

# Formation of Contract of Sale

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. Prior to this Act, the law in respect of sale of goods was contained in the Indian Contract Act, 1872.

The references to Sections in all the Chapters in Unit II of this book are to the Sale of Goods Act, 1930, unless otherwise stated.

## Definition of Contract of Sale

According to Section 4 (1).

*'A contract of sale is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.'*

Contract of sale includes both a sale and an agreement to sell.

If the property in the goods (ownership) is transferred from the seller to the buyer immediately it is known as 'sale'. On the other hand, if the property in goods is to be transferred to the buyer in future or subject to the fulfillment of certain conditions it is known as an 'agreement to sell' - Section 4 (3).

## ESSENTIALS OF A CONTRACT OF SALE

The following are the essential elements of a contract of sale:

1. *There must be two parties to a contract of sale* – the buyer and the seller.  
'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 both a buyer and a seller.

*Case:*

*State of Gujarat vs. Ramanlal & Co.*

In this case, a partnership firm was dissolved and the surplus assets of the firm were divided among the partners. The Court held that there was no sale as the partners themselves were the joint owners of the firm's assets and they could not be both buyers and sellers.

2. *Goods form the subject matter of contract of sale* – Sale of Goods Act is not concerned with the sale of immovable properties like land, building etc.
3. *The consideration for the contract of sale, i.e., the price must be paid in the form of money.* Exchange of goods for goods is not a sale. It is known as 'barter'. The consideration may be partly in money and partly in goods.

4. There must be a transfer of general property in goods from the seller to the buyer. In other words, the seller must have absolute right to sell the goods.

Example:

X, who owns certain goods, has general property in the goods. He has the right to sell. But if he pledges them with Y, Y has special property in the goods.

