, in case of destruction of goods, the loss shall be borne by the buyer even though the goods are in the possession of the seller	Transfer of risk of loss of goods does not take place because ownership is not transferred. As a result, in case of destruction of goods, the loss shall be borne by the seller even though the goods are in the possession of the buyer.
5	Rights of seller against the buyer's breach	Seller can sue the buyer for the price even though the goods are in his possession	Seller can sue the buyer for damages even though the goods are in the possession of the buyer.

6	Rights of buyer against the seller's breach	Buyer can sue the seller for damages and can sue the third party who bought those goods, for goods	Buyer can sue the seller for damages only.
7	Effect of insolvency of seller having possession of goods	Buyer can claim the goods from the official receiver or assignee because the ownership of goods has transferred to the buyer	Buyer cannot claim the goods even when he has paid the price because the ownership has not transferred to the buyer. The buyer who has paid the price can only claim rateable dividend
8	Effect of insolvency of the buyer before paying the price	Seller must deliver the goods to the official receiver or assignee because the ownership of goods has transferred to the buyer. He can only claim rateable dividend for the unpaid price.	Seller can refuse to deliver the goods unless he is paid full price of the goods because the ownership has not transferred to the buyer.

2.18.3 SALE AND HIRE PURCHASE AGREEMENT

Hire-purchase agreement means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes the agreement under which:

- i. Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments;
- ii. The property in the goods is to pass to such a person on the payment of the last instalment; and
- iii. Such a person has a right to terminate the agreement at any time before the property so passes.

Distinction between a Sale and Hire-purchase agreement:

	Basis of distinction	Sale	Hire-purchase agreement
1	Regulating law	All contracts of sale are governed by Sale of Goods Act, 1930	The Hire-purchase agreements are governed by Hire Purchase Act, 1972
2	Nature of contract	It is a contract of sale	It is an agreement of hiring and hence an agreement to sell
3	Possession of goods	Possession of goods need not necessarily be transferred immediately	Possession of goods is necessarily transferred immediately
4	Transfer of ownership of goods	Ownership of goods is transferred immediately	Ownership of goods is transferred on the payment of the last instalment when the option to purchase is exercised
5	Right to terminate	The buyer has no right to terminate the contract of sale	The hirer has right to terminate the agreement at any time before the ownership is transferred
6	Right to repossess the goods	The seller has no right to repossess the goods. He can sue for price	The hire-vendor has a right to repossess the goods if the hirer defaults
7	Transfer of good title to third party	The buyer can transfer a good title to third party because ownership of goods has been transferred	The hirer cannot transfer a good title to third party because ownership of goods has not been transferred
8	Compulsion as to be in writing	A contract of sale need not necessarily be in writing. The benefits of implied conditions and warranties are available	The hire-purchase agreement must be in writing.

9	Benefits of implied conditions and warranties under the Sale of Goods Act	The benefits of implied conditions and warranties are available	The benefits of implied conditions and warranties are not available.
10	Sales Tax	In case of sale of taxable goods, sales tax is levied	In case of hire of even taxable goods, sales tax is not levied.
11	Treatment of payment made by instalment	The payment made by the buyer is treated as payment towards the price of goods	The payment made by the hire purchases is treated as hire charges for the use of goods till the option to purchase the goods is exercised.

If in an agreement, the person taking the goods has an option to terminate the agreement at any time before the transfer of ownership of goods, it will be an agreement of hire purchase. If, in an agreement, the person taking the goods has no option to terminate the agreement, it will be a contract of sale even if the price is payable in instalments.

2.18.4 SALE AND BAILMENT

In a sale, the property in goods is transferred from the seller to the buyer. In a bailment, there is only transfer of possession from the bailor to the bailee. This may be for any one of the objects, namely, safe custody, use, carriage from one place to another etc. In a sale, the nuyer can deal with the goods in any way he likes. The bailee can deal with the goods according to the directions of the bailor.

Check your progress – 18:

Differentiate sale from agreement to sell.

LESSON-19

SUBJECT- MATTER OF CONTRCT OF SALE

CONTENTS

- 2.19.1 Classification of goods
 - 2.19.2 Effect of destruction of goods
 - 2.19.3 Document of title to goods
 - 2.19.4 The Price
 - 2.19.5 Stipulations as to time
- Check your progress: 19

Goods form the subject-matter of a contract of sale. According to Sec 2 (7), '*goods*' means *every kind of movable property* other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Trademarks, copyrights, patent rights, goodwill, electricity, water and gas are all goods.

Actionable claims and money are not goods. An actionable claim means a claim to any debt or any beneficial interest in movable property not in possession (Sec. 3 of the Transfer of Property Act, 1882). It is something which can only be enforced by action in a Court of Law. A debt due from one person to another is an actionable claim and cannot be bought or sold as goods. It can only be assigned. Money here means current money and not old rare coins.

The definition of the term '*goods*' also suggests that it includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed from the land before sale. Growing crops and grass are included in the definition of the term goods because they are to be severed from land. Trees which are agreed to be severed before sale or under the contract of sale are goods.

2.19.1 CLASSIFICATION OF GOODS

The goods which form the subject of a contract of sale may be either existing goods or future goods or contingent goods.

I. Existing Goods:

These are the goods which are owned or possessed by the seller at the time of sale. Only existing goods can be the subject of a sale. The existing goods may be-

- a. Specific goods: These are goods which are identified and agreed upon at the time a contract of sale is made. For example, a specified watch, dog or horse. Goods are, however, not specific merely because the source of supply is identified.
- b. Ascertained goods: Though commonly used as similar in meaning to specific goods, these are the goods which become ascertained subsequent to the formation of a contract of sale.
- c. Unascertained or Generic goods: These are the goods which are not identified and agreed upon at the time of the contract of sale. They are defined only by description and may form part of a lot.

Example: X who wants to buy a car set goes to a showroom where four models of Maruti cars are displayed. He sees the performance of a particular car, which he agrees to buy. The car so agreed to be bought is a *specific* car. If he marks a particular car, the car so marked becomes *ascertained*. Till this is done, all cars are unascertained.

II. Future Goods:

These are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after the making of the contract of sale. A contract of present sale of future goods, though expressed as an actual sale, purports to operate as an agreement to sell the goods and not a sale. This is because the ownership of a thing cannot be transferred before that thing comes into existence.

III. Contingent Goods:

Though a type of future goods, these are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

Example: A agrees to sell specific goods in a particular ship to B to be delivered on the arrival of the ship. If the ship arrives but with no such goods on board, the seller is not liable, for the contract is to deliver the goods only if they arrive.

