

B.Com II Semester  
Subject- Business Law  
Topic- Sale of Goods Act 1930

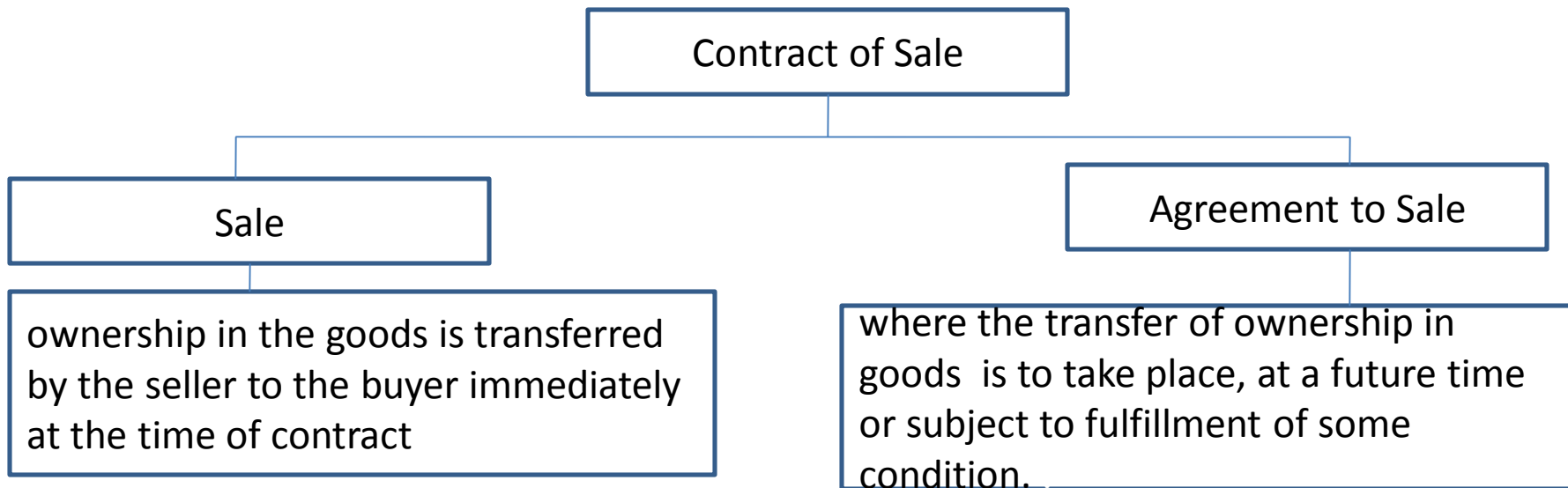
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# FORMATION OF CONTRACT OF SALE

- Till 1930, the law relating to sale and purchase of goods were regulated by the Indian contract act, 1872. In 1930, sections 76 to 123 of the Indian contract act, 1872 were repealed and separate act called 'The Indian sale of goods act, 1930' was passed. It came into force on 1<sup>st</sup> July 1930.

# MEANING OF CONTRACT OF SALE

- According to section 4 of the sale of goods act, 1930 . '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'.



# ESSENTIALS OF A CONTRACT OF SALE

- Two parties Buyer and Seller
- Goods
- Transfer of property
- All Essential elements of a valid contract must be fulfilled
- Price
- Include both sale and agreement to sale

# DIFFERENCE BETWEEN SALE AND AGREEMENT TO SALE

## **Sale**

- Ownership passes to the buyer.
- It is a executed contract.
- Risk of loss falls on the buyer.
- Seller cannot resell the goods.
- It can be in case of existing and specific goods.
- In case of breach of a contract, seller can sue for the price of the goods.
- The seller is only entitled to the ratable dividend of the price due if the buyer becomes insolvent.

## **Agreement to sell**

- Ownership remains with the seller.
- It is a executory contract.
- Risk of loss falls on the seller.
- Seller can sell goods to third party.
- It can be in case of future and unascertained goods.
- In case of breach of a contract, seller can sue only for damages not for the price.
- The seller may refuse to sell the goods to the buyer w/o payments if the buyer becomes insolvent.

# GOODS

- Definition-Sec2[7]The subject matter of a contract of a sale must be goods. The term 'goods' means 'every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, and things attached to or forming part of the land which are agreed to be served or under the contract of sale'.

# Effects of Destruction of Goods

1. **In case of Contract of Sale[Section 7]**- The contract of sale is void if the following three conditions are satisfied:
  - There must be a contract of sale for specific goods.
  - The goods must have become perished or so damaged as no longer to answer their description in the contract, before making of the contract.
  - The seller must not be aware about the destruction of goods.

