

STUDY NOTE – 2 : THE SALE OF GOODS ACT, 1930

SECTION 1:

COMMENCEMENT AND APPLICABLE

APPLICABILITY OF THE ACT

- ⇒ This act extends to whole of India, *except the State of Jammu and Kashmir*.
- ⇒ This act came into force w.e.f. 1 July 1930.
- ⇒ The 'contract of sale' includes both a sale as well as an agreement to sell.
- ⇒ The word Indian was omitted the title of the Act in 1963 (22 sept.)
- ⇒ This Act does not deal with the sale of immovable property.
- ⇒ The transaction relating to immovable properties, e.g., the sale, lease, gifts, etc., are governed by a separate Act known as 'Transfer of Property Act, 1882'. This Act is beyond the scope of this book.

DEFINITIONS (Sec. 2)

Buyer – Sec 2 (1)

- ⇒ A person, who buys or agrees to buy the goods.

Delivery Sec (2)

- ⇒ It means voluntary transfer of possession from one person to another.

Delivery State Sec 2(3)

- Goods are said to be in delivered state, when they are in such state that the *Buyer would be bound* to take the delivery of them in accordance with the contract.

Documents of title to Goods 2(4)

- A document of the title to goods may be described as any document used as proof of the possession or control of goods, authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

Section 2(4) of the Sale of Goods Act, 1930 recognizes the following as documents of title to goods:

- (i) Bill of lading,
- (ii) Dock warrant,
- (iii) Warehousekeeper's certificate,
- (iv) Wharfinger's certificate,
- (v) Railway receipt,
- (vi) Multi – modal transport document,
- (vii) Warrant or order for the delivery of goods, and

(viii) Any other document used in the ordinary course of business as document of title (as described in the preceding paragraph).

Document of Title v. Document showing the title :

A document of title enables a person named therein to transfer the property by mere endorsement and delivery, whereas a document showing title does not confer any right to transfer by way of endorsement and delivery.

For example, a share certificate shows that the person named therein is entitled to the shares represented by it, but does not allow transfer of the shares by mere endorsement and delivery of the certificate.

Goods – Sec 2 (7)

- ⇒ Goods mean every kind of *movable property*.
- ⇒ Other than actionable claims and money, and it includes.
- ⇒ stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.
- ⇒ You may notice that ‘money’ and ‘actionable claims’ have been expressly excluded from the term ‘goods’. **‘Money’ means the legal tender. ‘Money’ does not include old coins and foreign currency.** They can, therefore, be sold or bought as goods. Sale and purchase of foreign currency is, however, also regulated by the foreign Exchange Management Act,
- ⇒ ‘Actionable claims’, like debts, are things which a person cannot make use of, but which can be claimed by him by means of a legal action. Actionable claims cannot be sold or purchased like goods, they can only be assigned, as per the provisions of Transfer of property Act.
- ⇒ Grass, growing crops, trees to be cut and their log wood to be delivered, malba of a building to be demolished, etc. are goods. Similarly, things like goodwill, copyright, trade mark, patents, water, gas electricity are all goods and may be the subject matter of a contract of sale.

Seller – Sec 2 (13)

- ⇒ A person, who sells or agrees to sell the goods,.

Agreement to sell

- ⇒ Where transfer of property in goods takes place at future date.

Sale

- ⇒ Where transfer of property in goods takes place at the time of contract.

ESSENTIAL ELEMENTS OF VALID CONTRACT OF SALES

The following are the essentials of valid contract of sale:

- ⇒ **There must be two parties, one seller and other buyer.**
 - Seller and buyer must be different.
 - Part owner can sell goods to another part owner.
 - Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both sellers and buyers [State of Gujarat v. Ramanlal S & W. (1965)]. But, a partner may buy goods from the firm or sell goods to the firm.
- ⇒ **There must be movable goods as subject matter of contract.**
- ⇒ **There must be a transfer of property in goods. It means general property. (i.e. ownership)**
- ⇒ **There must be price involved. Price means money consideration for sale of goods.**
 - Exchange of goods for goods is barter.
 - If Exchange is for partly goods and partly for money it is sale.
- ⇒ **All essential elements of valid contract must be observed.**
- ⇒ **The contract of sale can be entered into, expressly or impliedly.**

Formation. The contract of sale may provide for any of the following methods.

- *Immediate delivery of goods.*
- *Immediate payment of price but delivery at some future date.*
- *Immediate payment of price and immediate delivery of goods.*
- *Delivery or payment or both made in installments.*
- *Delivery or payment or both will be made at future date.*

TRANSFER OF “PROPERTY IN GOODS”

- ⇒ Property means general property in goods and not merely special property in goods. It means ownership of goods. ***Special property in goods means possession of goods.***
- ⇒ Cases where property in goods is not transferred:
 - Bailment
 - Creating charge or pledge

Difference Between Sale and Agreement to Sell

Immediate transfer of ownership to buyer
 It is executed contract
 It creates right in rem for buyer
 Seller can sue for price – if not buyer
 Risk passes to buyer
 Buyer can get goods even if seller has becomes insolvent
 Delivery to receiver if buyer becomes insolvent before the payment of price

Ownership remains with the seller
 It is an executory contract
 It provides right in personam for buyer and seller
 Seller can sue for damages
 Risk doesn't passes to buyer
 Buyer can get proportionate share in money but can't get goods
 Delivery can be refused by seller if buyer becomes insolvent.

Difference between Sale and Hire Purchase

Metter	Sale	Hire Purchase
Meaning	Property in goods is transferred from seller to buyer immediately	Agreement where hirer uses goods by paying regular installment and having option to purchase goods on payment of last installment
Applicable Act	Sale of goods Act, 1930	Hire Purchase Act, 1972
Parties	Buyer and seller	Hirer and Hire vendor
How it made?	Orally or in writing	Only in writing – Valid
Transfer of ownership	Immediately buyer becomes owner of goods	When hirer paid last installment
Risk of loss	Risk of loss passes to buyer	Ownership not transferred hire vendor is liable
Return of goods	Buyer can't return goods	Anytime terminate agreement and return
Legal effect of Installment	Buyer remain liable to pay unpaid installment only	Each installment paid is treated as hire charges
Sale tax	Payable immediately	When all installment is paid

Difference between Sale and Bailment

Sale	Bailment
Transfer of property in goods for price	Delivery of goods for specific purpose that it will be returned to bailor or disposed of as per his direction
Property is transferred	It remains with bailor.
Consideration is in form of price, i.e., money	Gratuitous bailment is possible

Goods not returned to seller	Goods returned to bailor purpose of bailment is over
------------------------------	--