2.19.2 EFFECT OF DESTRUCTION OF GOODS

1. Goods perishing before making of contract (Sec.7):

A contract for the sale of specific goods is void if at the time when the contract was made, the goods have, without the knowledge of the seller, perished. The same would be the case where the goods become so damaged as no longer to answer to their description in the contract. This rule is based on the ground of mutual mistake or impossibility of performance.

Example: A cargo of dates was sold. The dates were contaminated with sea water so as to be unsaleable as dates, though they could be used for making spirits. Held, the contract was void as the dates no longer answered their description in the contract.

2. Goods perishing after the agreement to sell but before the sale is effected (Sec. 8):
An agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer. 'Fault' means wrongful act or default. This rule is based on the ground of impossibility of performance.

Example: A agrees to sell to B 10 bales of Egyptian cotton out of 100 bales lying in his godown. The godown had been destroyed by fire at the time of the contract. Both A and B are unaware of this fact. The contract is not void as the sale here is not of specific goods, but of a certain quantity of unascertained goods. A must supply 10 bales of cotton or pay damages for the breach.

2.19.3 DOCUMENT OF TITLE TO GOODS

A document of title to goods is one which enables its possessor to deal with the goods described in it as if he were the owner. It is used in the ordinary course of business as proof of the possession or control of goods. It authorises, either by endorsement or by delivery, its possessor to transfer or receive goods represented by it. It symbolises the goods and confers a right on the purchaser to receive the goods or to further transfer such right to another person. This may be done by mere delivery or by proper endorsement and delivery.

Conditions to be fulfilled by a document of title to goods:

1. It must be used in the ordinary course of business.
2. The undertaking to deliver the goods to the possessor of the document must be unconditional.
3. The possessor of the document, by virtue of holding such document, must be entitled to receive the goods unconditionally.

Some examples of documents of title to goods are given below:

1. Bill of Lading: It is a document which acknowledges receipt of goods on board a ship and is signed by the captain of the ship or his duly authorised representative.
2. Dock Warrant: It is a document issued by a dock owner, giving details of the goods and certifying that the goods are held to the order of the person named in it or endorsee. It authorises the person holding it to receive possession of the goods..

3. Warehouse-keeper's or Wharfinger's certificate: It is a document issued by a warehouse-keeper or a wharfinger stating that the goods specified in the document are in his warehouse or in his wharf.
4. Railway Receipt: It is a document issued by a railway company acknowledging receipt of goods. It is to be resented by the holder or consignee at the destination to take delivery of the goods.
5. Delivery Order: It is a document containing an order by the owner of the goods to the holder of the goods on his behalf, asking him to deliver the goods to the person named in the document.

2.19.4 THE PRICE (SECS. 9 AND 10)

The "price" in a contract of sale means the money consideration for sale of goods [Sec. 2 (10)]. It forms an essential part of the contract. It must be expressed in money. It is the consideration for the transfer or agreement to transfer the property in goods from the seller to the buyer. It is not essential that the price should be fixed at the time of sale. It must, however, be payable, though it may not have been fixed.

2.19.5 STIPULATIONS AS TO TIME (SEC. 11)

Stipulations as to time in a contract of sale may be-

Stipulations relating to time of payment: These are not of the essence of a contract of sale, unless a different intention appears from the contract.

Stipulations not relating to time of payment: Eg., delivery of goods, etc. As regards these stipulations, time may be of the essence of the contract but this essentially depends on the terms of the contract.

Check your progress – 19:

What are the consequences/effects of destruction of goods in a contract of sale of goods?

LESSON-20

CONDITIONS AND WARRANTIES

CONTENTS

- 2.20.1 Condition
 - 2.20.2 Warranty
 - 2.20.3 When condition can be treated as warranty
 - 2.20.4 Express and Implied Conditions and Warranties
- Check your progress: 20

The stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty [sec. 12 (1)].

2.20.1 CONDITION [SEC. 12 (2)]

A condition is a stipulation which is essential to the main purpose of the contract. It goes to the root of the contract. Its non-fulfilment upsets the very basis of the contract. It is defined by Fletcher Moulton L.J. in *Wallis vs. Pratt*, (1910) 2 K.B. 1012 as an “obligation which goes so directly to the substance of the contract, or in other words, is so essential to its very nature, that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all.” If there is a breach of a condition, the aggrieved party can treat the contract as repudiated.

2.20.2 WARRANTY [SEC. 12 (3)]

A warranty is a stipulation which is collateral to the main purpose of the contract. It is not of such vital importance as a condition is. It is defined in *Wallis vs. Pratt* as an “obligation which, though it must be performed, is not so vital that a failure to perform it goes to the substance of the contract.” If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract as a whole. The Court is not to be guided by the terminology used by the parties to the contracts. A stipulation may be a condition though called a warranty in the contract [Sec. 12 (4)].

Distinction between a condition and warranty:

1. Difference as to value:
A condition is a stipulation which is essential to the main purpose of the contract.
A warranty is a stipulation which is collateral to the main purpose of the contract.
2. Difference as to breach:
If there is a breach of a condition, the aggrieved party can repudiate the contract of sale.
In case of a breach of a warranty, the aggrieved party can claim damages only.
3. Difference as to treatment:
A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contented with damages only.
A breach of a warranty, however, cannot be treated as a breach of a condition.

2.20.3 WHEN CONDITION CAN BE TREATED AS WARRANTY (SEC.13)

1. Voluntary waiver of condition: Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may
 - (a) Waive the condition, or
 - (b) Elect to treat the breach of the condition as a breach of warranty [Sec. 13 (1)]
If the buyer once decides to waive the condition, he cannot afterwards insist on its fulfilment.
2. Acceptance of goods by buyer: Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, unless there is a term of the contract, express or implied, to the contrary.

2.20.4 EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES

In a contract of sale of goods, conditions and warranties may be express or implied. Express conditions and warranties are those which are expressly provided in the contract. Implied conditions and warranties are those which the law implies into the contract unless the parties stipulate to the contrary.

Implied Condition:

1. Condition as to title:
In a contract of sale, there is an implied condition on the part of the seller that
 - (a) In the case of a sale, he has a right to sell the goods, and
 - (b) In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.
2. Sale by description:
Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the sale is by sample as well as by description, the goods shall correspond both with the sample and the description.
3. Condition as to quality or fitness:
The condition as to quality or fitness is implied where
 - (a) The goods sold are such as the seller deals in the ordinary course of his business
 - (b) The buyer relies on the seller's skill or judgment as to the fitness of the goods for any particular purpose, and
 - (c) The buyer expressly or impliedly makes known to the seller that he wants the goods for that particular purpose.
4. Condition as to merchantability:
Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.
5. Condition implied by custom:
An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
6. Sale by sample:
In the case of a contract for sale by sample, there is an implied condition
 - (a) That the bulk shall correspond with the sample in quality
 - (b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
 - (c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample.