**Example-** X sold to Y all 700 bags of cement lying in his Delhi's godown. State the legal position:

1. If unknown to X, all bags had been stolen before he contract was made.
2. If unknown to X, all cement had become stone as a result of heavy rainfall.
3. If unknown to X, 109 bags had been stolen at the time of making the contract.

Solution:

Case 1- The contract is void because the goods have perished before making of the contract.

Case 2-The contract is void because the goods became so damaged as no longer to answer to their description.

Case 3- The contract has become void and Y cannot be compelled to accept 591 bags because the contract was indivisible.

**2. In case of an 'Agreement to sell' [Section 8]**- An agreement to sell becomes void if the following four conditions are satisfied:

- There must be an agreement to sell specific goods.
- The goods must have become perished or so damaged as no longer to answer their description in the agreement.
- There must not be any fault of seller or buyer.
- The risk must not have passed to the buyer, i.e. the goods must have perished before the agreement to sell becomes sale.

Example 1-X agrees to sell a particular horse to Y on the expiry of 8 days. The horse was delivered on trial for 8 days. However, the horse died on the third day, without any fault of either the buyer or the seller. This agreement becomes void and X could not recover the price from Y.

Example 2- X agreed to sell to Y 10 tonnes of potatoes to be grown on his land. X sowed sufficient land to grow more than 10 tonnes of potatoes. But without any fault on X's part, a disease attacked the crop and only about 8 tonnes of potato could be grown. It was held that the agreement to sell has become void.



# PRICE OF GOODS

**Section 2(10) defines price “as a money consideration for a sale of goods”.**

- It forms an essential part of the contract.
- It must be expressed in terms of money.
- 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.

**Modes of determining price-section 9(1):**

- It may be fixed by the contract, or
- It may be left to be fixed in an agreed manner, or
- It may be determined by the course of dealing between the parties.
- In the absence of this, the buyer must pay to seller a reasonable price. What is reasonable price is a question of fact dependent on the circumstances of each particular case[Sec.9(2)]

**Agreement to sell at valuation:**

- Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.

Provided that, if the goods or any part thereof have been delivered to, and appropriated by the buyer, he shall pay a reasonable price therefore.

- Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

# CONDITIONS AND WARRANTIES

**Meaning of stipulation[Sec. 12(1)]-** The representation as to the fact which becomes a part of the contract. of sale is called stipulation.

The stipulation may be a condition or warranty depending upon its importance in relation to the contract.

**Meaning of condition[Sec.12(2)]-**

- The stipulation which is essential to the main purpose of a contract is known as condition.
- The breach of condition gives the aggrieved party the right to terminate the contract.

**Meaning of warranty[Sec.12(3)]-**

- A warranty is a stipulation which is collateral to the main purpose of the contract, and
- the breach of which gives the aggrieved party a right to claim damages but not a right to reject goods and to terminate the contract.

## **When condition to be treated as warranty[Sec.13]-**

- Where the buyer waives a condition;
- Where the buyer elects to treat breach of the condition as a breach of warranty;
- Where the contract is not severable and the buyer has accepted the goods or part thereof.

# Types of conditions and warranties

## Express conditions

The express conditions and warranties are those which the parties agree expressly, i.e. orally or in writing

## Implied conditions

- Condition as to title[sec.14(a)]
- Sale by description[sec.15]
- Sale by sample[sec.17]
- Condition as to quality or fitness[sec.16(1)]
- Condition as to merchantable quality[sec.16(2)]
- Condition implied by custom[sec.16(3)]
- Condition as to wholesomeness

## Implied warranties

- condition as to quiet possession[sec.14(b)].
- warranty against encumbrance[sec.14(c)].
- Warranty to disclose dangerous nature of goods.
- Warranty as to quality or fitness by usage of trade[sec.16(4)]

# TRANSFER OF OWNERSHIP

A contract of sale of goods involves transfer of ownership from the seller to the buyer. Transfer of ownership or property in goods is in fact the object of making a contract of sale.

## **Significance of transfer of ownership-**

The time of transfer of ownership of goods decides various rights and liabilities of the seller and buyer. Thus it becomes very important to know the exact time of transfer of ownership of goods from seller to the buyer for the following reasons:

- Who shall bear the risk
- Who can take action against third party.
- Whether a seller can sue for price.
- In case of insolvency of a buyer whether the official receiver or assignee can take possession of goods from seller
- In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer.

