

CHAPTER - 2

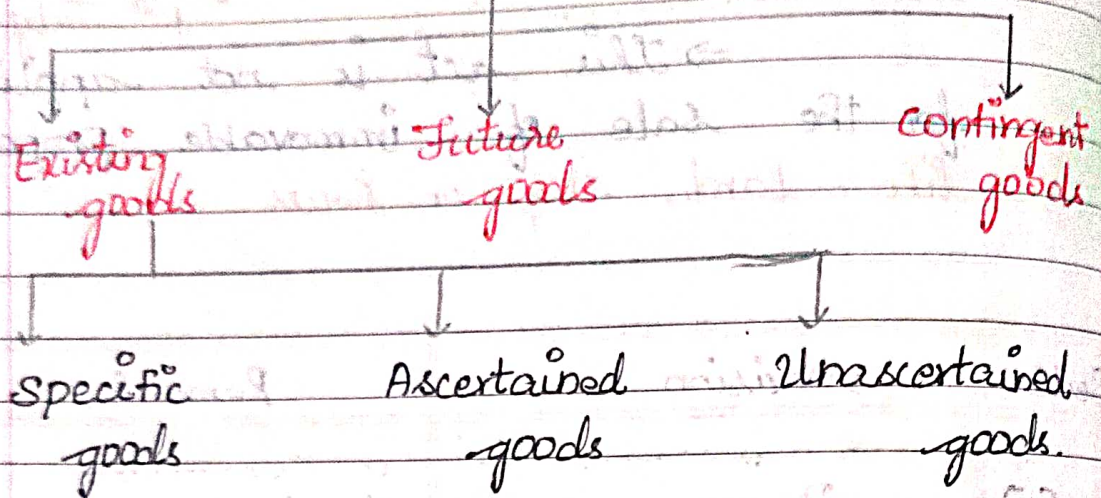
The sale of goods Act, 1930.

1st July, 1930

⇒ This act is not applicable for the sale of immovable properties like land, shop or house etc...

Section	provision	Remarks
2(1)	Buyer	who buys or agrees to buy.
2(13)	Seller	who sells or agrees to sell.
2(7)	Goods	Movable property, intangible, electricity, water, money not in circulation.
6	Existing goods	existed at the time of contract of sale.
2(14)	Specific goods	Identified and agreed upon
2(6)	Future goods	manufactured, produced or acquired by the seller after making contract
6(2)	Contingent goods	uncertain event may or may not.

Types of Goods.



Points To Remember:

* Existing goods → Sale

* Future goods → agreement to sell

* Contingent goods → agreement to sell, and not a sale.

* All future goods are ^{not} contingent goods.

* All contingent goods are future goods.

Basis of Difference between Sale and Bailment.

⇒ Transfer of property

⇒ Ratification of goods

⇒ consideration.

Types of Delivery.

Actual
delivery

Constructive
delivery

[Acknowledgement]

Symbolic
delivery

Section	Provision	Remarks.
2(2)	Delivery	Voluntary transfer of possession.
2(4)	Document of title to goods	water made → bill of lading, dock warrant, etc... railway receipt, warrant.
2(9)	Mercantile agent	Authority to sell or consign goods, buy goods or to raise money on the security of the goods.
2(11)	Property	General property → ownership Specific property → possession.
2(8)	Insolvent	Liability is more than the assets.
2(10)	Price	Consideration, monetary values.
2(12)	Quality	State or condition of goods.

Document showing title

It shows the name of holder of that certificate.

Document of title.

It doesn't show the name of holder of the certificate.

Elements of contract of Sale:

⇒ Two parties

⇒ Subject matter

⇒ Price

⇒ Transfer of property.

⇒ absolute or conditional

⇒ essential elements of

Valid contract.

Basis of Difference between sale and agreement to sell.

⇒ Transfer of property

⇒ Nature of contract

⇒ Remedies for breach

⇒ Liability of parties

⇒ Burden of Risk

⇒ Nature of Rights

⇒ Right of resale

⇒ In case of insolvency of Seller

⇒ In case of insolvency of Buyer.