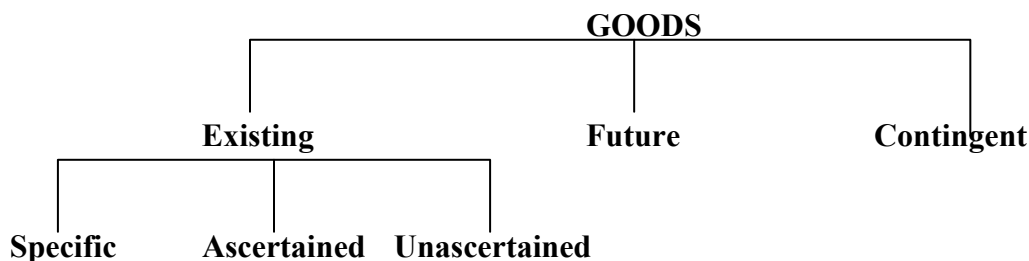
CONTRACT FOR WORK AND SKILL

- ⇒ Some contract involves use of both service and goods. This type of contract is considered as contract for work and skill.
- ⇒ This kind of contract involves exercise of skill and labour by one party on some goods or materials supplied by other party or supplied by party who exercise skill and labour for price. It is immaterial who supply material. Alternatively, it can be said that in this kind of contract, main purpose is to exercise work and skill. Supply of own goods is only subsidiary. Intension of parties is to transfer goods only after exercise of some skill and labour.
- ⇒ As it is not falling within categories of contract for Sale no sales tax is payable.

Example:

- (1) A dentist agreed to supply a set of artificial teeth to a patient. The material was wholly found by the dentist. Held, it was a contract for the sale of goods.
- (2) An artist was asked to paint a portrait. The material was supplied by the party and not by the painter. It was held to be a contract for work and labour and not of sale.

CLASSIFICATION OF GOODS



Types of Goods

The goods may be classified into following categories:

Existing goods

- Existing goods are the goods, which are owned and possessed by the seller at the time of sale. Existing goods may be of three types;

(a) Specific Goods:

- The goods, which are identified and agreed upon by the parties at the time of contract of sale.
- It should be noted that the goods must be both identified and agreed upon.

(b) Unascertained Goods:

- These are the goods, are not identified and agreed upon at the time of the contract of sale.

- These goods are merely described by the parties at the time of contract of sale.

(c) Ascertained Goods:

- There are the goods, which are identified after the formation of contract of sale. When the un-ascertained goods are identified and agreed upon by the parties, the goods are known as ascertained goods.

Future Goods

- ⇒ Future goods are those goods, which do not exist at the time of the contract of sale.
- ⇒ These goods are to be manufactured or acquired by the seller after the making of the contract of sale.
- ⇒ Future goods cannot be sold, but there can only be an agreement to sell.

Example:

A, a manufacturer agrees to sell 5 tables and 50 chairs to B at Rs.10,000. B agrees to purchase it. However, tables and chairs are yet to manufactured by A.

Contingent goods

- ⇒ It is a kind of future goods.
- ⇒ It is goods, the acquisition of which is contingent upon the happening or non –happening of an uncertain event.

Example:

A agrees to sell the goods loaded on the ship “Titanic”, which is coming from London to Bombay. The ship may or may not arrive. So, these goods will be called as contingent goods.

Basis	Futures Goods	Contingent Goods
1. Meaning	Goods that are yet to be manufactured produced or acquired by the Seller after making contract of sale.	Goods, the acquisition of which by the Seller depends upon a contingency, which may or may not happen.
2. Element of uncertainty	Acquisition of Future Goods does not depend upon and uncertainty.	The procurement of Contingent Goods is dependent upon an uncertain event.
3. Scope	Future Goods do not include contingent Goods because of the element of certainty.	They are wider in scope, it includes future Goods.
4. Effect of Contract	Where by a contract of Sale, the Seller purports to effect a present sale of future Goods, the contract operates as an “agreement to sell” the Goods[Sec.6(3)]	There may be a “Contract for Sale” of Goods, the acquisition of which by the Seller depends upon a contingency which may or may not happen [Sec.6 (2)]
5. Example	B agrees to buy the entire crop of wheat that would yield in S’s farm, at the rate of Rs.1000 per quintal.	A agrees to sell to B a certain painting only if C, its present owner, sells it to him. The sale is contingent upon the sale by C.

Price of Goods – Sec 9 – 10

Price means the money consideration for a sale of a Goods 2(10)

The following are the modes of determining price: [Sec. 9]

- ⇒ Price is specified under the contract. It is the most common method of determining the price. Here, parties decide the price in advance.
- ⇒ Price may be determined as per the method specified in contract.
Example :
Delivery of rice on 1st December 2008 at the rate prevailing on that day.
- ⇒ Price may be determined in accordance to custom and usage of trade. This method is applicable if parties regularly trade.
- ⇒ Where the price is not fixed as above, the buyer shall pay the seller a *reasonable price*.
‘What is a reasonable price is a question of fact and circumstances.

Fixation of price by third party. (Sec. 10)

If it is so, contract shall specify name of third party.

If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price.

If the third party is prevented from fixing price, defaulting party is liable for the damages.

Consequences of Destruction of Specific Goods – Sec 7 – 8
--

The consequences of destruction of specific goods can be discussed under the following three heads:

- ⇒ ***If goods perish before making the contract***
 - Contract is void – ab – initio, due to mistake as to existence of subject matter.
 - It is to be noted that if the seller has knowledge about the destruction of goods, even then the enters into the contract of sale with buyer, then seller is bound to compensate to the buyer.
- ⇒ ***Where a part of the goods is perished before making contract***
 - If the goods was divisible, then the contract can be enforced party and if the goods was indivisible, then the contract becomes void – ab – initio.

Example:

A contracted to sell one wagon containing 700 bags of groundnut to B. Unknown to A, 109 bags had been stolen at the time of sale, Therefore, A made a delivery of 591 bags. Held, the sale was void.

If goods perish after the “Agreement to sell; but before’ Sale [Sec. 8]

The contract is void if subsequently the goods have perished, and there is no fault on the part of the buyer or seller in perishing the goods.

Example:

A horse was delivered upon trial for 8 days. However, the horse died within 8 days, without the fault of buyer or seller. Held, the seller must bear the loss, as the contract was void.

However, parties to the contract may provide otherwise also.

Section 7 and 8 are applicable only in case of specific goods.

Therefore, if unascertained goods are destroyed either before or after making the agreement, the contract shall not become void. Thus, in an agreement to sell unascertained goods, even if the entire stock of goods is destroyed, the contract that not become void and the seller will have to perform his promise.