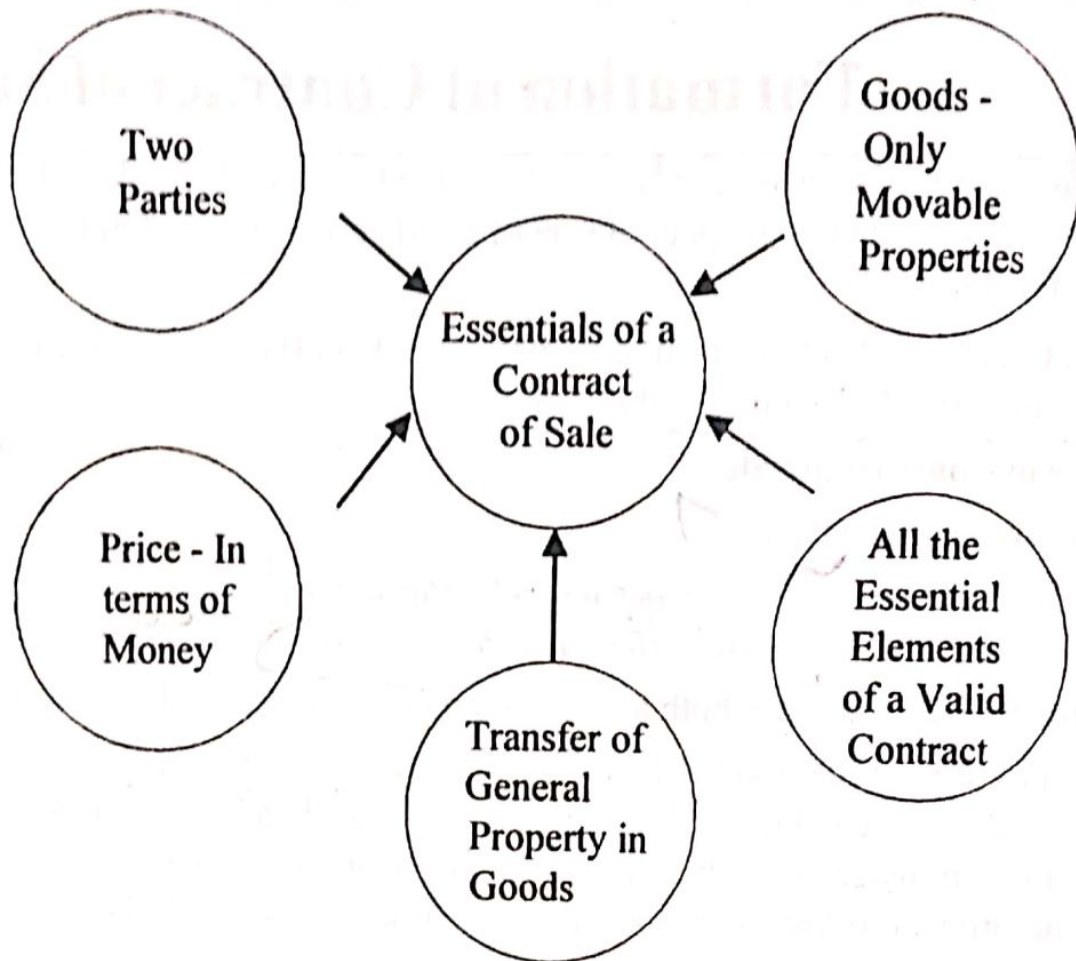


Figure 1. 1

5. All the essential elements of a valid contract must be present in the contract of sale, e.g., Offer, acceptance, free consent, capacity of the parties to make contract and so on.

## GOODS

'Goods' form the subject matter of a contract of sale. Section 2 (7) defines 'Goods' as follows:

'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'. Trade marks, copyrights, patents, goodwill, electricity, water, gas are all goods.

### Classification of Goods

Goods are classified under the Sale of Goods Act as follows:

## Existing Goods

These are the goods that are owned and possessed by the seller at the time of sale. Existing goods are further divided into specific, ascertained and unascertained goods.

- (a) Specific goods are those which are identified and agreed upon at the time of contract of sale.

### Example:

A specific TV set or a specific Wristwatch.

- (b) Ascertained goods are those that are identified out of a mass of unascertained goods, agreed upon and appropriated (set aside) for the purpose of the contract of sale.

### Example:

When 20kgs of sugar are appropriated from a bag containing a larger quantity of sugar, the 20kgs become ascertained for the contract.

- (c) Unascertained goods are those which are not identified and agreed upon at the time of the contract of sale. They are only defined by description.

### Example:

X wants to buy a cycle and goes to a shop selling bicycles. He is taken to the godown of the shop where he sees hundreds of cycles. These are unascertained. X may select a particular cycle which becomes specific. If the particular cycle selected by X is taken out and kept separately, it becomes ascertained.