Section	Provision	Remarks
ec (4)	<u>Sale and Agreement to sell.</u>	-
4(2)	"	Contract of Sale may absolute or conditional.
4(1)	"	A contract of Sale of goods is a contract whereby the Seller transfer or agrees to transfer the property in goods to the buyer for a price.
4(3)	<u>In Time of transfer of property.</u>	Sale → Immediately Agreement to sell → In future date.
7	<u>Goods perishing before making of contract</u>	Specific goods, perished or damaged, without the knowledge of the seller, Void - contract of Sale.
8	<u>Goods perishing before Sale but after agreement to sell.</u>	Specific Goods, Perished or damaged without any fault of buyer and Seller - Void agreement.
9 10	<u>Ascertainment of price.</u>	Buyer shall pay the reasonable price - valid price is not fixed at the time of contract.
	Third Party is Pretended to not fix the price → void but another may claim damages	Third party refuse to fix price → void.

Jus in Rem → Right against goods

Jus in Personam → Right against person

Hire purchase agreement are governed by Hire purchase Act, 1972

* Possession of Goods is deliver to the Buyer.

* Buyer has a condition to pay the agreed amount in periodical installments.

* the General property is to pass to the person on the payment of last instalments.

* Such person has a right to terminate the agreement at the any time before the property so passes.

Basis of Difference of Sale and Hire purchase

⇒ Timing of Passing property

⇒ position of the party

⇒ Termination of contract

⇒ Burden of Risk of insolvency of the buyer

⇒ Transfer of Title

⇒ Resale.

Unit 2: Condition & Warranty.

Section	Provision	Remarks.
11	Stipulation as to time	-
12(1)	Condition and Warranty.	Subject matter there of may be condition or warranty
12(2)	Condition	primary, Breach → Reject + Repudiate + claim damages
12(3)	Warranty.	Secondary, Breach → claims only + damages.
12(4)	Breach of condition is treated as Breach of warranty.	Breach of warranty is not considered as Breach of condition
13	When condition to be treated as warranty.	-

Basis of difference between condition and warranty.

- ⇒ Meaning
- ⇒ Right in case of breach
- ⇒ Conversion of stipulations.

When condition to be treated as warranty (Section 13).

Option at the Buyer

⇒ Elected

⇒ Waiver

Compulsory

⇒ excused by Law.

⇒ Non-Severability.

Implied Warranty

Section (14 b)

Undisturbed possession.

1) Buyer shall have quiet possession.

2) Unless Buyer can sue the seller.

Section (14 c)

non-existence of encumbrance

1) Free from any charge or encumbrance

in favor of third party.

~~Section (14 b)~~

Disclosure of dangerous nature of goods

in. Seller must warn the Buyer of the probable danger.

Section (16 (3))

quality or fitness by usage of trade

may be annexed or attached by the usage of trade.

Condition and warranty may be implied or express (Section 14-17).

Implied Condition

Section (14)a Title	Section (15) Description	Section (15) Sample & description	Section 16(1) Quality or Fitness
1) Sale → Right to sell	1) Should correspond with description	Sample + description are Satisfied.	1) Buyer should convey the purpose of Buying.
2) Agreement to sell → Right in future at the time of sale.	2) Buyer can reject if not as per description.	3) Goods dealt in by seller.	2) Buyer rely on Skill / Judgement of seller.
Section 16(2) Merchantability	Section (17) Sample.	Wholesomeness.	
1) By description	1) Bulk should correspond with Sample in quantity	Food stuff & eatables	
2) seller must be dealt in goods	2) Reasonable opportunity to examine goods.		
3) a man of ordinary prudence accept them as goods at that description.	3) Merchantable.		

CAVEAT EMPTOR

"Let Buyer Beware"

Section: 16 There is no implied warranty or condition as to the quality or fitness for any particular purpose.

⇒ It is Buyer's responsibility of selecting goods.

⇒ Seller is not responsible for bad selection by buyer.

⇒ Seller is not bound to disclose defects on goods.

Exceptions to the Caveat Emptor

⇒ Buyer made known to seller the purpose of his purchase.

⇒ Buyer relied on skill or judgement at seller.

⇒ Seller's business to supply goods of that description

⇒ Goods purchased under patent or Brand name.

⇒ When the seller commits fraud.

Date _____
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Unit 3: Transfer of Ownership and delivery of goods.

Transfer of Ownership Specific goods

↓	↓	↓
Section 20	Section 21	Section 22
In a deliverable state	To be put into a deliverable state	Seller has to do something to ascertain price.
Contract is made.	Putting into deliverable state + Notice to Buyer.	Such thing is done by Seller + Notice to Buyer.