# RULES RELATING TO PASSING OF PROPERTY FROM SELLER TO BUYER

- Three categories-

**1 Rules relating to the transfer of ownership of specific or ascertained goods-**[ Sec 19 - 22]The ownership is transferred immediately at the time of making the contract if all the following conditions are satisfied:

- .The contract is for the specific goods.
- . The goods are in deliverable state.
- . The goods are not required to be weight or measured for determining price.

**2 Rules relating to the transfer of ownership of unascertained goods or future goods**-sec [18 and 23]Unascertained goods means goods which have not been identified and agreed upon at the time when contract of sale is made. The ownership of unascertained goods is transferred to the buyer when the following condition are satisfied:

- . The goods must have been ascertained.
- . The goods must have been unconditionally appropriated by the seller or the buyer.
- . The contract to sell unascertained goods is not a complete sale. It is the agreement to sell.

**3. Rules relating to the transfer of ownership of goods sale on approval or on sale or return' basis—sec24**

- . The term sale on approval basis may be defined as the sale in which the buyer may return the goods within reasonable time. This is also known as sale on return basis. It means the buyer has the option either to return or retain the goods. Here, the property in goods does not pass from the seller to the buyer.

# TRANSFER OF TITLE BY NON - OWNERS

- General rule- NEMO DAT NON HABET
- -No one can give that which has not
- -To protect property rights

## Exceptions

- Transfer of title by Estoppel [Sec 27]
- Sale by mercantile agent [Sec 27]
- Sale by Joint owners.[ Sec 28]
- Sale by a person in possession under voidable contract.[Sec 29]
- Sale by a seller in possession after sale.[Sec 30 (1)]
- Sale by a buyer in possession before the transfer of ownership.[Sec 30 (2)]
- Sale by an unpaid seller [Sec 54]

# DELIVERY

- Meaning of delivery-sec 2(2) Delivery means the voluntary transfer of possession from one person to another.