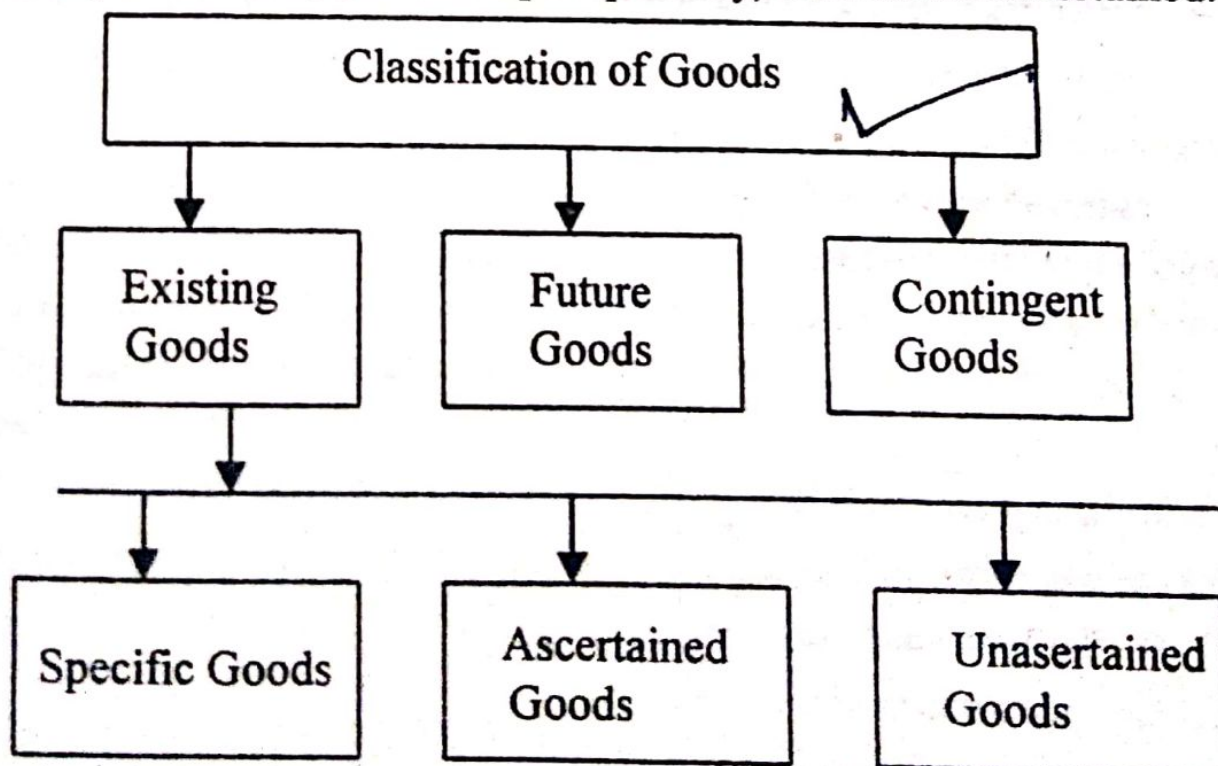


Figure 1 ?

## DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

The points of differences between Sale and Agreement to Sell may be tabulated as follows:

<i>Sale</i>	<i>Agreement to Sell</i>
1. The ownership rights are transferred to the buyer immediately.	1. Here the ownership rights are transferred to the buyer only in future.
2. If the goods are destroyed, the loss will fall on the buyer even if the goods are in the possession of the seller.	2. If the goods are destroyed, the loss will fall on the seller even if the goods are in the possession of the buyer.
3. If the buyer fails to pay the price, the seller can sue him for the price.	3. In a similar case, the seller can only sue the buyer for damages.
4. The seller cannot re-sell the goods (if he is keeping possession). If he does so, the second buyer does not get a good title.	4. In case of re-sale by the seller, the second buyer gets a good title provided he buys in good faith. The first buyer can sue only the seller for damages.
5. It creates 'jus in rem' (right against the world) <i>i.e.</i> , right to enjoy the goods against whole world.	5. It creates 'jus in personam' (right against a person) <i>i.e.</i> , right to the buyer to sue the seller for damages.
6. If the buyer becomes insolvent before paying the price, the seller can get only a rateable dividend from the buyer's estate towards the price.	6. If the buyer becomes insolvent before paying the price, the seller is not bound to part with the goods.
7. If the seller becomes insolvent, the buyer can recover the goods from the Official Receiver.	7. If the buyer has already paid the price and the seller has become insolvent, the former can claim only a rateable dividend from the latter's estate and not the goods.

# Conditions and Warranties

In the course of making a contract with the buyer, the seller may make certain statements with reference to the goods to induce the buyer. Any such statement or stipulation may be a mere expression of opinion by the seller or may form part of the contract itself.

A stipulation in a contract of sale with reference to goods, which are the subject-matter thereof, may be a condition or a warranty - Section 12 (1).

## Definition of Condition and Warranty - Section 12 (2) & (3)

A 'condition' is a stipulation that is essential to the main purpose of the contract. If there is a breach of condition the affected party can treat the contract as repudiated. (Repudiate - disown or reject).

A 'warranty' is a stipulation that is collateral to the main purpose of the contract. If there is a breach of warranty the affected party can only claim damages only and has no right to reject the contract.

## DISTINCTION BETWEEN CONDITION AND WARRANTY

<i>Condition</i>	<i>Warranty</i>
<ol style="list-style-type: none"><li>1. A condition is a stipulation which is essential to the main purpose of the contract.</li><li>2. For the breach of condition, the affected party can abandon the contract of sale.</li><li>3. A breach of condition may be treated as a breach of warranty. This happens if the affected party decides to claim damages only.</li></ol>	<ol style="list-style-type: none"><li>1. A warranty is a stipulation which is collateral to the main purpose of the contract.</li><li>2. For the breach of warranty, the affected party can claim damages only.</li><li>3. A breach of warranty cannot be in any way treated as breach of condition.</li></ol>

## **When is a Condition treated as a Warranty? (Section 13)**

Under the following circumstances, a condition is treated as a warranty:

- (a) When the buyer waives the condition, i.e., avoids insisting on the condition; or
- (b) When he elects to treat the breach of condition as a breach of warranty; or
- (c) Where a contract of sale is 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.