Example

‘A’ agreed to sell to ‘B’ 100 bags of wheat from his stock of 1,000 bags in his godown. The entire stock was destroyed by fire. ‘A’ is bound to deliver 100 bags of wheat or else he will be liable for damages.

If the contract does not otherwise provide, then –

- ⇒ Stipulation as to time of payment is not deemed to be essence of contract.
- ⇒ Stipulation as to time of delivery is deemed to be essence of contract.

CONDITIONS AND WARRANTIES

- ⇒ Generally, at the time of sale, the seller makes some representation, statements of stipulations for the praise of his goods. Some of representations are in nature of opinion others are in nature of facts. Representation as to fact which becomes a part of contract of sale is called as stipulation.
- ⇒ Stipulation may be condition or warranty depends upon its importance in relation to contract.
- ⇒ Stipulation which is *essential to the main purpose of contract is known as condition*. Breach of condition gives the aggrieved party right to terminate the contract.
- ⇒ Stipulation which is *collateral to the main purpose of the contract is warranty*. Breach of warranty gives rise to the aggrieved party right to claim damages but contract cannot be terminated.
- ⇒ The conditions and warranties *may be express or implied*.
- ⇒ Express conditions and warranties are those, which the parties agree expressly, i.e. orally or in writing.
- ⇒ Implied conditions are those, which are implied by the law in the absence of any agreement to the contrary.

IMPLIED CONDITIONS

The following are the implied conditions which are contained in the Sales of Goods Act:

Conditions as to title – sec 14(a)

- ⇒ There is an implied condition on the part of the seller that
 - In the case of sale, the seller has a right to sell the goods, and
 - In the agreement to sell, the seller will have a right to sell the goods at the time of passing of ownership in goods.
- ⇒ If the title of seller out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

Conditions as to description – Sec 15

- ⇒ Where the goods are sold by description, there is an implied condition that the goods shall correspond to the description.

Example;

A machine was sold. The buyer has not seen the machine, but the seller described it as a new one. However, it was found to be a very old one. Held, the machine was not according to the description.

Sale by sample – Sec 17

- ⇒ Where the goods are sold by sample, the following are implied conditions.
- The bulk shall correspond to sample in quality.
 - The buyer shall be given a reasonable opportunity to compare the goods with the sample.
 - The goods shall be free from any defect, rendering them un – merchantable. It is to be noted that this implied condition applies only in the case of latent defects, i.e. those defects which cannot be discovered by ordinary inspection. In fact, such defects are discovered when the goods are put to use or by examination in laboratories. The seller is not liable for apparent or visible defects which can be discovered by examination.

Sale by description as well as sample – Sec 15

- ⇒ If the sale is by sample as well as description, both conditions shall be satisfied. Goods must correspond with sample as well as description.

Example :

A agreed to sell to C some oil described as “Foreign refined oil” and warranted only equal to sample. The goods supplied were equal to sample, but contained a mixture of hemp oil. Held, C could reject the goods.

Conditions as to quality and fitness for buyer’s purpose – Sec 16

- ⇒ Where the buyer, expressly or impliedly, tells the seller the particular purpose for which he needs the goods and relies on the skill or judgment of the seller, there is an implied condition that the goods shall be reasonably fit for such purpose.
- ⇒ When the article can be used only for one particular purpose, the buyer need not inform the seller the purpose for which the goods are required.

Example:

A purchased a hot water bottle from a chemist. While the bottle was being used by A’s wife, it burst and injured A’s wife. Held, the seller was liable for damages as the bottle was not fit for the purpose for which it was meant – Priest vs Last.

Exceptions to the implied condition as to quality or fitness

- ⇒ The condition as to quality or fitness’ will not apply, if the buyer is suffering from an abnormality, which renders the goods unsuitable for a particular purpose and the buyer does not inform the seller about that abnormality.

Example

A purchased a coat. He had abnormally sensitive skin, By wearing the coat, he got skin complaint. Held, there was no breach of condition, as he had not disclosed the abnormally of his skin.

- ⇒ Where the goods can be used for a number of purposes, the buyer should inform the particular purpose for which such goods were required. If the does not disclose, there is no such conditions of quality or fitness.

Conditions as to merchantability

- ⇒ Where goods are *bought by description* from a seller, who deals in goods of that description, there is an implied conditions that the goods shall be of merchantable quality.
- ⇒ ‘Merchantability’ means that there is no defect in the goods, which renders them unfit for sale. Thus, a watch that will not keep time and a pen that will not write cannot be regarded as merchantable.

Example:

A radio set was sold to a layman. The set was defective. It did not work in spite of repairs, Held, the buyer could return the set and claim refund.

Condition as to wholesomeness

- ⇒ In the case of *eatable and food – stuff*, there is an implied condition that the goods shall be wholesomeness, i.e., free from any defect which renders them *unfit for human consumption*.

Example:

A Purchased milk from B, a milk dealer. The milk contained typhoid germs. A’s wife on taking the milk got infected and died. Held, A was entitled to get damages – Frost vs Aylesbury Dairy Co. Ltd.

IMPLIED WARRANTIES

The following are the implied warranties which are contained in the Sales of Goods Act:

Warranty as to quiet possession – Sec 14

- ⇒ In the absence to any contract showing contrary intention, there is an implied warranty that the *buyer shall have and enjoy quiet possession of the goods*. If the buyer is disturbed in the enjoyment of the goods, he can claim damages from the seller.

Warranty against encumbrances – Sec 14

- ⇒ Unless the circumstances of the case are such as to show a contrary intension, there is an implied warranty that the *goods shall be free from any charge or encumbrance* in

favour of any party not declared to the buyer before or at the time contract is made. However, there will not be any such warranty if charge is declared to buyer at the time of sale.

Warranty as to quality and fitness by usage of Trade – Sec 16

⇒ An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Warranty to disclose the dangerous nature of goods

⇒ In case of sale of dangerous goods, the *seller is under an obligations to warn the buyer about the probable danger*. Failure to do so will make the seller liable to pay damages.

Example :

A sold a tin of disinfectant to B, knowing that it was likely to be dangerous to the tin, whereupon disinfectant powder went into her eyes, causing her injury. Held, A was liable in damages to B, as he failed to warn B of the probable danger.

Difference between Condition and Warranty

Matter	Condition	Warranty
Stipulation	Essential to main purpose of contract	Collateral (subsidiary) to main purpose of contract.
If breach?	Buyer has right to cancel contract	Buyer has no right to cancel the contract . Can claim damages
Treatment	Breach of condition may be treated as breach of warranty	Breach of warranty can't be treated as breach of condition

DOCTRINE OF CAVEAT EMPTOR

⇒ The doctrine of *‘Caveat Emptor’* means *“let the buyer beware”*.