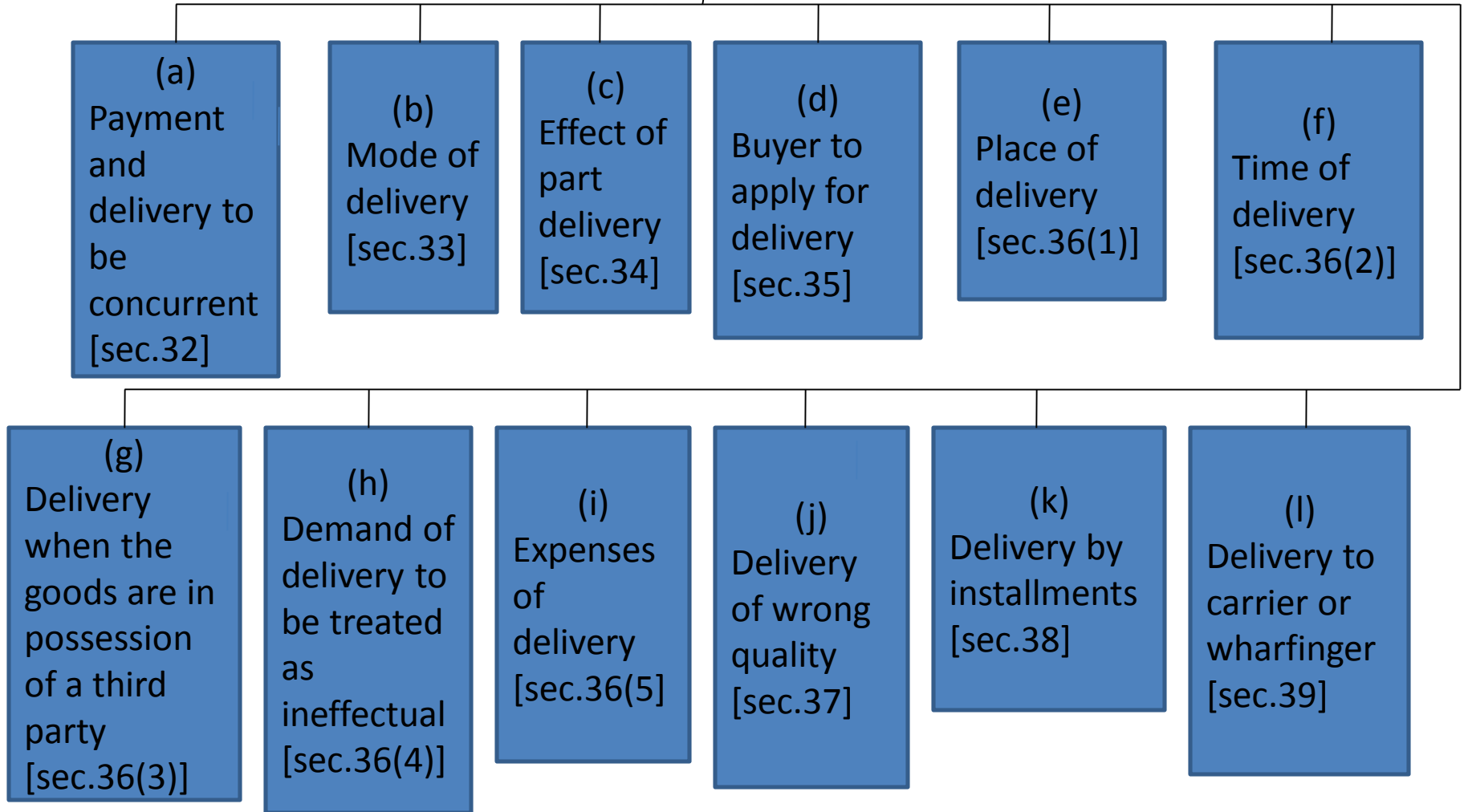
## Types of Delivery-

1. Actual delivery
2. Symbolic delivery
3. Constructive delivery



# RULES AS TO DELIVERY

## Rules as to Delivery



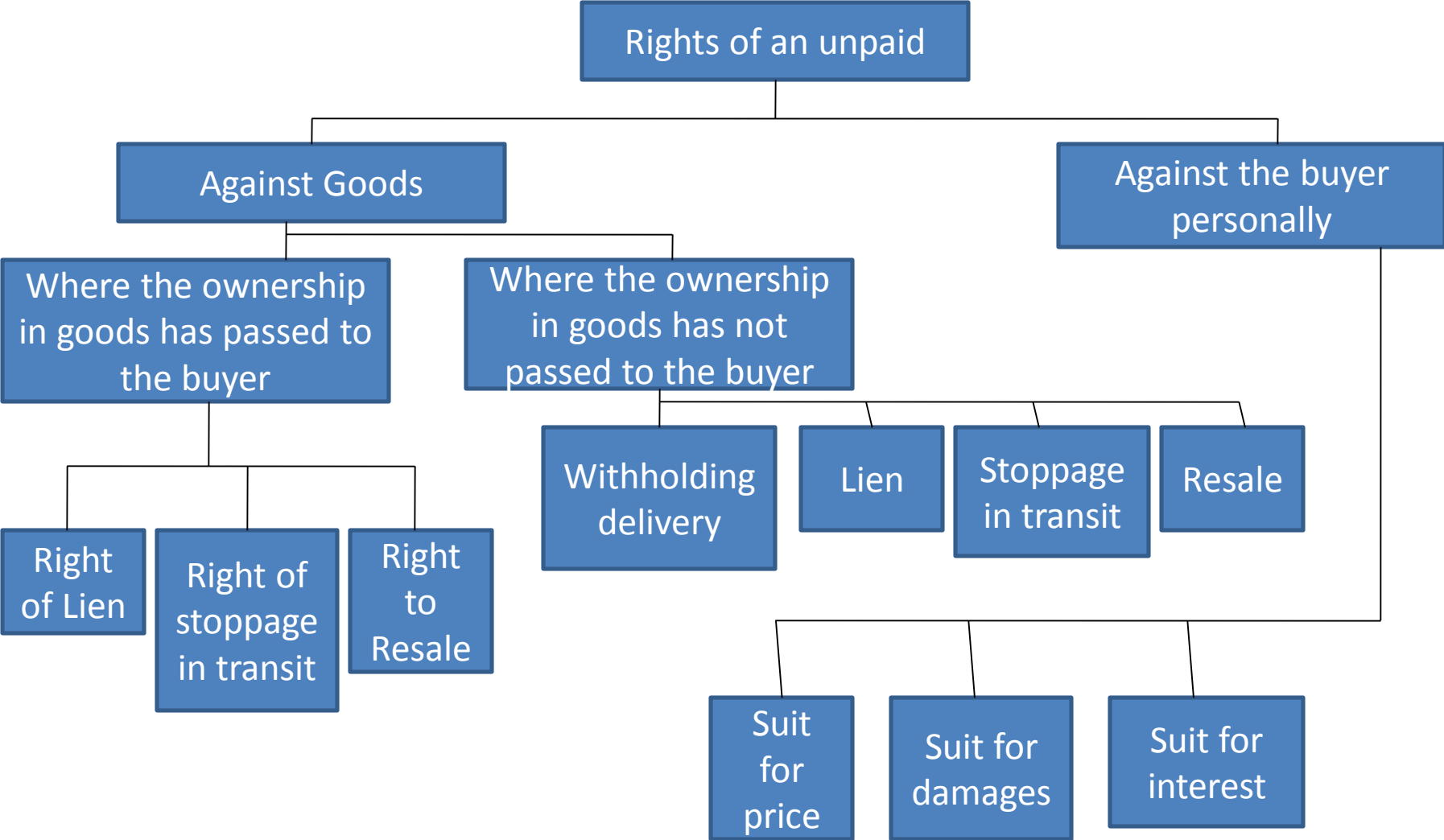
# UNPAID SELLER

## Meaning of unpaid seller- sec 45

The seller to whom the full price of the goods sold has not been paid the price is known as unpaid seller. A seller of goods is deemed to be unpaid in the following cases:

1. The price must be due but not paid.
2. A negotiable instrument like cheque and bill of exchange was received but same has been dishonoured.
3. The 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.
4. The seller shall be called an unpaid seller even when only a small portion of the price remains to be paid.
5. The seller must have an immediate right of action for the price.

# RIGHTS OF AN UNPAID SELLER



# Rights of unpaid seller against the goods when ownership is transferred

## 1. Right of lien-sec 47-49

Lien means the right to retain the possession of goods until the full price is received. An unpaid seller can exercise his right of line in the following cases :

- Where the goods have been sold on the cash basis
- Where the goods have been sold on credit basis and the term of credit has expired.
- Where the buyer has become insolvent even if the period of credit has not been expired

**Other rules to satisfy conditions for this right are :**

- i)-The unpaid seller must be in actual possession of goods sold .
- ii) It can be exercised even if the documents of title have been delivered to the buyer.
- iii) It can be exercised for the price and no for other expenses.
- iv) If the seller delivers some goods ,it can be exercised on the remaining.

## **The Unpaid seller loses his Right of Lien**

- When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- When the buyer or his agent lawfully obtains the possession of the goods.
- When the seller waives his Right of Lien.
- When the buyer disposes off the goods by sale with the consent of the seller
- When the price is paid by the buyer .
- When the goods are destroyed.

## **2. Right of stoppage of goods in transit[Sec 50-52]**

The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

### **Unpaid seller can stop the goods in transit in the following cases:**

- While the buyer becomes insolvent
- While the goods are out of actual possession of seller, but have not reached buyer's possession, ie, goods are in transit with carrier.
- The unpaid seller can stop the goods in transit only for payment of the price of the goods and not for any other charges.

### **The unpaid seller cannot stop goods in transit in the following cases:**

- When the goods reach the destination.
- While the buyer or his agent takes possession of delivery even if it has not reached destination.
- In case the carrier is agent of the buyer, the transit comes to an end the instance carrier receives the goods and seller cannot stop the transition .
- Carriers wrongful refusal to deliver goods to the buyer.

### **3. Right of Re-sale**

If a buyer fails to pay the price within a reasonable time, the unpaid seller has the right of re-sell the goods –

- Where the goods are of perishable nature
- Where the unpaid seller has exercised his right of lien or stoppage in transit and gives a notice to buyer of his intention of re-sale the goods.
- Where the unpaid seller has expressly reserve a right of re-sale if the buyer commits a default in making he payment

# **Rights against the goods where the property in the goods has not passed to the buyer[Sec 46(2)]**

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



# Rights against the buyer personally

- He may sue for price. [Sec 55]
- He may sue for the damages for the non-acceptance of goods-Sec 56
- He may sue for the damages for the repudiation of the contract before the due date of the delivery of the goods- Sec 60
- He has the right of interest for the delayed payment
- He may sue the damages for the wrongful refusal to take the delivery.

# DOCTRINE OF *CAVEAT EMPTOR*

- Caveat Emptor is a fundamental principle of the law of sale of goods.
- It means “Caution Buyer”, i.e. “Let the buyer beware”.

## **Exceptions to the doctrine of Caveat Emptor[sec.16]:**

- In case of any misrepresentation by the seller..
- In case of concealment of latent defects by the sellers.
- In case of sale by description and sample[sec.15].
- Conditions as to merchantability.
- Conditions as to quality of fitness for buyers purpose.
- Conditions of wholesomeness.

# Auction of sale

## Meaning:

Sale of auction is the public sale where the goods are generally sold to the highest bidder.

## Rules of Auction Sale:

The law on auction sales is contained in Sec.64 of the Sale of Goods Act. According to it, in the case of a sale of auction the following rules apply:

- Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
- The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;
- A right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so re-served, but not otherwise, the seller or any one person on his behalf may, subject to the provision here in after contained, bid at the auction;
- Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such a sale, or for the auctioneer knowingly to take any bid from the seller or any such person.