There can be any number of express conditions and warranties in a contract of sale. The implied conditions and warranties are contained in the Sale of Goods Act and these are given below:

### **IMPLIED CONDITIONS IN A CONTRACT OF SALE**

The following are the implied conditions in a contract of sale:

#### **1. Condition as to Title - Section 14 (a) :**

In a contract of sale there is an implied condition that in the case of a sale, the seller has a right to sell the goods and 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.

**Case:**

#### ***Rowland vs. Divail***

In this case, R bought a car from D and later came to know that D had no title to the car. The Court held that R could recover the price paid.

#### **2. Sale By Description (Section 15) :**

When goods are sold by description there is an implied condition that the goods shall correspond with the description. Otherwise, the buyer is not bound to accept the same.

Sale of goods by description covers the following situations:

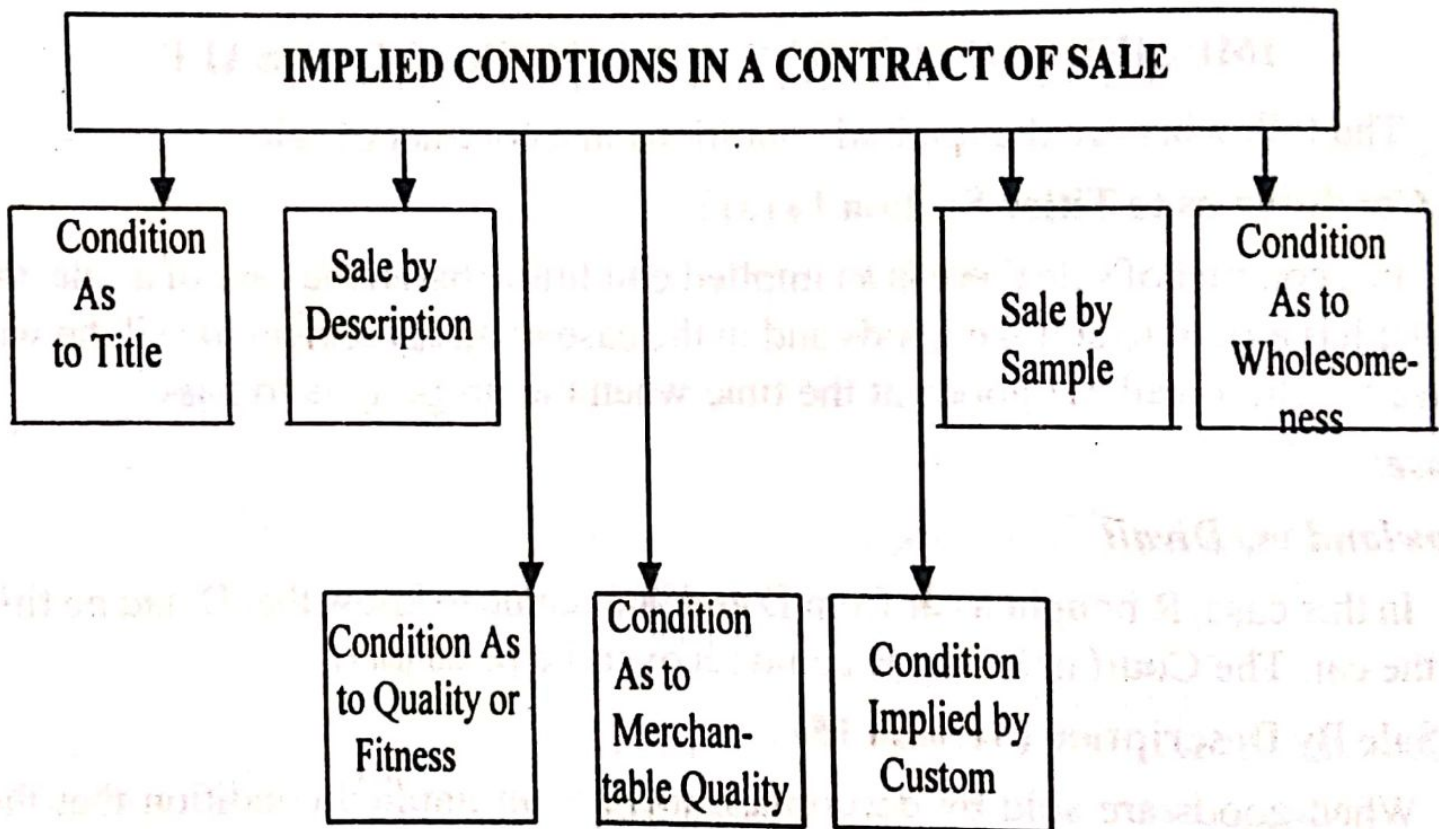
- (a) The buyer has not seen the goods and relies on the seller's description