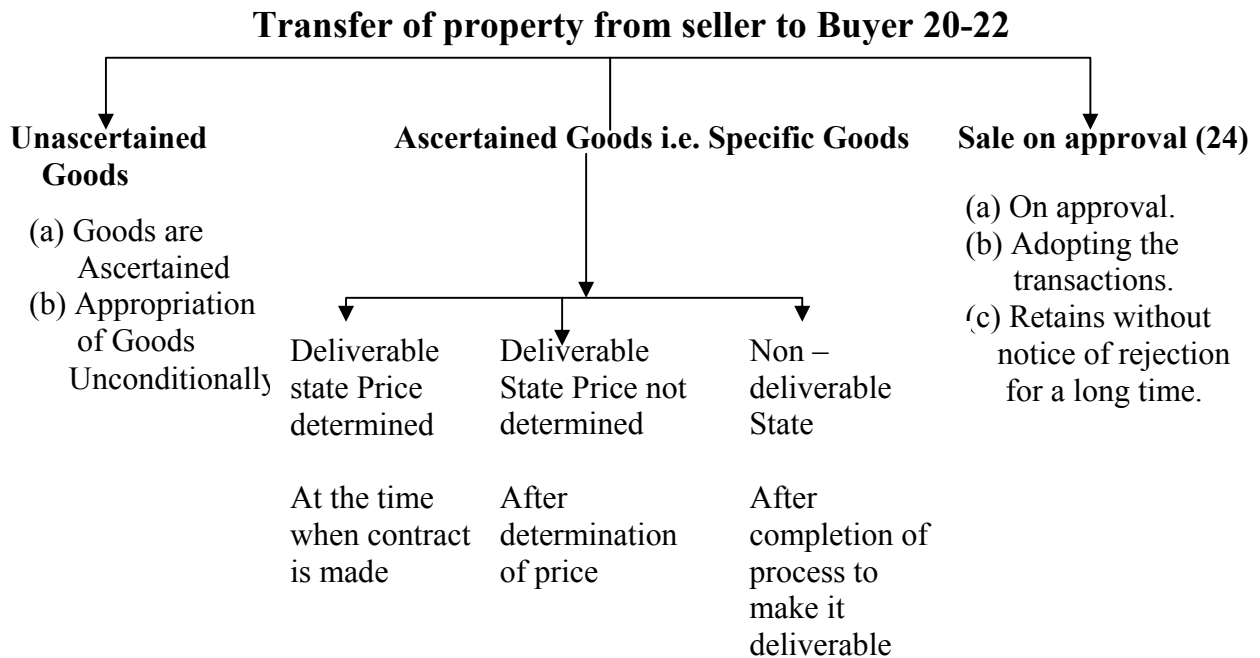
⇒ *It means that the buyer while purchasing goods must act with a “third eye and ear”, i.e.,*

- He should be careful to see that the goods purchased will serve his purpose well.
- If the buyer is not careful and he finds later on that the goods do not serve his purpose, he cannot hold the seller liable for it.
- The seller is under no obligation to tell the defects of his articles.

⇒ However, in the following exceptions Doctrine of caveat emptor is not applicable:

- Implied conditions as to quality or fitness. It means when buyer has specified his purpose and relied on skill of seller, the doctrine of caveat emptor is not applicable.
- When goods are sold by description, it should be of merchantable quality. In such case, doctrine of caveat emptor is not applicable.
- In case of edible items, implied condition of wholesomeness is applicable and goods should be fit for human consumption then buyer is not liable but seller will be liable.
- Usage or custom of trade.
- When the consent of buyer is obtained by fraud, the provision of doctrine of caveat emptor is not applicable.

TRANSFER OF OWNERSHIP



⇒ *Ownership is transferred immediately at the time of making the contract if all the following conditions are satisfied:*

- Contract is for specific goods.
- Goods are in deliverable state.
- Goods are not required to be weighed or measured for determining price.

Example :

A sold to B, 100 bales of cotton lying in his godown. Before the bales could be identified and separated, all bales were destroyed in fire. Here, seller is liable for damage because ownership is not transferred.

Section 21

⇒ If the goods are not ready in deliverable state at the time of making contract of sale, ownership of goods is transferred after formation of contract of sale when following conditions are satisfied;

- Contract is for specific goods.
- Goods are put in deliverable state by seller.
- Fact that the goods are put into deliverable state has come to knowledge to the buyer.

Example :

Certain quantity of oil was purchased by A. The oil was to be filled in tins. B filled up some of the tins and informed A to take the delivery. In the meantime, a fire destroyed

the entire quantity of oil. Held, A will bear the loss of the oil which was filed in the tins and the seller must bear the loss of the balances.

Section 22

⇒ If the goods are not weight or measured at the time of making contract of sale, ownership of goods is transferred after the formation of contract of sale when the following conditions are satisfied.

- Contract is for specific goods
- At the time of formation, price is not determined. It is determined later by weighed or measurement.
- Goods are put in deliverable state by the seller.
- Fact that the goods have been weighed or measured in order to determine price has come to knowledge of buyer.

Example

A sold 10 kg wheat. The wheat was to be weighed. Before the wheat was weighed, it was carried away by the flood. Held, the ownership of the wheat left with the seller and it did not pass to the buyer.

Transfer of ownership in the case of unascertained goods – Sec 18 and 23

⇒ In the case of unascertained goods, when both parties come to know which particular goods shall be delivered, ownership is transferred.

⇒ The following conditions must be satisfied to transfer the ownership:

- Ascertainment is first step in transfer of ownership. It means process of identification and setting aside goods from a huge mass of goods.
- Generally, it is made by seller, (*unilateral act*).

Appropriation :

For property to pass *u/s 23*, the following conditions must be satisfied –

- (a) Goods of the description mentioned in the contract must be produced or obtained.
- (b) The must be in a deliverable state, i.e. the Goods are in such state that the Buyer would, under the contract, be bound to take delivery of them.
- (c) They must be unconditionally appropriated to the contract, Unconditional appropriation is where, in pursuance of the contract, Seller –
 - (i) Delivers the Goods to Buyer or a carrier or other bailee for their transmission to Buyer and
 - (ii) does not reserve the right of disposal. [Sec. 23(2)]
- (d) The assent of the parties may be given expressly or impliedly and can be given either before or after the appropriation.
- (e) **Example:** A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, given notice to B that the bags are ready and requires him to take them away. B says he will

take them as soon as he can. By this appropriation by A, and assent by B, property in the sugar passes to B.

⇒ Contract to sell unascertained goods is not complete sell, it is agreement to sell.