Section 18 ⇒ Identification of goods

Unascertained goods → Seller is responsible.

Specific or ascertained → Buyer is responsible.

Unascertained goods.

Section 23

→ Unascertained or future	→ Appropriation by Seller + Consent of Buyer.
→ Conform → description and quality	→ Appropriation By Buyer + consent of Seller
→ deliverable state	→ Assent may be after or before Appropriation.
→ Unconditionally appropriated.	
→ Ex Assent (Express or implied)	

Section 25 → Reservation of Right of disposal.

Seller has kept condition

Buyer fails to fulfil condition

Then the seller can sell goods to 3rd party.

Section 26 → Risk prima facie.

Risk passes with property.

"If the ownership passes from seller to buyer risk also passes at any situation and vice versa."

⇒ If seller is in default in giving delivery than the seller is liable for loss

⇒ If Buyer is in default to take delivery than the Buyer is liable for loss.

Section 24 → Good sent on approval or "on sale or return".

⇒ Specific Approval (reject or approved)

⇒ Expiration of time leads to approved.

⇒ Doing something = Acceptance.

Transfer of title By Non Owners.

"Sale by the person not By the owner"

"Nemo dat quid non habet"



If the seller is not owner of goods, then Buyer also will not become the owner.

Exceptions to this rule

↓ Section 27.	Section ↓ 28	Section ↓ 29	Section 30 ↓ (1)
Agent. Possession, ordinary course of Business, Good Faith.	Joint owners possessions, Good Faith.	possession under a voidable contract. possessions, Good Faith.	Goods already sold but Seller still have possessions and sold the goods
Section 30 (2)	Section 30 (2)	Section 54 (3)	
Effect of Estoppel	Sold by Buyer having only possess of goods.	Sale by an unpaid Seller.	
* Official receiver or Liquidator.	does not include hire purchase.	* Finder of goods * pledger	

Rules Regarding Delivery of goods

⇒ Delivery (33)

⇒ Effect of part delivery. (34)

⇒ Buyer to apply for delivery (35)

⇒ Place of delivery 36(1)

⇒ Time of delivery. 36(2)

⇒ Goods in possession of a third party. 36(3)

⇒ Time for tender of delivery.

⇒ Expenses for delivery. 36(4)

⇒ Delivery of wrong quantity. (37)

⇒ Instalment deliveries. (38)

⇒ Delivery to carrier. (40) 39(1)

⇒ Deterioration during transit (40)

⇒ Buyer's right to examine the goods. (41)

Unit - 4 : Unpaid Seller

Date _____

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Section 45(1) → Unpaid Seller

⇒ Whole of the price has not paid, Seller has an immediate Right of action for price.

⇒ Bill of Exchange or any other negotiable instrument → when dishonour then Seller take action for price.

Section 46 → Unpaid Seller's right.

⇒ a lien on the goods for the price while Seller is in possession of goods.

⇒ In case of Insolvency of Buyer a right of Stopping of goods in transit after he has parted with the possession.

⇒ A right of re-sale.

Right of unpaid seller against the goods.

* With holding Delivery

* Lien

* Stoppage in Transit

* Resale

Right of lien

Section 47	Section 48	Section 49.
1) No credit period decided $\rightarrow$ Immediately	Part delivery -ry.	Termination.
2) Credit period expires	Exercise his right of lien on the Balance goods.	1) Parted Possession with carrier without Reserving Right of disposal
3) Buyer Become Insolvent.		2) Buyer or his agent lawfully, taken possession.
		3) Waiver
		4) Estoppel.

Right of Stoppage in Transit

Section 50

⇒ Buyer of goods becomes Insolvent, The unpaid seller can ~~retain~~ the ~~owner~~ regain the ownership by his right of Stoppage of goods in Transit.

⇒ Unpaid seller.

⇒ Possession ^{is} parted ^{with} goods carrier.

⇒ Goods are in transit

⇒ Buyer has become insolvent

⇒ Subject to provision (Section 50)

Right of Lien

Right of Stoppage in transit.

Retain possession

Regain Possession

Lien can be exercised even the Buyer is not insolvent.

Buyer should be Insolvent.

Right of Lien ends at that time Right of Stoppage in transit starts.

Right of Resale (Section 54)

↓
Perishable

without
giving Notice.