7. Condition as to wholesomeness:

In case of eatables and provisions, there is an implied condition that the goods shall be wholesome and fit for human consumption.

Implied warranties:

In a contract of sale, unless there is a contrary intention, there is an implied warranty that

- (1) The buyer shall have and enjoy quiet possession of the goods, and
- (2) The goods are free from any charge or encumbrance in favour of any third party.

Check your progress – 20:

Elaborate on express and implied conditions.

LESSON-21

CAVEAT EMPTOR

CONTENTS

2.21.1 The doctrine of Caveat Emptor

2.21.2 Exceptions

Check your progress: 21

2.21.1 THE DOCTRINE OF CAVEAT EMPTOR

This means “let the buyer beware”, i.e., in a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill or judgment and makes a bad selection, he cannot blame anybody excepting himself.

Example: H sent to a market 32 pigs to be sold by auction. The pigs were sold to W “with all faults and errors of description”. H knew that the pigs were suffering from swine-fever, but he never disclosed this to W. Held, there was no implied warranty by H and the sale was good and H was not liable in damages. [Ward vs. Hobbs, (1878) 4 App. Cas 13].

The rule of caveat emptor is enunciated in the opening words of Sec.16 which runs thus: “Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale....”

2.21.2 EXCEPTIONS

The doctrine of caveat emptor has certain important exceptions. They are:

1. Fitness for buyer’s purpose:

Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller’s skill or judgment and the goods are of a description which it is in the course of the seller’s business to supply, the seller must supply the goods which shall be fit for the buyer’s purpose.

2. Sale under a patent or trade name:
In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.
3. Merchantable quality:
Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.
4. Usage of trade:
An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
5. Consent by fraud:
Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination (i.e., where there is a latent defect in the goods), the doctrine of caveat emptor does not apply.

Check your progress – 21:

Discuss the doctrine of caveat emptor and its important exceptions.

LESSON-22

TRANSFER OF PROPERTY

CONTENTS

- 2.22.1 Passing of property
 - 2.22.2 Contracts involving sea-routes
- Check your progress: 22

There are three stages in the performance of a contract of sale of goods by a seller, namely

1. The transfer of property in the goods
2. The transfer of possession of the goods (i.e., delivery) and
3. The passing of the risk.

Transfer of property in goods from the seller to the buyer is the main object of a contract of sale. 'Property in goods' means the ownership of goods whereas 'possession of goods' refers to the custody or control of goods. An article may belong to A although it may not be in his possession. B may be in possession of that article although he is not its owner.

It is important to know the precise moment of time at which the property in goods passes from the seller to the buyer for the following reasons:

1. Risk follows ownership:
Unless otherwise agreed, risk follows ownership whether delivery has been made or not and whether price has been paid or not. Thus, the risk of loss as a rule lies on the owner. Sec.26 provides in this regard that, unless otherwise agreed, the goods remain at the seller's until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not. But if delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault. Thus 'risk' and 'property' go together.
2. Action against third parties:
When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action against them.

3. Insolvency of the seller or the buyer:
In the event of insolvency of the seller or the buyer, the question whether the Official Receiver or Assignee can take over the goods or not depends on whether the property in the goods has passed from the seller to the buyer.
4. Suit for price:
The seller can sue for the price, unless otherwise agreed, only if the goods have become the property of the buyer.

2.22.1 PASSING OF PROPERTY

The primary rules for ascertaining when the property in goods passes to the buyer are as follows:

1. Goods must be ascertained:
Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.
2. Intention of the parties:
Where there is a contract for the sale of specific or ascertained goods, the property in them passes to the buyer at the time when the parties intend it to pass. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
Where the intention of the parties cannot be ascertained:
Where the intention of the parties as to the time when the property in the goods is to pass to the buyer cannot be ascertained from the contract, the rules contained in Secs.20 to 24 apply. These rules are as follows:
 - I. Specific goods (Secs. 20 to 22)
The rules relating to transfer of property in specific goods are as follows:
 - (a) Passing of property at the time of contract: Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. The fact that the time of payment of the price or the time of delivery of goods, or both, is postponed does not prevent the property in goods passing at once.

‘Deliverable state’ means such a state that the buyer would under the contract be bound to take delivery of the goods.
 - (b) Passing of property delayed beyond the date of the contract:
 - i. Goods not in a deliverable state: Where there is a contract for the sale of specific goods not in a deliverable state, i.e., the seller has to do something to the goods to put them into a deliverable state, the property does not pass until such thing is done and the buyer has notice of it.

- ii. When the price of goods is to be ascertained by weighing, etc.: Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

II. Unascertained goods (Sec. 23):

Where there is a contract for the sale of unascertained goods, the property in the goods does not pass to the buyer until the goods are ascertained. Until goods are ascertained there is merely an agreement to sell. The Act further provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, the property in the goods thereupon passes to the buyer.

The 'ascertainment of goods' and their unconditional "appropriation to the contract" are the two pre-conditions for the transfer of property from the seller to buyer in case of unascertained goods.

'Ascertainment' is the process by which the goods answering the description are identified and set apart.

'Appropriation' involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer. The appropriation must be unconditional. It is unconditional when the seller does not reserve to himself the right of disposal of the goods.

Delivery to carrier:

A seller is deemed to have unconditionally appropriated the goods to the contract where he delivers them to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal.

III. Goods sent on approval or 'on sale or return' (Sec.24):

When goods are delivered to the buyer on approval or 'on sale or return' or other similar terms, the property therein passes to the buyer:

- i. When he signifies his approval or acceptance to the seller
- ii. When he does any other act adopting the transaction

If the seller delivers the goods to the buyer 'on sale or return' on the terms that the goods were to remain his property until settled or paid for the property would not pass to the buyer until these terms are complied with.

- iii. If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, beyond the time fixed for the return of the goods, or if no time has been fixed, beyond a reasonable time.