**Case:**

#### ***Warley vs. Whipp***

In this case, a machine was sold describing it to be one year old but the buyer found it to be extremely old and did not perform as described. It was held that he could reject it as it did not correspond with the description.

- (b) The buyer has seen the goods but buys only on the basis of the seller's description



**Figure 2. 1**

### **3. Condition As to Quality or Fitness - Section 16 (1):**

Generally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. The buyer must examine the goods thoroughly before he buys them and satisfy himself that the goods will be suitable for the purpose for which he is buying them.

The following points, however, must be noted:

- (a) If the buyer makes known to the seller the particular purpose for which he needs the goods and depends upon the skill and judgement of the seller, there is an implied condition that the goods shall be reasonably fit for the purpose.

## IMPLIED WARRANTIES

The implied warranties in a contract of sale are shown below:

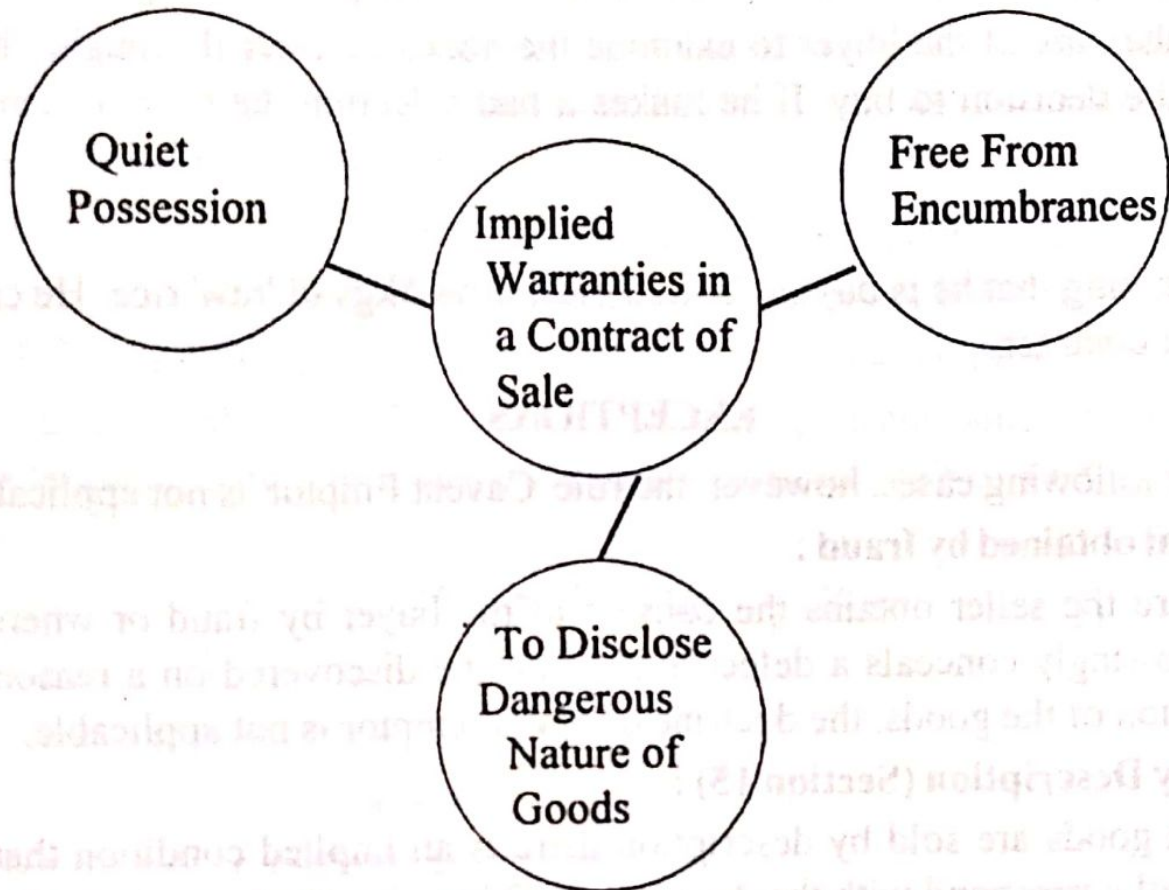


Figure 2. 2

**1. Quiet Possession - Section 14 (b) :** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer's enjoyment of the goods is in any way disturbed in consequence of the seller's defective title to sell, the former can claim damages.