Example :

20 bags of sugar out of a bulk were agreed to be sold. 4 bags of sugar were filled up and taken away by the buyer. Subsequently, the seller filled up 16 bags and informed the buyer. The buyer replied that he will take delivery as soon as possible. However, before the buyer could take their delivery. Goods were lost. Held, the buyer was responsible as the ownership had passed to the buyer.

Transfer of ownership in Case of Goods Sent on Approval or on sale or Return Basis – Sec. 24

⇒ It means buyer has the option either to return goods. Here, property in goods doesn't pass from seller to buyer:

Case	When ownership transferred
When the buyer given his approval or acceptance.	Approval or acceptance is communicated to seller
When the buyer does some act of adopting the transaction	When act of adoption is done.
When the buyer fails to return the goods.	On expiry of the fixed time
(a) If time is fixed for return of goods.	On expiry of the reasonable time.
(b) If no time is fixed	

Example

Certain jewellery was delivered to a buyer on sale or return basis. The buyer pledged the jewellery. Held, the buyer had adopted the transaction and as such property had passed and the seller could not recover the jewellery from the Pawnee.

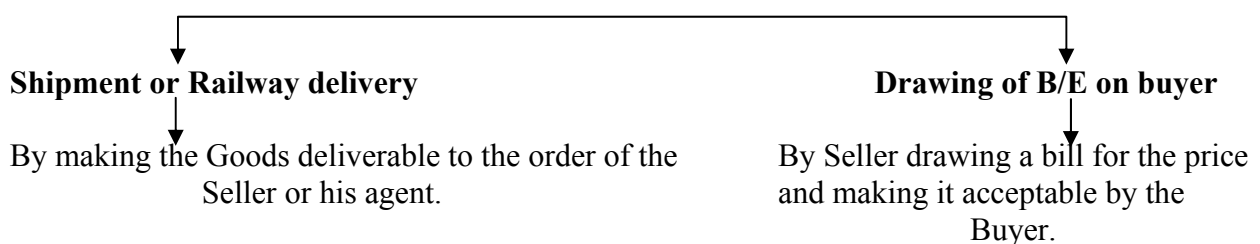
Right to disposal of Goods Sec. 25

⇒ Where the railway receipt or the bill of landing is in the name of the buyer, but is sent through the bank with the instructions that the same is to be delivered against the acceptance of the bill or payment of the price, the property in the goods shall not pass.

Deemed right of reservation Sec. 25

The seller may reserve the right of disposal under the following modes –

Reservation of right of disposal



Passing of Risk Sec. 26

- ⇒ The general rule is that risk passes with ownership. We can say that risk and ownership and ownership to together. However, express agreement between parties may provide otherwise.
- ⇒ Possession of goods is immaterial for risk.
- ⇒ When delivery is delayed because of fault of any party, he is liable for risk.
- ⇒ Sometime, risk is based upon custom or usage of trade.
- ⇒ Where the delivery of goods has been delayed due to the fault of buyer/seller, goods are at the risk of the party in fault.

Sale by Non – Owners or Transfer of Title by Non – Owners – Sec 27 – 30

- ⇒ The general rule is expressed by maxim ‘Namodat quod non habet’ which means no one can give what he does not himself posses. If seller’s title is defective, then buyer’s title will be defective.
- ⇒ Alternatively, we can say that the seller can’t give a better title to the buyer than be himself has.

The following are the exceptions to the above general rule:

○ **Sale of Estoppel [Sec. 27]:**

Where the owner by his conduct or by his act leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact that seller had no right to sell the goods.

Example : (Refer Classroom Notes *Hira Sweets*)

⇒ **Sale by mercantile agent Sec. 27**

Agent of seller can transfer the title if following conditions are satisfied :

- Agent must be in possession of goods or documents of title.
- Agent has sold goods in ordinary course of business.
- Buyer has acted in good faith.
- Buyer has no knowledge that seller had no authority to sell.

Example

A entrusted his car to a mercantile agent to receive offers and not to sell. A also delivered signed documents to the agent. On the basis of these documents, the agent pretended to the buyer that he had authority to sell the car and thus, the car was sold. Held, the owner was estopped from denying buyers title.

A mercantile agent means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)].

⇒ **Sale by one of the joint owners – Sec 28**

One of the joint owners can sale goods if following condition are satisfied.

- Goods are in sole possession of one of the joint owner.
- Buyer has acted in good faith.
- Buyer has no knowledge that seller had no authority to sell.

Example

A and B Jointly purchased a car. The car was in the possession of A with the consent of B. Later on A sold the car to an innocent purchaser. The purchaser will get a good title.

⇒ **Sale by person in possession under voidable contract**

- Seller must be in possession of goods under contract voidable.
- Goods must have been sold before contract is rescinded.
- Buyer has no knowledge that seller had no authority to sell.

Example

A purchased a watch from B under fraud. A sold the watch to C, who bought it in good faith. C gets goods title.

⇒ **Sale by seller in possession after sale – Sec 30**

- Ownership of goods has been passed to buyer.
- Seller continuous to be in possession of goods even after sale.
- Seller resells goods to new buyer.
- New buyer buys without notice to prior sell.

Example

A sells certain goods to B and promises to deliver the goods the next day. Before the delivery, A sells and delivers the goods to C, who buys them in good faith and without notice of the prior sale to B, C gets a good title to the goods, not with standing that the property had, before he purchased, passed to B.

⇒ **Sale by unpaid seller Sec. 54**

After exercise of his right of lien or right of stoppage goods in transit.

⇒ If the owner of goods has declared insolvent and his goods, is sold by official receiver or assignee or liquidator.

⇒ **Sale by finder of goods (Sec.169 of IC Act 1872).**

- The owner can't be found or found but refuse to pay lawful charges to finder.
- The Goods are perishable in nature or in danger. To save goods from loss, finder can sale it.
- Lawful charges of finder amount as 2/3 of its original value.