2.22.2 CONTRACTS INVOLVING SEA ROUTES

In contracts of sale which involve sea routes, certain special clauses and conditions are to be found. The meaning of these clauses has been standardised to an extent in accordance with the international customs and practices of merchants. Some of these clauses which are quite often found in such contracts and their legal effects are as follows:

C.I.F CONTRACTS - (Named port of destination):

C.I.F stands for “cost, insurance and freight”. If A of Delhi agrees to sell 100 bags of rice at Rs.2,500 per bag, C.I.F. Manchester, the sum of Rs.2,50,000 (100 x 2,500) includes

1. the price of the goods,
2. the cost of insurance, and
3. the freight up to Manchester

C.I.F. contract is performed by the delivery of documents (bill of lading, insurance policy, invoice, certificate of origin etc.) representing the goods to the buyer, through a bank. The documents are usually delivered by the bank against payment of the price, or against acceptance of a draft (bill of exchange). This protects both the seller and the buyer. The seller continues to be the owner of the goods until the buyer pays for the goods and gets the documents. If, in the meantime, the goods are lost at sea, the buyer or the seller, whoever is the owner at the time of the loss, can recover the amount from the insurer. If, on receiving the goods, the buyer finds that they are not according to the contract, he may reject them and recover the price paid by him.

Seller’s duties:

1. To make out an invoice of the goods sold.
2. To ship at the port of shipment goods of the description contained in the contract
3. To procure a contract of affreightment, under which the goods will be delivered at the destination contemplated by the contract.
4. To arrange for insurance upon the terms current in the trade that will be available for the benefit of the buyer. If the seller does not effect insurance, the buyer is not bound to accept and pay for the goods even if the goods arrive safely at the destination.
5. To tender, within a reasonable time after shipment, the bill of lading, the policy of insurance and the invoice and other documents to the buyer, so that he may obtain delivery of the goods, if they arrive, or recover for their loss if they are lost on the voyage.

The bill of lading tendered must correctly state the date of shipment of the goods, otherwise the buyer can reject the goods.

Buyer's duties:

1. To accept the documents if they are complete and regular, and pay the price less the freight, on delivery of the documents. The buyer is bound to do so even if the goods have been destroyed, for he has a remedy against the insurer of the goods.
2. To pay the unloading, wharfage charges, etc., at the port of destination.
3. To pay all customs and import charges.

In the case of a C.I.F. contract, the buyer has the right to reject

- a. The documents if they are not in order
- b. The goods if they do not conform to the contract of sale

C.I.F. contract is a contract for the sale of insured goods, lost or not lost, to be implemented by transfer of proper documents.

Transfer of Property :

In a C.I.F contract, the property in the goods passes from the seller to the buyer when the goods are shipped unless, as usually happens, the seller reserves the right of disposal. If the seller parts with control over the disposal of the goods, the property in the goods passes to the buyer. The seller indorses the bill of lading to the buyer. But if the seller indorses the bill of lading in blank and sends it to his agent to be delivered to the buyer only against payment of the price, or acceptance of the draft, he retains the disposal of the goods under his control. And till the price is paid or the draft is accepted, the property in the goods does not pass to the buyer.

F.O.B. CONTRACTS – (Named port of shipment):

F.O.B. stands for "free on board". If A of Delhi agrees to sell 100 tonnes of sugar, F.O.B. Mumbai, to B of Manchester, this would mean that A must put the goods on board a ship at Mumbai at his own expense under a contract of carriage by sea, to be made by or on behalf of the buyer, for the purpose of transmission to the buyer,

Seller's duties:

1. To deliver the goods on board the ship named by the buyer. When once the goods are put on board the ship, they are at the risk of the buyer. The duty of the seller ends when he delivers the goods at his own expense to the ship at the port of shipment. Such delivery transfers the possession, property and risk to the buyer.

2. To give notice of the shipment to the buyer so as to enable him to protect himself by insurance against loss during the sea transit; if the seller fails to do this, the goods will be at his risk.

Buyer's duties:

1. To arrange for the contract of affreightment.
2. To name the ship to which the goods are to be delivered or to authorise the seller to select the ship.
3. To pay all charges and bear all risks subsequent to delivery of the goods on board the ship.

The property in goods does not pass to the buyer until the goods are delivered on board the ship. If the seller is prevented from putting the goods on board the ship by the failure of the buyer to name a ship, the seller can sue for damages for non-acceptance and not for the price.

F.A.S. CONTRACTS

F.A.S. stands for 'free alongside ship'. The property in goods sold under an F.A.S. contract passes from the seller to the buyer when the goods are delivered alongside the ship named by the buyer under a contract of carriage.

Seller's duties:

1. To deliver the goods alongside the ship.
2. To notify the buyer immediately that the goods have been delivered alongside the ship.

Buyer's duties:

1. To arrange for the contract of affreightment.
2. To give the seller sufficient notice of the name of the ship and time for delivery alongside the ship.
3. To pay all charges and to bear all risks from the time the goods are delivered alongside the ship.

EX-SHIP CONTRACTS – (Named ship and named port of delivery):

These are contract under which the seller causes the delivery of the goods to be made to the buyer from a ship which has arrived at the port of destination at his (seller's) expense. In such contracts, the property in the goods does not pass to the buyer until the goods are actually delivered to him.

Seller's duties:

1. To deliver the goods to the buyer from a ship which has arrived at the port of destination at a place from which it is usual for goods of that kind to be delivered.
2. To pay the freight or otherwise release the ship owner's lien.
3. To furnish the buyer with a delivery order, or some other effectual direction to the ship owner to deliver.

In the case of an ex-ship contract, the property and risk in the goods do not pass to the buyer until they are delivered at the port of destination. The goods are at the seller's risk during the voyage and there is no obligation on him to effect an insurance on behalf of the buyer.

Check your progress – 22:

1. Discuss the types of goods.

2. What are the three stages in performance of contract?

LESSON-23

SALE BY NON-OWNERS

CONTENTS

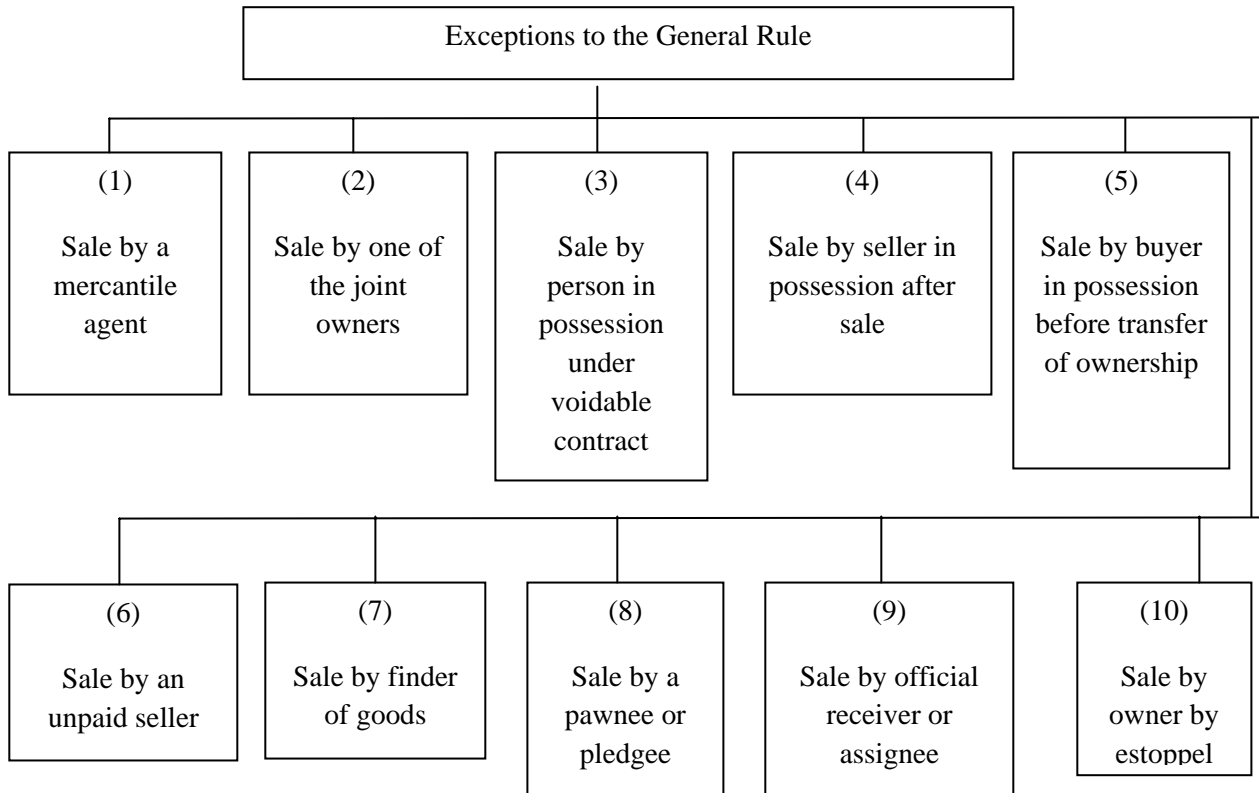
- 2.23.1 The general rule
 - 2.23.2 Exceptions to the general rule
- Check your progress: 23

2.23.2 THE GENERAL RULE

The general rule of law is that ‘no one can give that which one has not got’. It is only the owner of the goods, or a person authorised by him, who can sell the goods. If the seller has no title to the goods, the buyer does not acquire any although he may have acted honestly and may have paid value for the goods. This protects the owner of the goods. Sec. 27 also provides that where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. This is, however, subject to certain exceptions.

2.23.2 EXCEPTIONS TO THE GENERAL RULE

The circumstances under which a seller can give a better title than what he himself has, are as follows:



The various exceptions to the general rule and the conditions for their application are summarised below:

Exceptions to the general rule	Conditions to be fulfilled before a buyer gets a good title to the goods
1. Sale by a mercantile agent [Sec. 27]	(i) The agent must be in possession of goods or a document title (e.g., Railway receipt, Bill of lading) to the goods with the consent of the owner. (ii) The agent must have sold the goods in the ordinary course of business as a mercantile agent. (iii) The buyer must have acted in good faith (iv) The buyer must have no knowledge that the seller had no authority to sell. Example: <i>P, the owner of a car instructed an agent A to sell his car at not less than Rs.1,00,000. But A sold the car to B for Rs.80,000 and misappropriated the money. B acted in good</i>

	<p><i>faith and without notice of the above instruction to agent. Here, B got a good title to the car and the real owner P cannot recover the car from B. [Folkes vs. King].</i></p>
<p>2. Sale by one of the joint owners [Sec. 280]</p>	<p>(i) The joint owner must be in the sole possession of goods with the consent of other co-owners</p> <p>(ii) The buyer must have bought the goods in good faith</p> <p>(iii) The buyer must have no knowledge that the seller had no authority to sell.</p> <p>Example:</p> <p><i>X, Y and Z were the co-owners of some goods. X was in possession of those goods with the consent of Y and Z. X sold those goods to B who bought them in good faith and without notice that X had no authority to sell. In this case, B got a good title to the goods and Y and Z cannot recover the goods from B.</i></p>
<p>3. Sale by a person in possession under voidable contract</p>	<p>(i) The seller must be in possession of goods under a contract voidable under section 19 or 19A of Indian Contract Act, 1872 on ground of coercion, undue influence, misrepresentation or fraud.</p> <p>(ii) The goods must have been sold before the contract is rescinded</p> <p>(iii) The buyer must have bought the goods in good faith.</p> <p>(iv) The buyer must have no knowledge that the seller's title is defective.</p> <p>Example:</p> <p><i>X, by fraud obtained the possession of a diamond ring from Y. X sold the ring to B before Y rescinded the contract. B bought the ring in good faith and without notice of X's defective title. B got a good title and Y cannot recover the ring from B. [Phillips vs. Brooks].</i></p>

<p>4. Sale by seller in possession after sale [Sec. 30(1)]</p>	<p>(i) The seller must be in possession of goods or of a document of title to the goods, in the capacity of a seller and not in any other capacity such as bailee.</p> <p>(ii) The buyer must have bought the goods in good faith.</p> <p>(iii) The buyer must have no knowledge about the previous sale.</p> <p>Example: <i>X sold two TV sets to Y with the terms that one to be delivered immediately and another to be delivered after 2 days. Later on, Y delivered the first TV to X for some minor repair. X resold the first TV to P and the second to Q. Both P and Q bought in good faith and without notice of the previous sale. Here, Q got a good title to the TV but P did not get good title because X was in the possession of TV in the capacity of a bailee and not in the capacity of a seller.</i></p>
<p>5. Sale by a buyer in possession before the transfer of ownership [Sec. 30(2)]</p>	<p>(i) The buyer must be in possession of the goods or a document of title to the goods, with the consent of the original seller and must have bought or agreed to buy the goods.</p> <p>(ii) The new buyer must have bought the goods in good faith.</p> <p>(iii) The new buyer must have no knowledge about any lien or other right of the original seller in respect of goods.</p> <p>Example: <i>X takes the delivery of a furniture from Y under an agreement which provides for</i></p> <p>(a) <i>An immediate down payment of Rs.5,000,</i> (b) <i>The balance by way of 12 monthly instalments of Rs.1,000 each,</i> (c) <i>Transfer of ownership on the payment of last instalment,</i> (d) <i>Y's right to repossess the goods in case of non-payment of instalments due.</i></p>