**2. Freedom from encumbrances - Section 14(c):** In addition to what is given in Section 14 (b) above, the buyer is entitled to a further warranty that the goods are not subject to any charge or right in favour of a third party. If the buyer's possession is in any way disturbed by reason of the existence of any charge or encumbrance on the goods in favour of any third party, the buyer can claim damages.

**3. To disclose dangerous nature of goods :** If the goods sold are of a dangerous nature, it is the duty of the seller to caution the buyer about the same. Otherwise the seller will be liable for damages if the buyer is injured.



### CAVEAT EMPTOR

It is a Latin rule that means 'Let the Buyer Beware'. In a contract of sale, it is not necessary for the seller to give all the details in respect of the goods he sells.

It is the duty of the buyer to examine the goods he buys thoroughly before making the decision to buy. If he makes a bad selection, he cannot blame the seller.

**Example:**

X, thinking that he is buying 'boiled' rice, buys 5kgs of 'raw' rice. He cannot avoid the contract.

### EXCEPTIONS

In the following cases, however, the rule 'Caveat Emptor' is not applicable:

**1. Consent obtained by fraud :**

Where the seller obtains the consent of the buyer by fraud or where the seller knowingly conceals a defect that cannot be discovered on a reasonable examination of the goods, the doctrine of caveat emptor is not applicable.

**2. Sale By Description (Section 15) :**

When goods are sold by description there is an implied condition that the goods shall correspond with the description. Otherwise, the buyer is not bound to accept the same.

Sale of goods by description covers the following situations:

- (a) The buyer has not seen the goods and relies on the seller's description.
- (b) The buyer has seen the goods but buys only on the basis of the seller's description.
- (c) Packing of goods is part of the description.

**3. Condition As to Quality or Fitness - Section 16 (1):**

Generally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. The buyer must examine the goods thoroughly before he buys them and satisfy himself that the goods will be suitable for the purpose for which he is buying them.

If the buyer makes known to the seller the particular purpose for which he needs the goods and depends upon the skill and judgement of the seller, there is an implied condition that the goods shall be reasonably fit for the purpose.

**4. Condition As to Merchantable Quality - Section 16 (2) :**

Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods are of merchantable quality.