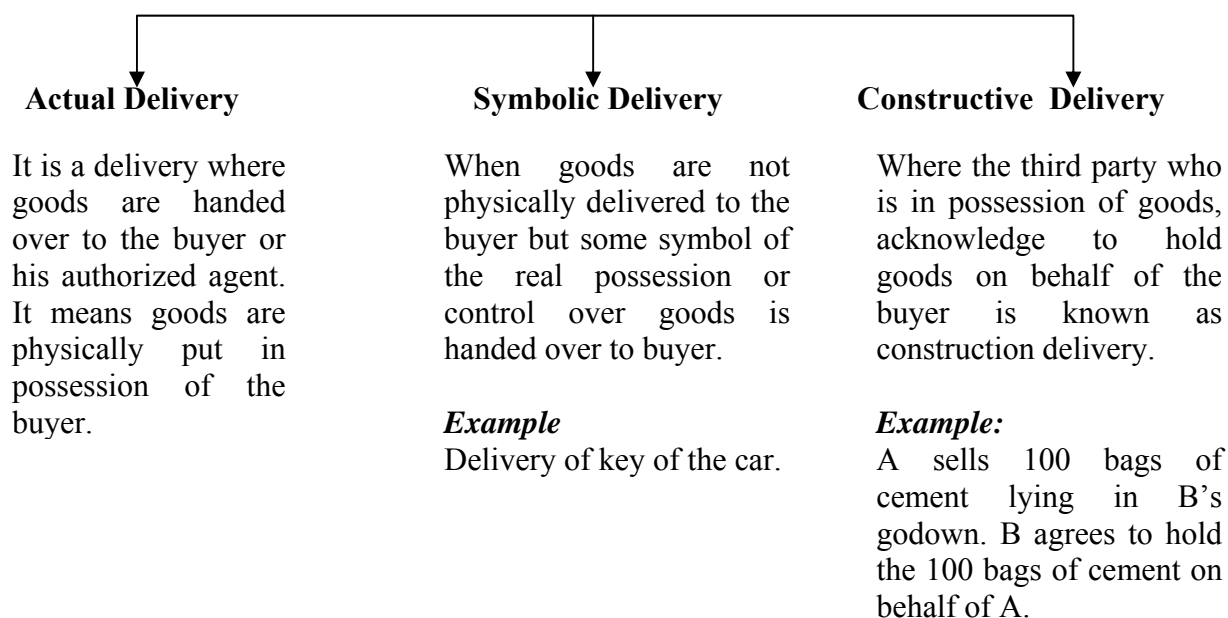
⇒ **Sale by pawnee or pledge(Sec.176 of IC Act 1872).**

- If there is default on part of payment of price or performance within time.
Reasonable notice is given by pawnee or pledge.

PERFORMANCE OF A CONTRACT OF SALE

1. **Meaning Sec.2(2):** Delivery means voluntary transfer of possession from one person to another.
2. **Duty of Seller Sec. 31:** It is the duty of the Seller to deliver the goods and of the buyer to accept and pay for them in accordance with the contract of Sale.
3. **Mode of delivery : Sec. 33:** Delivery of Goods sold may be made by –
 - (a) doing anything which the parties agree shall be treated as delivery ; or
 - (b) which has the effect of putting the Goods in the possession of the Buyer or of any person authorized to hold them on his behalf.

TYPES OF DELIVERY



Forward Delivery

Where delivery is to be made in future, and not at the time contract is entered into.

RULES REGARDING DELIVERY

Payment and delivery are concurrent Sec 32.

- ⇒ General rule suggest that the delivery of goods and payment of price are **concurrent** conditions. However, parties may provide otherwise.

Part Delivery Sec34.

- 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.

Buyer's duty to Demand the Goods Sec. 35

- ⇒ It is seller's duty to be ready and willing to deliver the goods to the buyer. But he is not bound to deliver goods unless the buyer makes a demand for delivery of the goods.
- ⇒ If the buyer fails to demand the delivery of goods, the seller is not liable for breach; Buyer must demand delivery within a reasonable time. However, contract may provide otherwise.

Rules as to Delivery [Sec. 36]**Place of delivery:**

Situation	Place where goods are to be delivered
If contract specified the place of delivery Contract does not specify the place of delivery;	At the place specified At the place at which goods are at the time of sale
In case of sale In case of agreement of sell (i) In respect of existing goods	At the place at which goods are at the time of agreement of sell.
(ii) In respect of future goods	At the place at which goods are manufacture, produce or acquire

Time of Delivery

- ⇒ If the contract specified time of delivery, goods shall be delivered within such time.
- ⇒ If no time is specified in contract as to time of delivery of goods, it should be delivered within reasonable time.

Delivery when the Goods in Possession of third party 36(3):

Unless and until such third person acknowledge to the buyer that the holds the goods on his behalf
However this provision shall not affect the operation of the issue or transfer of any documents of the title of the goods.

Time is tender of delivery

Demand or tender of delivery may be treated as reasonable unless made at a reasonable hour. That is, a reasonable hour is a question of fact.

Expenses of delivery

- ⇒ All expenses of making delivery of goods shall be paid by seller
- ⇒ Buyer shall bear the expense for receipt of goods.
- ⇒ unless otherwise agreed.

Delivery of Wrong quantity Sec 37

- ⇒ *If the seller has delivered excess quantity, the buyer has the following options:*
 - To accept the whole of the goods delivered to him.
 - To reject the whole of the goods delivered to him.
 - To accept contracted quantity and reject the excess.
- ⇒ *Seller has delivered short quantity, buyer has following options.*
 - To accept the goods delivered to him.
 - To reject whole quantity delivered to him.
- ⇒ *Right to reject the goods in excess of the contract does not apply where the variation is negligible.*
- ⇒ *Further, the right to reject the goods is not similar to the right to cancel the contract. If the buyer rejects the goods (either because they are less than or in excess of the quantity contracted for), the seller has a right to tender again the contract quantity and the buyer is bound to accept the same.*

Delivery of Mixed Quality – Quantity

- ⇒ The seller is bound to deliver goods of exact quality – quantity otherwise buyer may:
 - Reject the whole.
 - Reject the goods not complying with quality or quantity and accept the rest.
- [Contract is not repudiated] – means subsisting*

Delivery by Installment Sec 38

- ⇒ Delivery by installment is not valid except when the contract provides so or buyer accepts the delivery in installment.

Delivery to Carrier or Wharfinger – Sec 39

- ⇒ Delivery to carrier or wharfinger amounts as delivery to buyer if the following conditions satisfy:
- Buyer has made reasonable contract with carrier.
 - Seller is required to give notice to buyer to enable him to insure goods. If not to do then his risk.
- ⇒ If seller makes valid delivery of goods, buyer has following duties:
- To accept the goods.
 - To pay the unpaid price.
- ⇒ Where goods are sent by sea route, seller shall give notice to buyer to insure goods otherwise he will be liable for loss.

Risk where goods are delivered at distant place Sec 40

Where the seller agrees to deliver the Goods at his own risk at a place other than at which they are sold, the Buyer shall bear the risk of deterioration necessarily incident to the course of transit, unless otherwise agreed.

Buyer's right to examining goods Sec 41

Delivered to buyer – not previously examined reasonable opportunity.
Seller is bound on request to afford the buyer a reasonable opportunity of examine the good.