	<p><i>Before the 12th instalment was paid, X sold the furniture to Z. Can Y recover the furniture from Z? State your answer in each of the following cases.</i></p> <p>Case (i) : If the agreement does not provide for any other stipulation</p> <p>Case (ii) : If the agreement also provides that X can return the goods.</p> <p>Solutions:</p> <p><i>Case (i) : Y cannot recover the furniture from Z because it was a contract of sale (as X was not having any option to return but was under compulsion to buy) and not hire-purchase agreement.</i></p> <p><i>Case (ii) : Y can recover the furniture from Z because it was a hire-purchase agreement (as X was having an option to return) and hence, X was not having any title to it.</i></p> <p>Note: A buyer (being hirer in case of a hire purchase agreement) cannot transfer a valid title to the new buyer because an ‘option to buy does not amount to an “agreement to buy”’.</p>
<p>6. Sale by an unpaid seller [Sec. 54(3)]</p>	<p>An unpaid seller must have exercised his right of lien or stoppage in transit.</p>
<p>7. Sale by a Finder of goods [Sec. 169 of the Indian Contract Act, 1872]</p>	<p>(i) The owner cannot be found with reasonable diligence, or</p> <p>(ii) The owner, if found refuses to pay the lawful charges of finder, or</p> <p>(iii) If the goods are in danger of perishing or of losing the greater part of its value, or</p> <p>(iv) If the lawful charges of the finder in respect of the thing found amounts to two third of its value</p>
<p>8. Sale by a pawnee or pledgee</p>	<p>(i) The pawnor or pledger must have made a default in the payment of the debt or the performance of the promise at the stipulated time.</p> <p>(ii) The pawnee or pledge must have given a reasonable notice to the pawnor or pledger.</p>

9. Sale by Official Receiver or Assignee or Liquidator	The involved person must be the owner of goods.
10. Sale by owner by estoppel	<p>The owner of the goods by his statement or conduct must have lead the buyer to believe that the seller has the authority to sell.</p> <p>Example:</p> <p><i>X told Y, a buyer in the presence of Z that he (X) is the owner of the TV. But Z remained silent though the TV belonged to him. Y bought the TV from X. Here, Y will get a valid title to the TV even though X had no title to the TV because Z by his own conduct is prevented from denying X's authority to sell the TV.</i></p>

Check your progress – 23:

Who are considered as non-owners of goods?

LESSON-24

DELIVERY

CONTENTS

- 2.24.1 Delivery
 - 2.24.2 Types of Delivery
 - 2.24.3 Rules as to Delivery
- Check your progress: 24

2.24.1 DELIVERY

Delivery means the voluntary transfer of possession from one person to another.

Delivery of goods may be made-

- (a) By doing anything which the parties agree shall be treated as delivery, or
- (b) By doing anything which has the effect of putting the goods into the buyer's or his authorised agent's possession

2.24.2 TYPES OF DELIVERY

The delivery of goods may be of the following three types:

- (i) **Actual Delivery:**
Delivery is said to be actual where the goods are physically handed over to the buyer or his authorised agent.
Example: X sells to Y 100 bags of wheat lying in Z's warehouse. X orders Z to deliver the wheat to Y. Z delivers to Y. In this case there is an actual delivery of goods.
- (ii) **Symbolic Delivery:**
Delivery is said to be symbolic where some symbol of the real possession or control over the goods is handed over to buyer.
Example: X sells to Y 100 bags of wheat lying in Z's warehouse and hands over the key of Z's warehouse to Y. In this case, there is symbolic delivery of goods.

(iii) Constructive Delivery:

Delivery is said to be constructive where a person who is in possession of the goods, acknowledges to hold the goods on behalf of the buyer.

Example: X sells to Y 100 bags of wheat lying in Z's warehouse. Y orders Z to deliver the wheat to Y. Z agrees to hold the 100 bags of wheat on behalf of Y and makes the necessary entry in his books. In this case, there is constructive delivery of goods.

2.24.3 RULES AS TO DELIVERY [SECTIONS 32 TO 39]

1. **Payment and Delivery to be concurrent:**
Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. They must happen simultaneously.
2. **Mode of delivery:**
Delivery must have the effect of putting the goods into the buyer's or his authorised agent's possession.
3. **Effect of part delivery:**
A delivery of part of goods with an intention of giving the delivery of the whole amounts to the delivery of the whole for the purpose of transfer of ownership of goods, but a delivery of part of goods with an intention of separating it from the whole lot does not amount to the delivery of the whole of the goods.
4. **Buyer to apply for delivery;**
Unless otherwise agreed, the seller of the goods is not bound to deliver them until the buyer applies for delivery.
5. **Place of delivery:**
Where there is a contract as to the place of delivery, the goods must be delivered at the agreed place.
6. **Time of delivery:**
Where there is a contract as to the time of delivery, the goods are to be delivered within the time agreed.
7. **Delivery when the goods are in possession of a third party:**
Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. However, this provision shall not affect the operation of the issue or transfer of any document of title to goods.

8. Demand of delivery to be treated as ineffectual:
Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour.
9. Expenses of delivery:
Unless otherwise agreed, the expenses of putting the goods into a deliverable state shall be borne by the seller.
10. Delivery of wrong quantity:
Subject to any usage of trade, special agreement or course of dealing between the parties, the rules as to the delivery of wrong quantity are as under:

Case	Rights available to the buyer
I. Short delivery, i.e., where the seller delivers a quantity of goods less than contracted for	(a) The buyer may accept the goods so delivered, or (b) The buyer may reject the goods
II. Excess delivery, i.e., where the seller delivers a quantity of goods larger than contracted for	(a) The buyer may accept the goods so delivered, (b) The buyer may reject the whole, or (c) The buyer may accept the contracted quantity and reject the excess.
III. Mixed delivery, i.e., where the seller delivers the goods contracted for mixed with goods of different description Note: The mixing of goods with inferior quality does not amount to mixing of goods of different description.	(a) The buyer may reject the whole, or (b) The buyer may accept the goods which are in accordance with the contract and reject the rest

11. Delivery by Instalments:
Unless otherwise agreed, the buyer of goods is not bound to accept delivery by instalments.

The question whether the aggrieved party can repudiate the whole contract or not depends upon the terms of the contract and the circumstances of each case where-

- (i) The goods are to be delivered in instalments
- (ii) The instalments are to be separately paid for

(iii) The seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments.