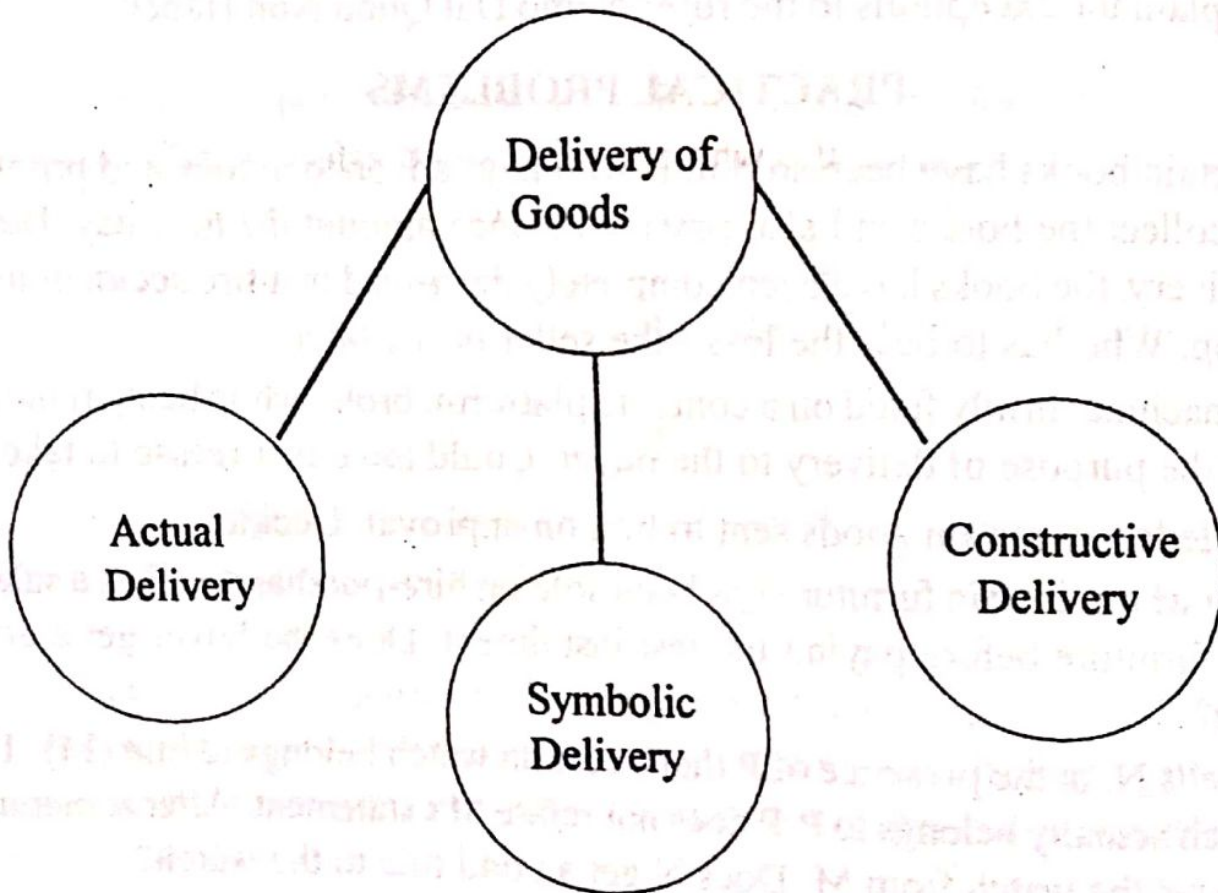
Goods are of merchantable quality if they are fit for the very purpose for which they are usually purchased. A pen that does not write or a watch that does not show time cannot be considered to be merchantable.

# Performance of Contract of Sale

A contract of sale is said to be performed when the seller gives delivery of the goods to the buyer and the buyer makes payment for the goods.

## Delivery of Goods

'Delivery' means voluntary transfer of possession of goods from one person to another - Section 2 (2). Delivery of goods may be of three types as shown below:



**Figure 4. 1**

**Actual delivery :** It takes place when the seller or his agent physically hands over the goods to the buyer.

**Symbolic delivery :** Actual delivery may not always be possible particularly when the goods are of a bulky nature. Handing over of the warehouse key to the buyer is symbolic delivery of goods.

**Constructive delivery :** Where a third person, may be a bailee, who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place constructive delivery.