Acceptance of Delivery – Sec 42

- ⇒ Delivery doesn't mean acceptance of goods, Buyer has deemed to have accepted the goods under the following circumstances:
- When he intimates the seller about acceptance of goods.
 - After receipt of goods, he does some act of affirmation.
 - When he doesn't inform seller about rejection of goods within a reasonable time.

Buyer's not bound to return the rejected good Sec 43.

He is required to intimate the seller about rejection. (Buyer's not bound to return the rejected goods)

Liability of the Buyer for refusal of delivery of goods Sec 44

- ⇒ If the buyer wrongfully refuses to take delivery of goods, he is liable for damages and expenses like storage cost and transportation cost to the seller.

UNPAID SELLER

Section 45

A seller of goods is deemed to be unpaid in the following cases:

- The price must be due but not paid. (When the *whole of the price* has not been paid or tendered)
- A negotiable instrument, like cheque, bill of exchange etc., was received, but the same has been dishonored.
- Seller who has obtained a decree for the price of the goods will also be an unpaid seller, if the decree has not been satisfied.
- When the seller has been paid the large amount but small portion of payment remains to be paid.
- Seller must have an immediate right of action for the price.

Right of an Unpaid Seller

Unpaid seller has the right against goods as well as against the buyer:

⇒ *Rights of unpaid seller against the goods:*

- Where ownership is transferred
 - ✓ Right of lien – Sec 47 – 49
 - ✓ Right to stoppage in transit – Sec 50 – 52
 - ✓ Right to resale of the goods
 - ✓ Where ownership is not transferred to the buyer, seller has the right to with hold delivery of goods.

Right of an unpaid seller against the goods Sec 46

The ownership has not been transferred.

Conditions Unpaid Seller + ownership not transferred.

Consequences Lawfully refuse to deliver the goods to the buyer until he is paid the price.

Buyer cannot hold the seller liable for now delivery of goods.

Seller's Lien Sec.47

Condition for exercising lien

Condition – Unpaid seller – actual possession

Buyer not paid the price of the good. The unpaid seller can exercise lien even through.

The property is goods has passed to the buyer

He is in the possession of the goods as an agent or bailee for the buyer.

Right of Lien

⇒ It means the right to retain the possession of goods until full price is received.

⇒ Seller can exercise his right of lien on the following two conditions:

- He must be in possession of the goods.
 - He is the unpaid seller.
- ⇒ If buyer becomes insolvent, lien can be exercised by unpaid seller.

In the following circumstances, unpaid seller's lien is lost: Sec 49

- When the seller waives his right of lien.
- When the buyer disposes off the goods by sale with consent of seller.
- When the goods are delivered off the buyer or his agent.
- When price is paid by the buyer.
- The right of lien cannot be exercised, where the right of lien has been expressly excluded.
- By delivery of goods to carrier. Without reserving the right of disposal of goods,.
- By Estoppels i.e. where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

Lien is not lost merely because the unpaid seller has obtained a decree for the price of the goods

Part delivery Sec. 48

Part delivery of goods does not disentitle the unpaid seller from existing lien on the remainder goods.

Right of Stoppage in Transit – Sec 50 to 52

Right of stoppage goods in transit Sec 50

- ⇒ The right of stoppage in transit is an extension of the right of lien.
- ⇒ The right of lien is a right to retain possession, whereas right of stoppage in transit is a right to regain possession.
- ⇒ The right of stoppages in transit can be exercised, if the goods are in transit, and the buyer has become insolvent in the meantime.

Conditions : unpaid Seller + possession of goods with carrier (independent) + insolvent buyer

Duration of transit – Sec 51

- ⇒ Carrier may hold the goods in three capacities:
 - As Seller's Agent : In this case, the seller has lien on the goods, so question of right of stoppage in transit does not arise.
 - As Buyer's Agent: In this case, the seller cannot exercise the right of stoppage in transit.
 - In an Independent Capacity: In this case, from the time they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent takes their delivery.
- ⇒ Goods are deemed to be in course of transit from the time they are delivered to a carrier for the purpose of transmission to the buyer, until the buyer or his agent takes their delivery.
- ⇒ The goods are in transit, even if the buyer asks the carrier to take them to some other destination until they are delivered to the buyer at some other destination.

⇒ If the goods are rejected by the buyer and the goods are in the possession of the carrier, the transit is not at an end, even if the seller has refused to take them back.

How Stoppage in transit is effected Sec 52

- ⇒ Right of Stoppage of Goods in Transit can be exercised either:
- By taking actual possession of the goods, or
 - By giving notice of his claim to the carrier, who holds the goods

Effect of sub – sale or pledge by the buyer Sec.53

Sub sale of pledge by the buyer

Effect on unpaid seller’s right

The unpaid seller’s right of lien or stoppage in transit is not affected by any further sale or other disposition of goods by the buyer.

Exception

- When seller has given his assent to such mortgage or other disposition of goods made by the buyer.
- When a document of title has been transferred to the buyer and the buyer transfer the document to a person who has brought the goods in good faith for value.

Distinction Between Lien and Stoppage – in – Transit

	Lien		Stoppage – in – Transit
1.	The goods are in actual possession of the seller.	1.	The goods are in possession of an independent carrier or bailes.
2.	This right can be exercised even when the buyer is solvent but fails or refuses to pay the price.	2.	This right can be exercised only when the buyer becomes insolvent.
3.	This right comes to an end when the seller parts with the goods.	3.	This right commences only when the seller delivers the goods to a carrier.
4.	This is a right to retain possession over the goods.		This is a right to regain possession o the goods.
5.	This right can be exercised by the seller himself.	4.	This right can be exercised by the seller through the carrier or the bailee in whose possession the goods are.

Right of Resale Sec 54

- ⇒ In case of perishable goods, unpaid seller can resale the goods if following conditions satisfied.
- Buyer fails to pay the price within reasonable time.
 - Seller is not required to give notice of re – sale.
- ⇒ In case of other goods (not perishable) unpaid, the seller can resale goods if the following conditions are satisfied:

- Seller has exercised his right of lien or stoppage of goods in transit.
- Seller has given notice to buyer to pay the price within reasonable time and buyer fails to pay the price.

⇒ Following will be effect of resale:

Rights	In case of resale after notice	In case of resale without notice
Unpaid seller’s right to recover loss on sale	Available	No Available
Original buyers’ right to recover profit on goods	Not available	Available
New buyer’s right to acquire good title.	Available	Available

Right to Withhold Delivery of Goods

- ⇒ It means seller refuses to deliver goods to buyer.
- ⇒ The following conditions must be satisfied to exercise right to withhold delivery of goods:
 - Seller is unpaid seller
 - Ownership of goods has not been passed.