12. Delivery to Carrier or Wharfinger:

Where the seller is authorised or required to send the goods to the buyer, delivery of the goods to carrier (whether named by the buyer, or not) for the purpose of transmission to the buyer, or delivery of the goods to wharfinger custody, is prima facie deemed to be a delivery of the goods to the buyer. The seller is further required to perform the following two duties also:

- (i) To make a reasonable contract with the carrier or wharfinger,
- (ii) To give notice to the buyer to enable him to insure the goods.

Check your progress – 24:

State the rules regarding delivery of goods.

LESSON-25

RIGHTS AND DUTIES OF A BUYER

CONTENTS

- 2.25.1 Rights of the buyer
 - 2.25.2 Duties of the Buyer
- Check your progress: 25

2.25.1 RIGHTS OF THE BUYER

1. Right to have delivery as per contract:
The first right of the buyer is to have delivery of the goods as per contract.
2. Right to reject the goods if the seller sends to the buyer a larger or smaller quantity of goods than he ordered:
If the seller sends to the buyer a larger or smaller quantity of goods than he ordered, the buyer may
 - a. Reject the whole
 - b. Accept the whole, or
 - c. Accept the quantity he ordered and reject the rest.
3. Right to repudiate the contract;
Unless otherwise agreed, the buyer of the goods has a right not to accept delivery thereof by instalments.
4. Right to notice of insurance:
Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.
5. Right to examine the goods which he previously has not examined before he accepts them:

The buyer has a right to examine the goods which he has not previously examined before he accepts them.

6. Right against the seller for breach of contract

(a) Suit for damages:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

(b) Suit for price:

If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.

(c) Suit for specific performance:

The buyer may sue the seller for specific performance of the contract to sell. If the goods are specific or ascertained, the Court may, if it thinks fit, order for the specific performance of the contract

(d) Suit for breach of warranty:

Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods. But he may

1. Set up against the seller the breach of warranty in diminution or extinction of the price, or

2. Sue the seller for damages for breach of warranty.

(e) Repudiation of contract before due date:

When the seller repudiates the contract before the date of delivery, the buyer may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. This rule is known as the 'rule of anticipatory breach of contract'.

(f) Suit for interest:

Where there is a breach of contract on the part of the seller and as a result the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount of the price refunded to him from the date on which the payment was made. The Court may award the interest at such rate as it thinks fit.

3.17.2 DUTIES OF THE BUYER

1. Duty to accept the goods and pay for them in exchange for possession:

It is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale. Further, the buyer must be ready and willing to pay the price in exchange for possession of the goods.

2. Duty to apply for delivery:
Apart from any express contract, it is the duty of the buyer to apply for delivery.
3. Duty to demand delivery at a reasonable hour:
It is the duty of the buyer to demand delivery at a reasonable hour.
4. Duty to accept in instalment delivery and pay for it, if it is agreed so in advance
5. Duty to take risk of deterioration in the goods in the course of transit:
Where the seller of goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer shall take any risk of deterioration in the goods necessarily incident to the course of transit.
6. Duty to intimate the seller when he rejects the goods:
Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.
7. Duty to take delivery of goods within a reasonable time:
It is the duty of the buyer to take delivery of the goods within a reasonable time after the tender of delivery. He becomes liable to the seller for any loss occasioned by his neglect or refusal to take delivery.
8. Duty to pay price according to the terms of the contract:
Where property in goods has passed to the buyer, it is his duty to pay the price according to the terms of the contract.
9. Duty to pay damages for non-acceptance by negligence or wrongful refusal to accept and pay for the goods:
Where the buyer wrongfully neglects or refuses to accept and pay for the goods, he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

Check your progress – 25

Discuss the rights and duties of a buyer of goods.

LESSON-26

RIGHTS OF AN UNPAID SELLER

CONTENTS

- 2.26.1 Rights against goods
- 2.26.2 Rights against the buyer personally
 - Check your progress: 26
 - Lesson End Activities
 - Let Us Sum Up

(Unpaid Vendor's Rights)

A seller of goods is deemed to be an unpaid seller when-

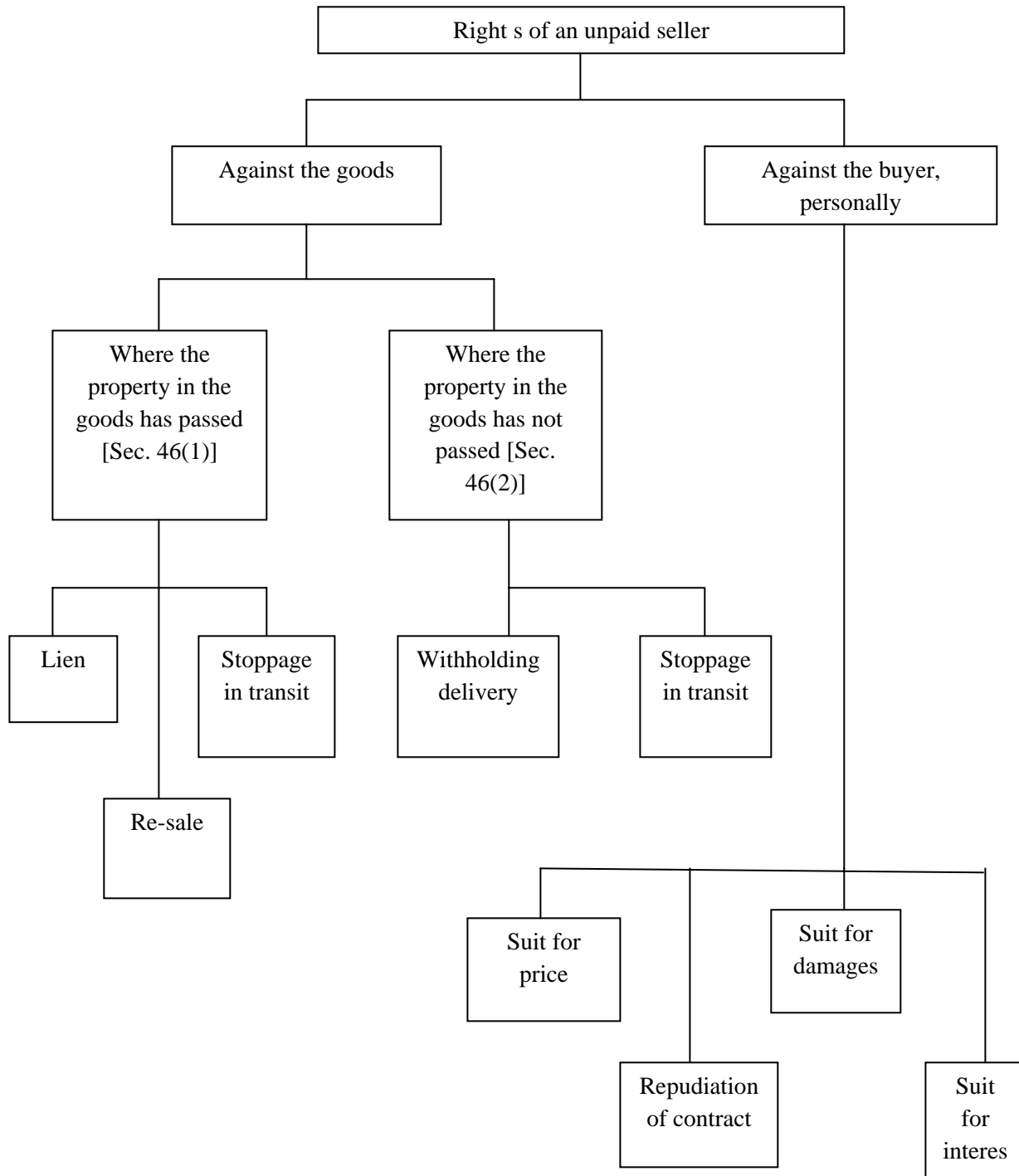
1. The whole of the price has not been paid or tendered (offered to be paid)
2. A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