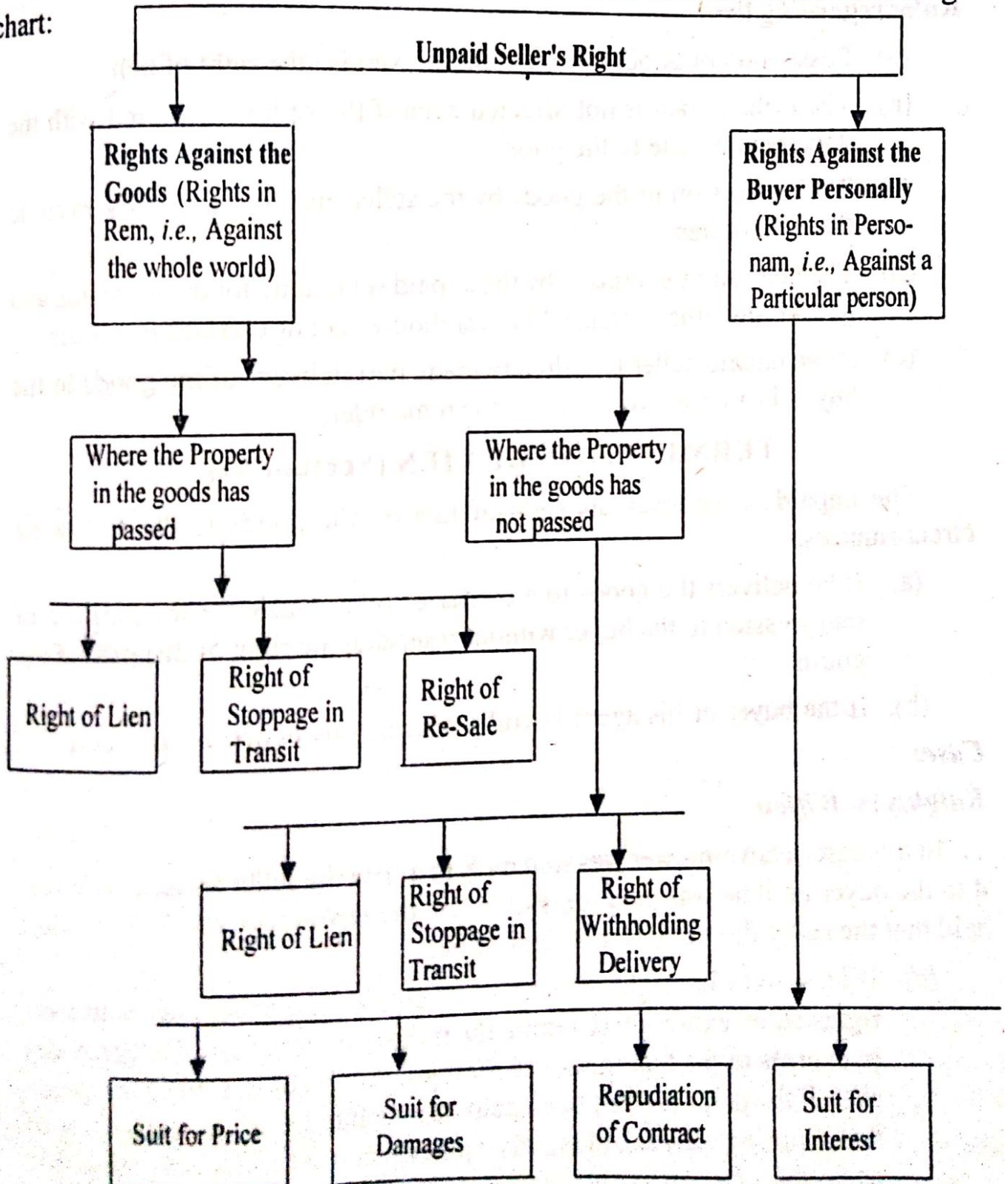
# Rights of an Unpaid Seller

An unpaid seller is one to whom -

- (a) the whole of the price has not been paid; or
- (b) a Bill of Exchange or such other negotiable instrument has been given but the same has been dishonoured – Section 45 (1).

## RIGHTS OF AN UNPAID SELLER

The various rights of an unpaid seller have been indicated in the following chart:



## **Rights of an unpaid seller against the buyer personally**

These rights of the unpaid seller against the buyer are called 'rights in personam'. These are as follows:

1. *Suit for Price (Section 55)* - If the buyer wrongfully refuses to pay for the goods, the seller may sue him for the price whether the property in the goods has passed to the buyer or not.
2. *Suit for Damages for Non-Acceptance (Section 56)* - If the buyer wrongfully refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.
3. *In case of Repudiation of Contract (Section 60)* - If the buyer abandons the contract before the date of delivery, the seller may treat the contract as existing and wait till the date of delivery or he may treat the contract as cancelled and sue the buyer for damages for the breach.
4. *Suit for Interest - Section 61 (2) (a)* - If 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 there is no such agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

## **AUCTION SALE**

It is a public sale in which different willing buyers participate. The goods are finally sold to the highest bidder, i.e., the one who has quoted the highest price.

### **Rules regarding Auction Sale (Section 64)**

The rules in respect of auction sale, contained in the Sale of Goods Act, are given below:

1. If the goods are put up for sale in an auction in lots, each lot is deemed to be a subject of a separate contract of sale.
2. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner. Until such announcement any bidder may revoke his bid.
3. A right to sell may be reserved expressly by the seller. In such a case, the seller or any one person on his behalf may bid at the auction.
4. Where a sale is not notified to be subject to a right to bid on behalf of the seller, it is not lawful for the seller to bid himself or to employ any person to bid at such a sale.
5. The sale may be notified to be subject to a 'reserve' or 'upset' price. It is a price below which the auctioneer will not sell.