Non-Perishable

Seller must
give notice of
his intention to
resale.

↓
Loss

claim from
original Buyer
as damages

↓
Profit

Retain
with the
Seller.

If the seller fails to
give the notice.

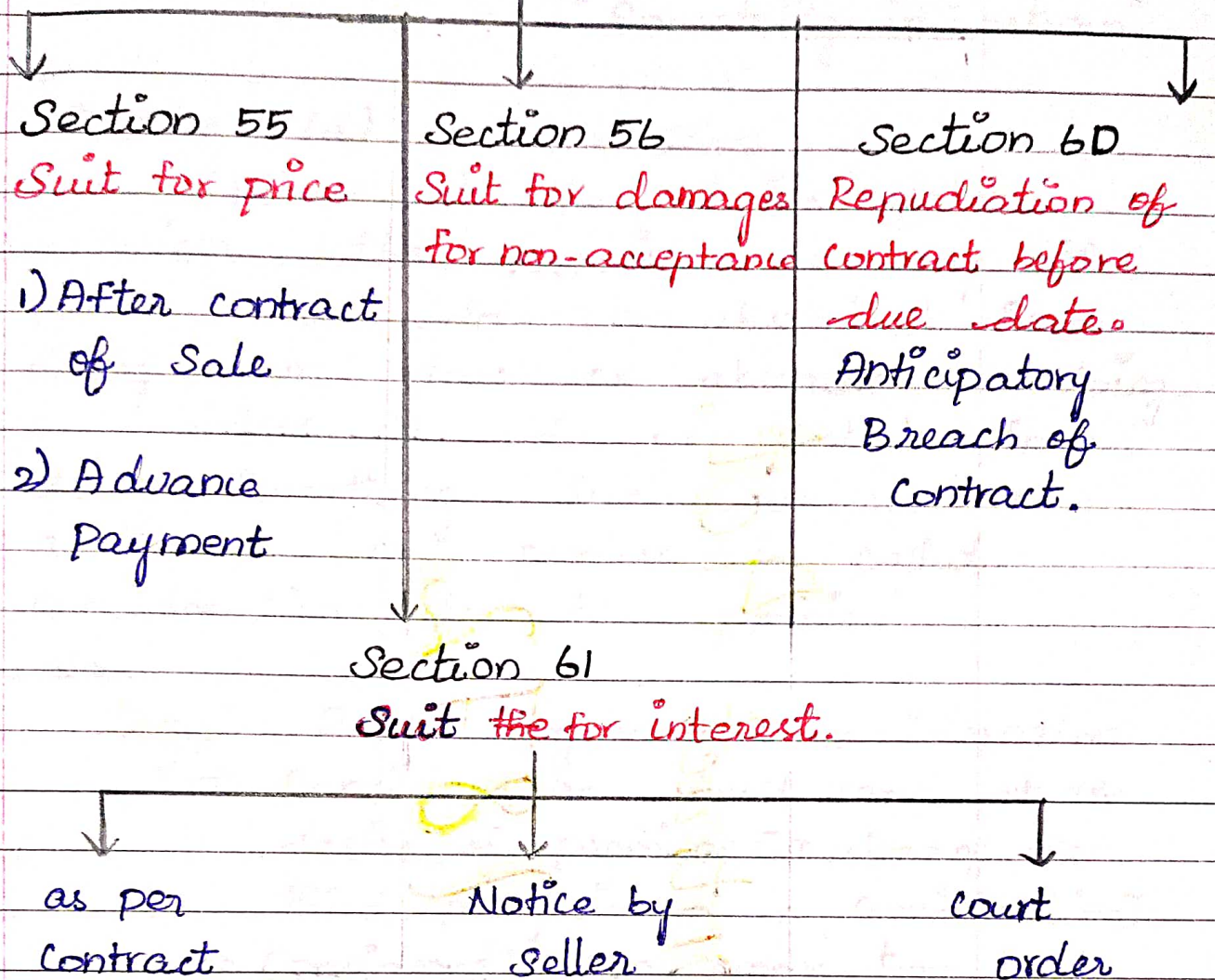
↓
Loss

Cannot recover
from the originally
Buyer.

↓
Profit.

must given
it to the
original Buyer.

Rights of Unpaid seller against the Buyer



Remedies of Buyer against the Seller