The following conditions must be fulfilled before a seller of goods can be deemed to be an unpaid seller:

1. He must be unpaid and the price must be due
2. He must have an immediate right of action for the price
3. A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

When payment is made by a negotiable instrument it is usually a conditional payment, the condition being that the instrument shall be duly honoured. If the instrument is not honoured, the seller is deemed to be an 'unpaid seller'. A seller who has obtained a money decree for the price of the goods is still an unpaid seller if the decree has not been satisfied.

‘Seller’ here means not only the actual seller, but also any person who is in the position of a seller, e.g., an agent of the seller to whom a bill of lading has been endorsed, or a consignee or agent who has himself paid for the goods or is directly responsible for the price [Sec, 45(2)].



2.26.1 RIGHTS AGAINST GOODS

Rights of an unpaid seller against the goods:

Where the property in the goods has passed to the buyer, an unpaid seller has the following rights against the goods:

i. Right of lien:

A lien is a right to retain possession of goods until payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

- a. The goods have been sold without any stipulation as to credit
- b. The goods have been sold on credit, but the term of credit has expired
- c. The buyer becomes insolvent

ii. Right of stoppage in transit:

The right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods. He has the further right of resuming possession of the goods as long as they are in the course of transit, and retaining possession until payment or tender of the price. It is available to the unpaid seller-

- a. When the buyer becomes insolvent, and
- b. When the goods are in transit

The buyer is said to be 'insolvent' when he has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

The right of stoppage in transit is an extension of the right of lien, but it arises only on the insolvency of the buyer and when the goods are in transit.

Transit is an intermediate stage. Goods are deemed to be in course of transit from the time they are delivered to a carrier, or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them from such carrier or other bailee.

iii. Right of Re-sale:

The unpaid seller can re-sell the goods-

- a. Where the goods are of a perishable nature, or
- b. Where he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

If, on re-sale, there is a loss to the seller, (i.e., the difference between the contract price and the amount realised on re-sale of the goods), he can claim it from the buyer as damages for breach of contract. If there is a surplus on the re-sale, he is not bound to hand it over to the buyer because the buyer cannot be allowed to take advantage of his own wrong.

Where the property in the goods has not passed to the buyer, an unpaid seller has the following rights against the goods:

iv. Right of withholding delivery:

Where the property in goods has not passed to the buyer, an unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

v. Right of stoppage in transit:

The right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods. He has the further right of resuming possession of the goods as long as they are in the course of transit, and retaining possession until payment or tender of the price. It is available to the unpaid seller-

- a. When the buyer becomes insolvent, and
- b. When the goods are in transit

The buyer is said to be 'insolvent' when he has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

The right of stoppage in transit is an extension of the right of lien, but it arises only on the insolvency of the buyer and when the goods are in transit.

Transit is an intermediate stage. Goods are deemed to be in course of transit from the time they are delivered to a carrier, or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them from such carrier or other bailee.

2.26.2 RIGHTS AGAINST THE BUYER PERSONALLY

Rights of an unpaid seller against the buyer personally:

These are the rights which an unpaid seller may enforce against the buyer personally. These rights of the seller against the buyer are called rights in personam as against the rights in rem (i.e., the rights against the goods), and are in addition to his rights against the goods. The rights in personam are as follows:

i. Suit for price;

a. Where property has passed:

Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods.

- b. Where property has not passed:
Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract.
- ii. Suit for damages:
Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for non-acceptance.
- iii. Repudiation of contract before the due date:
Where the buyer repudiates the contract before the date of delivery, the seller may either-
 - a. Treat the contract as subsisting and wait till the date of delivery, or
 - b. He may treat the contract as rescinded and sue for damages for the breach. This rule is known as ‘the rule of anticipatory breach of contract’.
- iv. Suit for interest:
Where there is a specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however there is not specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.
In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable [Girija Prasad vs. Sardar Labh Singh, A.I.R. (1977) Pat. 241].

Check your progress – 26

Explain the rights of an unpaid seller/vendor.

Lesson end activities:

X entered into a contract for the sale of 100 bags of wheat out of 1000 bags lying in his godown. Unknown to X, the entire stock was destroyed by fire. X declined to deliver. State the legal position.

Let us sum up:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price [Sec.4].

The term 'Contract of sale' includes both a 'sale' and 'agreement to sell'.

- Property means the general property in goods, and not merely a special property [Section 2(11)]. General property in goods means ownership of the goods. Special property in goods means possession of goods. Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

Hire-purchase agreement means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement.

- Goods form the subject-matter of a contract of sale. According to Sec 2 (7), 'goods' means *every kind of movable property* other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Trademarks, copyrights, patent rights, goodwill, electricity, water and gas are all goods.

The "price" in a contract of sale means the money consideration for sale of goods [Sec. 2 (10)].

- In a contract of sale of goods, conditions and warranties may be express or implied. Express conditions and warranties are those which are expressly provided in the contract. Implied conditions and warranties are those which the law implies into the contract unless the parties stipulate to the contrary
- Transfer of property in goods from the seller to the buyer is the main object of a contract of sale. 'Property in goods' means the ownership of goods whereas 'possession of goods' refers to the custody or control of goods
- Delivery means the voluntary transfer of possession from one person to another.
- A seller of goods is deemed to be an unpaid seller when-
The whole of the price has not been paid or tendered (offered to be paid)
A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.