Right of unpaid seller against buyer:

Suit for price [sec 55]

- 55 (1) – Property has passed to the buyer
 - Buyer wrongfully neglects or refuses to pay price of goods
- 55 (2) - property has not passed to the buyer
 - price is payable on a particular date irrespective of delivery.
 - Buyer wrongfully neglects or refuses to pay price of goods

Suit for damages for non acceptance (56)

When buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non acceptance.

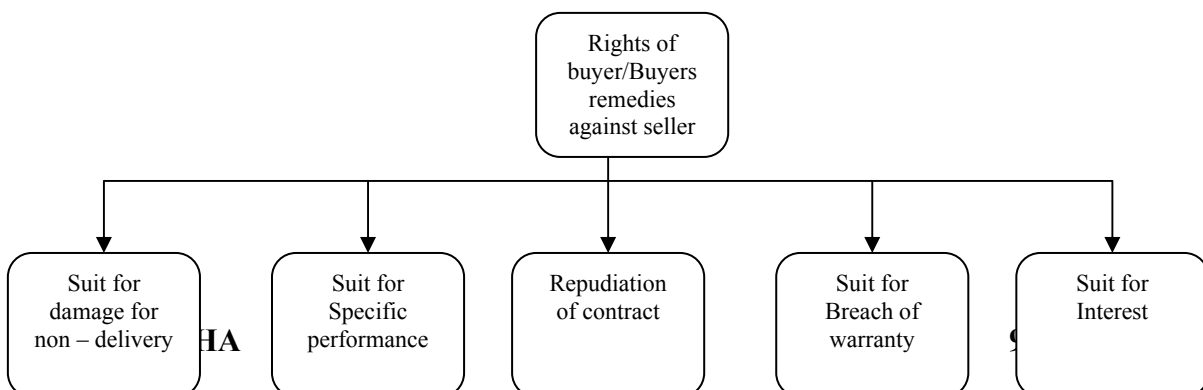
Suit for damages for Breach (60)

Repudiation of contract before due date: Where the contract is repudiated by the buyer before the date of delivery the seller may treat the contract as rescind and sue for damage for the breach.

Suit for interest [61(2) (d)]

Specific agreement between seller and buyer as to interest on price of goods from the date on which payment becomes due the seller may recover the interest from the buyer.

⇒ This right is in addition to other remedies available to the seller.



Buyer's right against the seller or remedies against seller

The buyer has following remedies against the seller:

⇒ **Suit for damage for non – delivery Sec 57**

Buyer is ready and willing to take delivery of goods but seller wrongfully neglects or refuses delivery of goods, buyer may sue seller.

⇒ **Suit for specific performance Sec 58**

Where seller wrongfully refuses to deliver specific or ascertained goods, court may direct specific performance order.

⇒ **Suit for breach of warranty Sec 59**

If there is breach of warranty, buyer may claim damages from the seller. Buyer may deduct the amount of damage from price payable if price is not paid. Buyer may recover the damages if price paid.

⇒ **Right to repudiate the contract**

If the seller declares his intention of non – delivery of goods, buyer may repudiate the contract and immediately sue for damages.

⇒ **Suit for Interest**

- In the absence of any contract to the contrary no interest shall be payable by the buyer on the delay payment. If, there is no such agreement, the seller may give notice to the buyer of his intention to charge interest on delayed payment.

Delivery to Carrier

⇒ It means transporter or bailee to whom goods are delivered by the seller for transportation to buyer.

⇒ When goods are delivered to a carrier, it is deemed delivery of goods to the buyer if following conditions are satisfied:

- Seller delivers exactly same goods as per contract.
- The Buyer has informed carrier name, address and goods required to be delivered.
- The seller delivers goods for the purpose of delivery.

Auction Sale – Sec 64

⇒ It means public sale. The seller invites the interested parties by advertisement to offer the price. (i.e. bid)

⇒ The seller may hire service of auctioneer. An auctioneer is an agent of seller.

- ⇒ Advertisement of auction sale is not offer but an invitation to make an offer and therefore if an auction sale is not held on appointed day, bidder can't sue auctioneer.
- ⇒ Every bid amounts as offer and acceptance is given by auctioneer by some usual mode of acceptance e.g., fall of hammer, going – going gone or one – two – three.
- ⇒ Auction sale starts with placing of bids. Auctioneer accepts the highest bids but he may accept lower bid without giving any reason. When bid accepted, valid contract is formed.
- ⇒ Bid once made can be withdrawn before fall of hammer even if expressly prohibit.
- ⇒ Seller can bid at auction sale if bidders are informed of fact. (pretended bidding)
- ⇒ If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer. The bid is said to be pretended when it is made by the seller or some one on his behalf.
- ⇒ Only one person can be appointed for bidding.(called puffer)
- ⇒ Auctioneer may set reserve price or upset price. Bid lower than which is invalid.
- ⇒ 'In the case of Knockout agreement, the buyers joint their hands to eliminate competition among themselves at an raise the bid against each other and only one of them will bid at the auction. When the profit. Prima facie, a knockout agreement is not illegal. However, if the intention of the parties to the agreement is to defraud a third party, this will be illegal.
- ⇒ ***Damping is illegal, it includes;***
 - Pointing out defects in the goods, or
 - Misleading the purchaser or doing any other act so that he may not participate in the auction. It empowers the auctioneer to with draw the property from the auction.
- ***Sale in lots :***

When the goods are put up for sale in lots, each lot is deemed, prima facie, to be the subject – matter of a separate contract of sale.

Delivery of Goods in Contract by Sea Route

It includes following three categories of contracts:

- ⇒ **CIF Contract**
 - It means 'cost, insurance and freight;
 - Here, the price of goods includes the cost of goods, insurance and freight expenses.
 - In CIF contract, buyer pays insurance and freight expenses.
 - The essential of CIF contract is that seller shall deliver shipping documents to the buyer usually through the bank. If the seller fails to deliver the documents within reasonable time, he is liable for breach of contract.
 - Ownership of goods is transferred to the buyer, when he pays the price of goods while receiving shipping documents. If buyer refuses to pay the price, the seller can claim damages for breach of contract.

⇒ **FOB Contract**

- It means free on board. Here, seller is required to put the goods on board of ship at his expense.
- Buyer is liable for all the expenses and risk one goods are loaded on ship.
- The ownership of goods is transferred to the buyer as soon as goods are loaded to ship.

⇒ **Ex – Ship Contract**

- It means contract in which the seller has to deliver the goods to the buyer at the port of destination.
- All the freight charges and risk during voyage for goods remain with seller.
- Ownership of the goods is transferred to the buyer when goods are actually delivered at the port of destination.